



Cabinet Economic Development Committee

Summary

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A Government Farm Debt Mediation Bill

Portfolios	Agriculture / Commerce and Consumer Affairs
Purpose	This paper seeks approval to establish a statutory scheme for the mediation of farm debt in New Zealand.
Previous Consideration	None.
Summary	<p>The proposed scheme would require secured creditors to farm businesses to offer statutory mediation before taking any enforcement action in relation to debt held over that business. It would also allow for farmers to initiate statutory mediation with a secured creditor.</p> <p>The Bill would provide for fair, equitable and timely resolution of farm debt issues. It would have the following two key objectives:</p> <ul style="list-style-type: none"> • to enable farmers and secured creditors to meet in an equitable manner to constructively and objectively explore options for business turnaround; • to provide for a timely and dignified exit for those where few other options exist. <p>The scheme would be based on the New South Wales Farm Debt Mediation Act 1994, which is highly regarded. System design and implementation issues will be worked through in tandem with the drafting of the Bill. This will include making sure that farmers can access support and counselling, that mediators are appropriately qualified and experienced, and determining who will administer the system.</p> <p>The scheme will apply in relation to loans that are secured against the following types of assets: farmland (including buildings); farm machinery; livestock; and harvested crops and wool.</p> <p>The scheme will not apply to lifestyle farms, forestry, wild harvest fishing, or the hunting or trapping of animals.</p> <p>A further report will be submitted to DEV in May 2019 with a draft Bill for approval. That report will include costed options for the Bill's implementation.</p> <p>Attachment 1 provides a list of the parties consulted, including stakeholders with experience in farm debt mediation in New South Wales and Queensland.</p> <p>The detailed design of the proposed regime is summarised in Attachment 2.</p>

Regulatory Impact Analysis	A Regulatory Impact Analysis (RIA) is in Attachment 3 . Officials consider that the RIA partially meets the quality assurance criteria (comments are in paragraphs 97-99).
Baseline Implications	Financial implications will be considered in the May 2019 report to DEV.
Legislative Implications	A category 2 priority on the 2019 Legislation Programme will be sought for a Farm Debt Mediation Bill (must be passed in 2019). It is proposed that an exposure draft of the Bill be released, subject to the approval of the Attorney-General.
Timing Issues	It is proposed that the Bill be introduced no later than mid-2019, and passed by the end of 2019.
Announcement	The Minister of Agriculture will issue a press release. The offices of the Minister of Agriculture and Minister of Commerce and Consumer Affairs will manage any communications.
Proactive Release	This paper will be proactively released, subject to any appropriate redactions.
Consultation	Paper prepared by MPI and MBIE. PCO, Reserve Bank, Treasury, TPK, Inland Revenue, MFAT and Māori Crown Relations: Te Arawhiti were consulted. DPMC was informed. A number of stakeholder and interested groups were also consulted. The Minister of Agriculture and the Minister of Commerce and Consumer Affairs indicate that the Minister of Finance was consulted, and that New Zealand First and the Green Party were also consulted.

The Minister of Agriculture and the Minister of Commerce and Consumer Affairs recommend that the Committee:

General

- 1 note that a statutory regime providing for the mediation of farm debt is consistent with a priority in the New Zealand Labour Party - New Zealand First Coalition Agreement, for the 'examination of agricultural debt mediation as well as receivership fees and charges';

Mediation of farm debt

- 2 agree to establish a statutory regime for the mediation of farm debt, based on the New South Wales Farm Debt Mediation Act 1994;
- 3 note that the Farm Debt Mediation Bill will establish a statutory framework within which farmers and lenders will be able to participate in mediation;

- 4 agree that the mediation regime will apply to farm business that are solely or principally engaged in one or more of:
- 4.1 agriculture (including sharemilking);
 - 4.2 horticulture;
 - 4.3 aquaculture;
 - 4.4 any activity involving primary production carried out in connection with any of the above activities;
- 5 agree that the following activities will be excluded from the scope of the regime:
- 5.1 lifestyle farming;
 - 5.2 businesses engaged in:
 - 5.2.1 forestry;
 - 5.2.2 wild harvest fishing;
 - 5.2.3 the hunting or trapping of animals;
- 6 agree that the mediation regime will apply in relation to loans which are secured against the following types of assets:
- 6.1 farmland (including buildings);
 - 6.2 farm machinery (that is, vehicles or machines commonly used for farming operation purposes, such as tractors, milking equipment and irrigation systems);
 - 6.3 livestock;
 - 6.4 harvested crops and wool;
- 7 agree that mediation will be able to be triggered:
- 7.1 by lenders where a farmer is in default and the lender intends to take any form of enforcement action in relation to debt secured over assets of the type described in paragraph 6 above;
 - 7.2 by farmers without any statutory criteria, but subject to restrictions on how frequently farmers can apply to mediate;
- 8 agree that a system such as the prohibition and exemption certificate system used in New South Wales will be used by the relevant authority in New Zealand to provide a structured and transparent method for determining the outcome of mediation while also preserving the independence of mediators;
- 9 agree that decisions made by the relevant authority in relation to the issue of prohibition or exemption certificates be subject to internal review on appeal;
- 10 agree to the detailed design of the mediation regime, as set out in Appendix Two to the paper under DEV-18-SUB-0290;

Financial implications

- 11 note that there are no financial implications *per se* in deciding to establish a farm debt mediation scheme;
- 12 note that the Minister of Commerce and Consumer Affairs and the Minister of Agriculture will bring a fully costed proposal for the implementation of the Farm Debt Mediation Bill back to Cabinet in the same Cabinet paper that seeks approval for the Farm Debt Mediation Bill to be introduced;

Legislative implications

- 13 note that a category 2 priority on the 2019 Legislation Programme is being sought for the Farm Debt Mediation Bill (must be passed in 2019);
- 14 authorise the Minister of Agriculture to issue drafting instructions to the Parliamentary Counsel Office to give effect to the above paragraphs;
- 15 authorise the Minister of Agriculture and the Minister of Commerce and Consumer Affairs to jointly make any minor and technical policy decisions that may arise during the drafting of the Farm Debt Mediation Bill and in relation to its implementation;
- 16 note that the Farm Debt Mediation Bill should be introduced no later than mid 2019;
- 17 note that the Farm Debt Mediation Bill should be passed no later than the end of 2019;

Exposure draft

- 18 agree that an exposure draft of the Farm Debt Mediation Bill be released prior to finalisation of the Bill for introduction;
- 19 note that the Minister of Agriculture will seek approval of the Attorney-General to release the exposure draft of the Farm Debt Mediation Bill;

Implementation

- 20 invite the Minister of Agriculture and the Minister of Commerce and Consumer Affairs to submit a further paper to Cabinet Economic Development Committee in May 2019 seeking approval to introduce the Farm Debt Mediation Bill, and detailing implementation options and associated costs;

Publicity

- 21 note that the offices of the Minister of Agriculture and Minister of Commerce and Consumer Affairs will work together to manage communications and media interest as required.

Janine Harvey
Committee Secretary

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Cabinet Economic Development Committee
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