

Mediation Information Package



This package provides relevant information about mediation relating to farm business debt under the *Farm Business Debt Mediation Act 2017 (Qld)* (the Act).

Included in this pack:

- information about the rights and obligations of the farmer in relation to mediation
- information about persons qualified to conduct mediations under the Act.

Mediation

Purpose of mediation

The purpose of mediation under the Act is to provide an efficient and equitable way for farmers and mortgagees to attempt to resolve matters relating to farm business debts. In short, it is a requirement that a mortgagee serve a notice inviting a request for mediation on the farmer before any mortgagee enforcement action can be taken.

Financial problems encountered by farmers are more effectively managed and addressed if they are identified early. The first step for a farmer is to contact their mortgagee (lender) to discuss their situation. Other legal aid and community services may also assist.

If matters remain unresolved, mediation provides a structured negotiation process in which the mediator, as a neutral and independent person, can assist the farmer and the mortgagee to bring about an agreement on matters relating to the farm business debt.

Benefits of mediation under this Act:

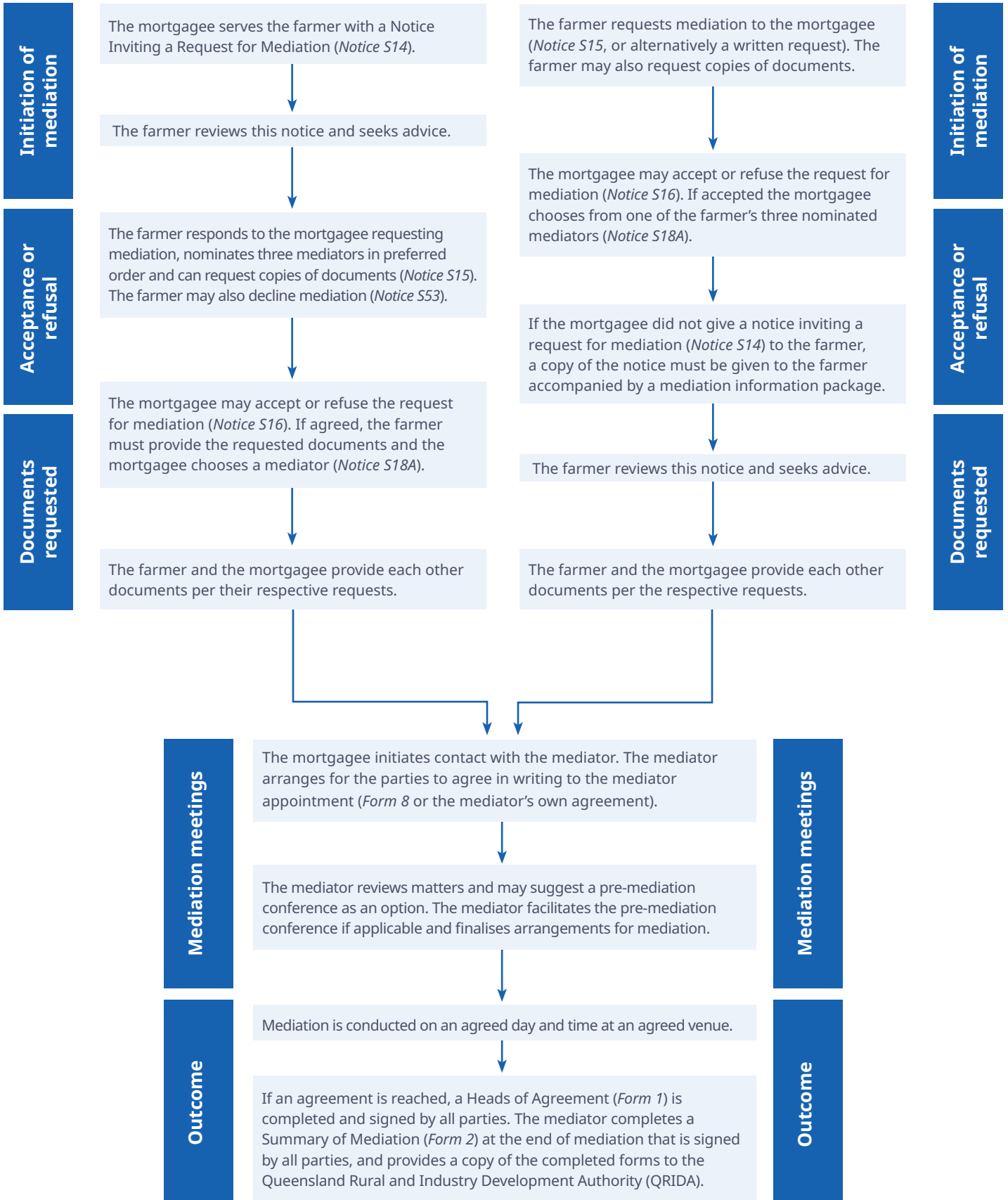
- ✓ establishes the rights of the farmer to be offered mediation prior to a mortgagee undertaking enforcement action
- ✓ helps disputing parties understand how the others see and feel about the problem
- ✓ enables business relationships to be maintained and even enhanced by encouraging co-operative problem solving
- ✓ enables identification and exploration of all issues, including those which may not be revealed in arbitration or litigation because of the application of the rules of evidence
- ✓ is confidential thereby avoiding adverse publicity or media attention and the need for any confidential or commercially sensitive information or trade secrets to be publicly disclosed
- ✓ is usually significantly cheaper and quicker than arbitration or litigation and can be arranged to suit the convenience of the parties
- ✓ focuses on the future rather than on the rights and wrongs of the past.



