

**Submission to:** **Tasmanian Government Consultation Paper**  
**Subject:** **Tasmanian Farm Debt Mediation Scheme**

**By:**

**Rural Business Tasmania**

*Supporting and Growing*  
**RURAL ENTERPRISE**



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Rural Business Tasmania welcomes the invitation to provide input to the public consultation to help inform the development of a farm debt mediation (FDM) scheme that delivers benefits for Tasmanian farmers.

The potential introduction of a Tasmanian FDM scheme has been a constant discussion point for over a decade and has looked at the benefits and pitfalls of how such legislation may be utilised by parties to meet their requirements. Lenders generally operate nationally and thus to come in line with other mainland states such legislation would provide a robust and consistent approach for those where a mutually agreed outcome can be negotiated informally.

### **1. Our experience with Farm Debt:**

Rural Business Tasmania has been the provider of the RFCS (rural financial counselling) service for Tasmania since it and its preceding programs were introduced in the late 1980's. The Rural Financial Counselling Service supports approximately 150 farming clients per annum in Tasmania through its outreach and case management model. Over the lifetime of service this equates to thousands of clients supported.

Clients are referred from various sources including lenders or will self-refer to the service when they are experiencing or at risk of experiencing financial hardship. Clients are supported through our case management approach to explore options and find sustainable solutions to enable them to be successful primary production business operators.

Farm debt contributes to financial hardship in many of the clients supported. The service is able to provide early intervention and assist the farmer to negotiate with lenders to find an avenue to sustainability or a graceful exit. The success of such support relies on the readiness for change, negotiation and adaptation of parties involved, final outcomes deemed successful and legislative remedies available.

Through this work we see on a daily basis the emotional anguish and pressure that results from financial hardship and unsustainable farm debt. Cashflow is impacted as limited funds are consumed by farm debt servicing requirements. This limits the ability for the farm to operate at optimum levels and efficiency. When the emotional and practical pressure is constant, it is often noted that the decision making of the client is impacted. The farmer can only look to the next few weeks (how do I pay my bills, feed my animals, tend my crops, feed my family AND service the principal and interest to the bank). Long term planning, efficiencies and strategic goals are forgotten.

In cases where RFCS Tasmania received informal approaches for assistance with farm debt mediation and intervention, 85 per cent of clients in asset management avoided foreclosure. The other 15 per cent achieved agreeable exit from the farm business but may have benefited from an FDM scheme.

We have also had interactions and understanding through our mainland colleagues of existing mainland state FDM schemes and in particular the Victorian scheme. Interactions with senior bank managers and Victorian financial counsellors show widespread support of the concept of FDM schemes to all parties.

## **2. The benefits we suggest may derive from utilisation of an FDM scheme:**

Rural Business Tasmania asserts the need for a mandatory approach to farm debt mediation that would protect not only the interest of farmers but promote sector sustainability. The benefits for the community of farming businesses to remain in and contribute to the economic prosperity of the community are considerable.

There are limited occasions when informal negotiations fail and the lender will enforce action to the detriment and against the wishes of the farmer. Various measures have been introduced to regulate the lending industry. These together with public pressure to support those impacted by crisis invoked financial hardship (such as drought) has improved many outcomes since the 1980's when widespread news of evictions was a regular event.

There are exceptions to any practice and the recent Royal Commission provided evidence that further support, understanding and communication may support a cleaner and less emotive and harrowing experience.

Debt mediation legislation aims to ensure efficient and equitable resolution of farm debt disputes. Under proposed legislation, mediation is required to be offered to the farmer before a creditor can take possession of property or initiate other enforcement action under a farm mortgage, for example. It provides a safe environment for farmers to talk constructively with their bank/creditor and work through debt problems together.

In states where legislation is not present debtors have little or no legal discourse. Avenues for complaint do exist where a member of the Australian Financial Complaints Authority has acted

in a manner that the borrower feels is unjust. Current consumer and safe lending practices tend to address consumer credit and exclude many commercial credit arrangements.

