



**23 June 2022**

Mr David Evans  
Director, Financial Policy  
Financial Policy and Business Support Branch  
Department of Agriculture, Water and the Environment

Via email: [David.Evans@agriculture.gov.au](mailto:David.Evans@agriculture.gov.au)

Dear Mr Evans,

**RE: Consultation on better practice guide for Farm Debt Mediation**

The National Farmers Federation (NFF) welcomes the opportunity to provide feedback to the Department of Agriculture, Water and the Environment (the Department) on the draft national better practice guide for farm debt mediation (the guide).

The NFF is supportive of a harmonised National Farm Debt Mediation Scheme with standardized rules and procedures across each state and territory. The guide will importantly ensure that the principles by which farm debt mediation (FDM) operates across each state and territory are consistent.

The NFF acknowledges that the draft guide incorporates several of the NFF's key recommendations.

The NFF is supportive of the guide's principles which:

- encourage early, informal engagement between farmers and lenders;
- ensure farmers are provided with clear and accessible information;
- seek to address power imbalances;
- reinforce the duty of all parties to act in good faith; and
- ensure farmers are encouraged to seek professional advice and appropriate additional support.

The NFF makes the following recommendations to address remaining concerns.

**Introduction, context and intended audience**

Greater context would assist stakeholders to understand how the guide interacts with the broader FDM policy framework and related guidelines.

The NFF recommends including clarification as to how the guide complements and interacts with state and territory FDM schemes, the ABA Code of Practice and APRA prudential frameworks.

Additionally, the intended audience and purpose of the guide is unclear. The NFF recommends the guide outline how it is intended be used, and by whom, to assist lenders, farmers, support providers and organisations, and operators of FDM schemes.

**Early, informal engagement and adverse consequences**

Although the NFF is in favour of guidelines that encourage early, informal mediation, we remain concerned about the potential adverse consequences for farmers.

Mediation in this context, whether formal or informal, can bring issues to light that could force banks to initiate foreclosure proceedings on a farm business to dispel their prudential obligations.

We note the guide provides the valuable assertion that early engagement should be undertaken 'without prejudice' and should not affect any future FDM that may take place. However, ambiguity remains in situations where the principled and prudential obligations of lenders are incongruous: that is, informal and non-prejudicial early engagement versus proper procedure for loans in financial distress.

The guide in its current form does not sufficiently mitigate the risk of farmers unwittingly triggering lenders' prudential obligations in respect of loans in financial distress or default.

The NFF recommends that the guide place an onus on lenders to caution farmers of this risk prior to early engagement, and strongly reiterate the objective of early, non-prejudicial engagement processes to build trust and facilitate outcome-focused dialogue wherever possible.

**Informal mediation definition**

Informal mediation or pre-mediation conferences are a valuable mechanism to aid the progress of formal FDM. However, the 'informal' nature of engagement does not dispel the need for farmers to be afforded adequate protection and provided with clear and accessible information.

Any mediation must involve an independent and appropriately skilled mediator and farmers should always be encouraged to seek and receive

appropriate legal or financial advice prior to engagement. Additionally, all interactions should include clear and transparent reporting to ensure clarity of expectations by all parties.

We welcome the guide's encouragement of lenders to assist with farmers' costs to participate in debt resolution activities and obtain appropriate advice.

**State Farm Debt Mediation Comparison table**

Further, the NFF recognises the draft comparison table of state and territory FDM schemes as a beneficial resource to provide clarity around the inconsistencies between FDM rules and practices. However, this resource alone is unlikely to mitigate the confusion for farming entities operating across multiple states and territories. Ultimately, alleviating inconsistencies through legislative reform remains the ideal solution.

Should you require any questions please contact Charlotte Wundersitz, Policy officer (Trade and Economics) on 02 6269 5666 or at [cwundersitz@nff.org.au](mailto:cwundersitz@nff.org.au).

Kind regards



**Mr Ash Salardini**  
**A/CEO**  
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