Creditor (mortgagee) initiated mediation



Farmer initiated mediation



Frequently asked questions

Who chooses a mediator?

The farmer is responsible for nominating three mediators in order of preference from the Register of Mediators located on QRIDA's website (search for Farm Business Debt Mediation at qrda.qld.gov.au).



All mediators accredited to mediate under the Farm Business Debt Mediation Program are appropriately qualified to perform the functions of a mediator.

Who are the mediators?

QRIDA accredits a number of people as part of a Register of Mediators under the Act. All mediators are experienced and have received training in the Act.

The mediators are strictly neutral, they do not take sides or represent either the farmer or the mortgagee. Mediators facilitate negotiations between the parties to seek a solution to the dispute. Mediators are respected and trusted by all parties, have expertise in rural and agriculture related disputes and can be a great benefit in helping reach a solution satisfactory to all parties.

How to arrange mediation?

On the basis that a mediator has been agreed to, it is the responsibility of the mortgagee to then ask the chosen mediator to arrange the mediation. This includes the time, date and location of the mediation and the coordination of mediation meetings.

The mediator arranges for the completion of a *Form 8 Mediator Appointment* or their own agreement, with a copy provided to each party including QRIDA. Mediation meetings are to be conducted soon after arrangements are made and with as little formality and technicality as possible.

The farmer and the mortgagee may bring solicitors, accountants, rural financial counsellors, Legal Aid Queensland or other advisors. The farmer may also bring other family members. All people attending must be approved by the mediator.

A person representing a party at a mediation meeting must be authorised in writing to enter into a *Form 1 Heads of Agreement* for the party.

How to prepare for mediation?

Each party is encouraged to thoroughly prepare their case before mediation commences.

Once the parties have agreed upon the mediator, the chosen mediator will assume control of the process including arranging the date, time and location of the mediation and the sharing of costs.

The mediator may convene a pre-mediation conference between the parties. This approach is strongly suggested but not mandatory under the legislation. A pre-mediation conference may take the form of a face to face meeting, telephone conference, or even online video link. Farmers should ensure that any advisor engaged by them also participates in the conference.



Support services such as the Rural Financial Counselling Service can assist in the preparation of a position statement, cashflows and action plans for the farmer that assists to clarify specific issues related to the dispute and outline any proposed solution for consideration at mediation.