A nationally mandated approach (as suggested through the consultation paper proposed adoption of national principles) would deliver better and fairer outcomes for farmers. The proposed Tasmanian FDM scheme is anticipated to support a small number of farm businesses per annum (“it is anticipated that there may be between 8 – 17 farm debt mediations in Tasmania each financial year...” (page 3 Consultation Paper).

The position could be taken that as there is only a small number of Tasmanians who may utilise the scheme, the costs and infrastructure needed outweighs any benefit derived. This argument does not factor in the potential incentive for farmer and lender to reach informal agreement to limit or avoid involvement in an enforced legislated process. The enforced process provides avenues for communication and resolution where communication may have stalled on either side. This has a potential benefit for the industry in that lending sector would consider investment into the sector to be a lower risk with reduction of debt in arrears, brought about through cleaner and more timely resolution of disputes.

The security of legislated process as the final step would provide a level of comfort and support through earlier informal negotiations for the most favourable terms. The requirement of the lender to offer mediation would provide them with incentive to review any potential negative impacts (aggressive lending practices, provision of loan that may be unsustainable). It will influence culture of lenders to ensure adherence to good lending principles, long term business sustainability practices of the farmer and supportive relationship between lender and borrower. This is a much wider benefit to the agricultural sector than just the handful (1 – 2 per month) that will directly benefit.

### **3. Potential additional principles for consideration and inclusion:**

The principles and features suggested for the proposed Tasmanian FDM scheme are clear and provide a reasonable framework to implement legislation. Detailed planning to ensure the process does not become burdensome and time consuming will be required. Evidence suggests that planning for a mediation process can take between 80 – 100 hours and require professional support for the farmer. This may involve significant legal and financial advisor costs. Should the farmer utilise the Australian and Tasmanian government funded RFCS, significant pressure on workload may result on the service and impact on its ability to provide timely support to a large number of clients, some with complex financial hardship cases to resolve.

Consideration to costs associated with mediation (mediator costs and venue) should be further reviewed. The proposal for parties to equally share costs at commercial level may be a significant barrier and negate any opportunity for a farmer to utilise the service. If the borrower is already under significant financial pressures, but need to engage costly legal or specialist support and then contribute approximately \$3000 (as per consultation paper), this may seem an insurmountable road to resolution particularly when also considering the emotional and time resources that will be expended in an already stressful situation. It is noted that in Victoria the cost per mediation session is currently \$195 whereas the NSW scheme is on a 50%:50% shared basis. As a significant number of Tasmanian lenders would need to negotiate with Victorian (Melbourne) based banking credit control/debt departments it is suggested that a cost closer to that of the Victorian model should be adopted.

Consideration should also be included for location of mediation hearing to ensure that it will sit within Tasmanian jurisdiction. Where local (Tasmanian based) lending representatives are still overseeing the lending arrangement it is often the experience of RFCS that a more positive outcome may be negotiated. If the debt in arrears has been transferred to central debt management departments of the lender in question, this may add to the cost and difficulty in communication and resolution. For example, in one case (in the past and without supporting FMD legislation,) it was necessary for a client of RFCS service to attend meetings in Melbourne to attempt resolution. RFCS were requested to attend to support client. Two issues arise from this – firstly additional costs involved for travel, accommodation and secondly any jurisdictional complications of lender being Victorian based against Tasmanian land held.

#### **4. Practical application of model to meet the needs of farmers and lenders:**

In reviewing some mainland jurisdictions, the “farm” debt mediation scheme sits within a more broad “small business” offering. It is noted that feedback or comment on such a broad offering is not within the scope of this consultation paper and thus this submission refrains from comment on the relevance or access by business other than defined by the specific “farm” legislation.

It is noted that in most cases the legislation and scheme implementation is however specific to farm mortgage, farm machinery or water rights. Clarity around the type of lending covered by the FDM scheme must be specified. Currently the Consultation Paper only references “creditor”

which has a broad definition. It is not anticipated that the broader interpretation would be covered under the intended legislation.

The success of the proposal is dependent on the access, ease of use and support offered during the mediation process. This extends to the participants taking part in mediation having a working knowledge of commercial transactions in a rural setting. A mediator should be conversant with applicable lending legislation and associated agreements together with primary production to ensure conversation is relevant to the matter discussed. Although it would not be expected that a mediator would have expertise in the matter sufficient knowledge or practical understanding, as suggested in the consultation paper, would provide confidence in mediated discussions.

