

## “We can work it out” - Getting the best result from a farm debt mediation

MARK KELLY

Last month, I wrote about the Farm Debt Mediation Act 2019. The FDMA requires lenders to mediate with farmers before they can enforce farm debt. The idea is to create a circuit-breaker in high pressure farm debt situations. A chance for folk to talk before things go too far.

This month, some tips on how to get the best result from a farm debt mediation.

The first thing to appreciate is that the parties do not have to do a deal. As the Beatles sang: “*We can work it out and get it straight or say goodnight*”. Everyone has the power to walk away.

But, absent a deal, enforcement action may follow. Before the mediation, everyone should carefully consider what that might look like, economically and personally. You need to be able to compare whatever deal becomes available through mediation with the alternative. You need to be able to make an informed decision.

Get legal and accounting advice and support. These professional advisors will bring an objective lens to the process.

Prepare carefully. The advisors will assist with this. Prepare useful information, prepare for the negotiation, prepare mentally. The stakes can be huge, and this is not a time to wing it. As the old saying goes, failing to prepare can mean preparing to fail.

Exchange useful information, as early as you can. Get and share up-to-date accounts, balances, valuations, stock numbers, business plans, and marketing plans. If the farmer wants to convince the lender to stick with the business, or to agree to an orderly full or partial sell down, they need to convince the lender that the proposal is credible. Late, insufficient, or incomplete information is less likely to persuade.

Share your story. Farm debts are more than just a number, for the farmer and the lender. They are about personal and family histories, and a connection to the land. It is important to share and hear that. It gives context and credibility. It can be cathartic.

Rein in the rage. The pressure of farm debts gone awry can be immense. For some, anger is a natural reaction to stress. Others think that aggression is the way to get what they want. But the truth is that no-one wants to do a deal with someone who is shouting at them. Rudeness, or personal attacks, are poison to compromise. The best way to get the best result will be to be constructive and courteous.

Seize the day, and seal the deal. A farm debt mediation can be an unnerving prospect. But they usually work. Give it your best shot, and stick with it. You will very likely be surprised by the results that can be achieved. Take it from McCartney: “*We can work it out, we can work it out*”.

*Mark Kelly is a barrister, commercial mediator, and accredited FDMA mediator. He mediates throughout NZ.*