During the mediation, the mediator will cover a fixed agenda of topics. These include:

- an explanation of the mediation process
- the agreement to mediate document
- timings for the mediation session
- mediators' fees and reporting obligations
- preparation required by the parties prior to mediation
- who will attend the mediation.

The mediator will also explain the confidentiality provisions of the Act, the requirement for the parties present at mediation to have the authority to settle the matter, what constitutes satisfactory mediation, the requirement of both parties to act in 'good faith' and the farmers' rights under Section 27 of the Act - the cooling off period in relation to a Heads of Agreement.

What is the role of advisors in mediation?

It is recommended that farmers engage a professional advisor/s. The advisor/s can be Legal Aid Queensland, a solicitor, an accountant or some other appropriately qualified person. The role of the parties' advisor in mediation will be to help prepare their clients for mediation. Advisors provide advice and do not represent their clients in mediation. Advisors may also assist the mediator with drafting the terms of any settlement reached. It is essential that the advisor has a clear understanding of the mediation process and sound financial skills.

What happens at mediation?

A neutral venue including a main room large enough to accommodate all participants and separate rooms for each group will need to be arranged. Once the participants have been introduced, the mediator will open the mediation by making a short statement explaining the mediation process and the mediator's role including essential features and objectives of mediation.

After opening, the mediator will ask each party in turn to explain what it is that has brought them to mediation. From the parties' statements, the mediator will identify the issues in dispute and the common ground between the parties. After checking with the parties, the mediator will collate the issues and the common ground stated between the parties. This information will form the basis of an agenda for the discussion.

During the mediation, the mediator may meet with each of the parties separately. The aim of a private session is to enable the mediator to explore any underlying issues and to ensure that the parties are comfortable with the process. It is during the private session that proposed settlement options are often explored and tested. The mediator will not, unless specifically authorised, disclose anything said in a private session to the other parties.

How long does the mediation process take?

There is no prescribed timeframe and mediation may involve one or more meetings.

What is a Heads of Agreement?

If an agreement is reached at mediation the mediator will prepare a document that states the main points of agreement. Once signed, this document forms the *Form 1 Heads of Agreement*. Each party has 10 business days to sign the document.

If another mediation session is required because a person representing a party at a mediation meeting does not have the authority to enter into a Heads of Agreement, that party is liable for all costs associated with that additional session.

There is a 10 business day cooling-off period for any Heads of Agreement entered into by a farmer. The cooling-off period may be extended by agreement between the farmer and the mortgagee. The farmer may revoke the Heads of Agreement during the cooling-off period.



The cooling-off period may be waived by agreement if the farmer has had reasonable opportunity to seek legal advice.

What happens if the parties don't reach agreement?

Under the Act, the parties are required to make reasonable attempts to negotiate a settlement to their dispute at mediation.

If, after reasonable attempts, an agreement cannot be reached at mediation, the mortgagee may apply to QRIDA for an Exemption Certificate. If this application is approved, the farmer has the right of review of the decision. An Exemption Certificate allowing a mortgagee to commence action under the mortgage will only be issued based on the decision of any QRIDA internal review, or the expiry of 20 business days after the farmer received the original decision.

Settlement at mediation is voluntary and neither party can be forced to agree to anything at mediation.

Farmer's eligibility for mediation

The Act does not apply if:

- the farmer is an insolvent under administration under the *Corporations Act*, Section 9; or
- the farmer is the subject of a petition presented by a creditor, other than the mortgagee, under the *Bankruptcy Act 1966* (Cwlth) or a corresponding law of another jurisdiction, including a jurisdiction outside Australia; or
- for a farmer that is a corporation - the farmer is a Chapter 5 body corporate within the meaning of the *Corporations Act*, section 9.

The Act does not apply to a farmer for a particular farm business debt if:

- the farmer previously defaulted under the farm mortgage for the debt and took part in mediation for the debt under this Act; and
- the farmer and mortgagee entered into a contract, mortgage or other document to give effect to a Heads of Agreement as a result of the mediation; and
- the farmer has defaulted under the farm mortgage and the default relates to the contract, mortgage or document.