Measures to be included in introduction of the scheme should include:

### **Suitable and accessible information**

- Clear concise website, information flyers, fact sheets of how the scheme operates, where support is available and the steps required by each party.
- Information should be available from a variety of sources and mediums including via the lender, specialist advisors (RFCS, lawyers, accountants, farm management consultants)
- Checklists, standard forms and case study examples would also assist the farmer in understanding the process, minimising preparation and limiting costly expert advice.

Information sessions should be held to ensure that Tasmanian operators (farmers, lenders and advisors) have the opportunity to understand and seek generalist information from the government on the legislated process.

### **Support provision and alternative resolution**

Clear information as to free support through the RFCS should be included and recommendation to refer to this support recognised as part of the implementation process. This should not bind the farmer (borrower) to use the service for support but rather ensure that it is clear that a government funded service exists.

Other forms of support including AFCA, remediation via lending practices, consumer protections should also be included in information to ensure that all avenues of remediation are made known.

## **Support to counter barriers of severe financial hardship**

Consideration as to financial hardship restraints on meeting mediation costs should be included to ensure that financial impediment does not prevent a borrower from accessing the legislated support of mediation.

This may include access for farmers to a mandated hardship fund in cases where severe financial hardship can be demonstrated.

## **Emotional and financial counselling support channels (particularly in dealing with unfavourable or failed mediation)**

It is suggested that clear pathways to support are provided to the farmer dealing with mediation. This could include fact sheets as to potential outcomes, what may have contributed to the situation and support to ensure that a similar situation does not re-occur. In many instances it may be a series of events or circumstances that led the parties to FMD. This may include natural disaster, personal circumstances, lack of business acumen, incorrect advice or a series of bad decisions/events. A successful outcome may include enforcement action but may also set out a series of steps and actions with mutually agreed milestones to establish a successful and financially stable life going forward.

Rural Business Tasmania supports introduction of the proposed Farm Debt Mediation Scheme and acknowledges the critical role that our organisation can play in supporting its practical contribution to Tasmanian agriculture.

Should we continue to be the service provider in coming funding periods of the Rural Financial Counselling Service, we will encourage and support the process to our fullest ability.

We welcome any further contribution through our business and financial management acumen that we may be able to provide to the process and look forward to further discussions with the Tasmanian Government and rural stakeholders in supporting our farming community to be successful and sustainable financially sound business ventures.

Rural Business Tasmania wish to note the support for our role in the business and financial management expertise that has been acknowledged by our colleague rural stakeholders including Poppy Growers Tasmania and Fruit Growers Tasmania.

## Rural Business Tasmania

Established in 1986, Rural Business Tasmania Inc is a not-for-profit charitable organisation primarily offering business and financial management support, counselling, coaching and expertise to rural and regional communities.

Through the provision of numerous programs, the organisation assists rural business enterprises manage the ever-evolving demands and challenges facing the primary industry sector and regional communities.

These programs include the State supported and Australian Government funded Rural Financial Counselling Service, Small Business Support Program, our State Government supported Rural Business Programs including the Cultivating Rural Excellence, Cadetship programs, Forest Contractors Resilience Program, the Forum of Rural Stakeholders and the Rural Relief Fund.

### RBT Vision

*A sustainable and prosperous future for rural and regional Tasmania*

### RBT Mission

*To develop and deliver services and projects within the rural business sector that foster viable and sustainable economic development for Tasmania*

#### **The organisation seeks to support and grow rural enterprise by:**

Developing success and sustainability through innovation.

Empowering clients to achieve improved outcomes.

Being advocates for the sector.

Providing immediate assistance when required.

Facilitating positive change.

Providing education and support.

Helping farmers understand their current position and where they are at.

Fostering partnerships with primary production sector facing organisations.

Providing support to deal with emerging changes and challenges.

Helping its clients in times of crisis.

Rural Business Tasmania's focus is on growing a more robust, resilient, and productive rural sector for the State through increased business and micro and economic skill training and sharing of financial expertise.