What is good faith?

All parties should exhibit good faith in their actions related to the mediation process. The implied doctrine of good faith has been sourced from multiple areas of Australian Contract Law. The *Information sheet - good faith* outlines guiding principles and supporting information including examples of how each party may establish proof of good faith in their actions related to the mediation process.

These guiding principles include, but are not limited to:

1. Respect for the parties
2. Respect for the process
3. Provision of relevant material
4. Attending with a preparedness and capacity to act and reflect on all propositions put forward by the other side with an open mind and genuine consideration.

Can a farmer apply to suspend enforcement action?

The farmer can apply for an Enforcement Action Suspension Certificate if:

- the farmer has given the mortgagee a *Notice S15 Request for Mediation Incorporating Nomination of Mediators and Request for Documents*; and
- the mortgagee has failed to mediate and the farmer is in default under a farm mortgage.

Is mediation information confidential?

Subject to certain exemptions provided for in the Act, confidentiality applies to matters discussed or agreed at mediation meetings. This includes actions taken for the purpose of arranging or following up matters at a mediation meeting.

The actions taken at mediation are not admissible in any civil, criminal or administrative proceeding.

What is the cost of mediation?

The cost usually includes the mediator's fee and out of pocket expenses, together with any hire fee for the venue. An indicative fee rate charged by the mediator is published on the Register of Mediators which is available on QRIDA's website.

Each party to a mediation must pay the party's own costs for the mediation and half of the mediator's fee and shared expenses.

Farm Business Debt Mediation process in detail



Mortgagee initiated mediation

The Act describes specific processes and notices served to relevant parties to mediation, including QRIDA.

When the mortgagee has served a *Notice S14 Inviting a Request for Mediation*, on the farmer, the farmer may elect to exercise a right to mediation by nominating three mediators in order of preference. The farmer may also request documents relating to the farm business debt and mortgage by completing a *Notice S15 Request for Mediation Incorporating Nomination of Mediators and Request for Documents*.

Key steps to a mortgagee initiated mediation:

1. The mortgagee serves the farmer with a *Notice S14 Inviting a Request for Mediation* along with a Mediation Information Package. A copy of the notice also needs to be provided to QRIDA. The farmer reviews this notice and seeks advice.
2. The farmer then responds to the mortgagee within 20 business days with a *Notice S15 Request for Mediation Incorporating Nomination of Mediators and Request for Documents* that also includes their nomination of three mediators in preferred order and a request for copies of documents. The farmer also has the right to decline mediation with a *Notice S53 Declining Mediation*.
3. The mortgagee may agree to the request for mediation by responding with a *Notice S16 Agreement or Refusal to Mediate*. The farmer must provide the requested documents as listed on the *Notice S15 Request for Mediation Incorporating Nomination of Mediators and Request for Documents* to the mortgagee within 30 business days.
4. The mortgagee chooses a mediator from the three nominated by the farmer with a *Notice S18A Response to Mediator Nomination*.
5. The farmer and the mortgagee provide each other documents per the respective request for documents notices.
6. The parties agree on a mediator. The mortgagee initiates contact with the agreed mediator. The mediator arranges for the completion of a *Form 8 Mediator Appointment* or the mediator's own agreement.
7. The mediator reviews the matter and may suggest a pre-mediation conference as an option.
8. The mediator facilitates a pre-mediation conference and finalises arrangements for mediation.
9. Mediation is conducted on an agreed day and time at an agreed venue.
10. If an agreement is reached, a *Form 1 Heads of Agreement* is prepared by the mediator and signed by the farmer, mortgagee and mediator. The mediator completes a *Form 2 Summary of Mediation* which is signed by all parties and provided to QRIDA.



Farmer initiated mediation

Where the farmer has initiated mediation, the mortgagee must either agree or refuse mediation by preparing a *Notice S16 Agreement or Refusal to Mediate*. A copy of the notice is provided to both the farmer and QRIDA. If the farmer is in default, the mortgagee must also complete and serve a *Notice S14 Inviting a Request for Mediation* accompanied by a Mediation Information Package.

The steps below highlight the notices, forms and timeframes relevant to an individual or business with a mortgage over a farm business, whether or not the mortgage is in default or at risk of default.

Key steps to a farmer initiated mediation:

1. The farmer requests mediation by giving a *Notice S15 Request for Mediation Incorporating Nomination of Mediators and Request for Documents* or a written request to the mortgagee. The use of Notice S15 is not mandatory, however this notice allows the farmer to nominate three mediators in preferred order and request copies of documents.
2. The mortgagee may accept or refuse the request for mediation by responding with a *Notice S16 Agreement or Refusal to Mediate*. At this time the mortgagee may also choose from one of the three nominated mediators. The farmer must provide the requested documents listed on the *Notice S16 Agreement or Refusal to Mediate* to the mortgagee within 30 business days.
3. The mortgagee chooses a mediator with a *Notice S18A Response to Mediator Nomination*.
4. The mortgagee must issue a *Notice S14 Inviting a Request for Mediation* accompanied by a Mediation Information Package to the farmer. A copy of the notice also needs to be provided to QRIDA. The farmer reviews the notice and seeks advice.
5. The mortgagee and farmer provide each other documents as per the respective request for documents notices.
6. The parties agree on a mediator. The mortgagee initiates contact with the agreed mediator. The mediator arranges for the completion of a *Form 8 Mediator Appointment* or the mediator's own agreement.
7. The mediator reviews the matter and may suggest a pre-mediation conference as an option.
8. The mediator facilitates a pre-mediation conference and finalises arrangements for mediation.
9. Mediation is conducted on an agreed day and time at an agreed venue.
10. If an agreement is reached, a *Form 1 Heads of Agreement* is prepared by the mediator and signed by the farmer, mortgagee and mediator. The mediator completes a *Form 2 Summary of Mediation* which is signed by all parties and provided to QRIDA.

Mediation documents - list of forms and notices



Farmer to complete (if applicable)

Notice S15	Request for Mediation Incorporating Nomination of Mediators and Request for Documents
Notice S18	Mediator Nomination
Notice S18B	Mediator Unavailable or Change of Mediator
Notice S29	Revoking Heads of Agreement
Notice S32	Discontinuing Mediation
Notice S53	Declining Mediation
Form 3	Application for Enforcement Action Suspension Certificate
Form 7	Request for Internal Review of Original Decision



Mortgagee to complete (if applicable)

Notice S14	Inviting a Request for Mediation
Notice S16	Agreement or Refusal to Mediate
Notice S18A	Response to Mediator Nomination
Notice S32	Discontinuing Mediation
Form 4	Application for Exemption Certificate
Form 7	Request for Internal Review of Original Decision



Mediator to complete (if applicable)

Form 1	Heads of Agreement
Form 2	Summary of Mediation
Form 5	Application for Accreditation as a Mediator
Form 6	Application for Re-accreditation as a Mediator
Form 8	Mediator Appointment

🔍 Farm Business Debt Mediation

Find out more

To access these forms and notices above and find out more about Farm Business Debt Mediation, contact us on **1800 623 946** or **scan the QR code** to go to the Farm Business Debt Mediation page on QRIDA's website at qrda.qld.gov.au/program/farm-business-debt-mediation.



Services available to all farmers

Rural Financial Counselling Service (Southern QLD)	rfcssq.org.au	07 4622 5500
Rural Financial Counselling Service (North QLD)	rfcsnq.com.au	07 4652 5669
Legal Aid Queensland - Farm and Rural Legal Service	legalaid.qld.gov.au	1300 651 188
Lifeline	lifeline.org.au	13 11 14
Beyond Blue	beyondblue.org.au	1300 224 636
National Debt Helpline	ndh.org.au	1800 007 007
Salvation Army	salvationarmy.org.au	13 72 58