



22 May 2019

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Government Farm Debt Mediation Bill: Approval for Introduction

Purpose:

This brief provides the draft Cabinet paper Government Farm Debt Mediation Bill: Approval for Introduction for your consideration and feedback.

Minister	Action Required:	Minister's Deadline
Minister of Agriculture	<p>Note and agree the recommendations contained in the briefing</p> <p>Agree to forward this briefing to the Minister of Commerce and Consumer Affairs</p>	As soon as possible

Contact for telephone discussion (if required)

	Name	Position	Work	Mobile
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MBIE contact	Privacy	Principal Advisor, Business Law		

Key Messages

1. MPI has prepared the attached draft Cabinet paper for your initial consideration and feedback. The Cabinet paper makes policy recommendations for key areas of the design of the Farm Debt Mediation scheme, and seeks approval for the introduction of the Bill.
2. The recommendations in the attached Cabinet paper reflect the key elements agreed by Cabinet in December 2018 [CAB-18-MIN-0608 refers]. Further system design since Cabinet's agreement has been based on the Farm Debt Mediation Act 1994 (NSW), but has been modified to fit with New Zealand property law and legal frameworks, and allow additional flexibility in the system to provide for the incorporation of tikanga.
3. Earlier this month, we sought your approval for a number of the key features of the draft Farm Debt Mediation Bill [B19-0248]. This briefing contains further advice on the commencement and the administration of the Bill. Your approval is sought for these decisions, and for a number of minor and technical decisions that have been made through the drafting and system design process.
4. Officials are working alongside Parliamentary Counsel Office (PCO) make a number of edits to the Bill and work through some detailed legal and policy questions and complete drafting of the Bill. We are aiming to have the Bill ready for consideration at the Economic Development Committee (DEV) on 12 June, alongside this Cabinet paper.

Proactively

Recommendations

5. The Ministry for Primary Industries recommends that you:

- a) **Note** that officials are still working with the Parliamentary Counsel Office to prepare the final draft of the Bill

Noted

b) **Agree:**

- To the recommendation that the scheme will be administered by the Ministry of Primary Industries, and funded from baselines
- To the recommendation that the draft Bill have two commencement dates of 1 February 2020 (preliminary and mediator provisions) and 1 October 2020 (remainder of the Bill)
- To the minor and technical policy decisions in the Appendix attached to the Cabinet Paper

Agreed / Not Agreed

- c) **Agree** to provide feedback on the attached draft Cabinet paper, preferably by Friday 31 May to facilitate its submission to Cabinet Office by Thursday 6 June, in order to be considered by DEV on 12 June

Agreed / Not Agreed

- d) **Agree** to forward this briefing to the Minister of Commerce and Consumer Affairs.

Agreed / Not Agreed

Emma Taylor
Director
Agriculture, Marine & Plant Policy

Hon Damien O'Connor
Minister of Agriculture

/ / 2019

Background

6. MPI has prepared the attached draft Cabinet paper for your initial consideration and feedback. The Cabinet paper makes policy recommendations for key areas of the design of the Farm Debt Mediation scheme, and reports back to Cabinet on the development of the associated Bill.
7. The recommendations in the attached draft reflect the key elements agreed by Cabinet in December 2018 [CAB-18-MIN-0608 refers]. Further system design since Cabinet's agreement has been based on the Farm Debt Mediation Act 1994 (NSW), but has been amended to fit with New Zealand property law and legal frameworks, and allow additional flexibility in the system to provide for the incorporation of tikanga.
Earlier this month, we sought your approval to a number of the key features of the draft Farm Debt Mediation Bill [B19-0248]. This briefing has further advice about the commencement and the administration of the Bill and seeks your decision on these matters to support final drafting.
8. The recommendations have also been thoroughly tested with key stakeholders including Federated Farmers, the New Zealand Bankers Association and the Restructuring and Insolvency Turnaround Association New Zealand.

Officials and the Parliamentary Counsel Office are still working on the Bill

9. Officials are working alongside Parliamentary Counsel Office (PCO) to work through some detailed legal and policy questions and complete drafting of the Bill. We are aiming to have the Bill ready for consideration at the Economic Development Committee (DEV) on 12 June, alongside this Cabinet paper.
10. Agencies have been consulted on the draft Cabinet Paper and officials are working through their comments. We do not expect these to impact the draft Cabinet paper or Bill.

Confirmation required on commencement and administration of the draft Bill

11. Earlier this month, we briefed you on options for the commencement of the Bill and options for the administration of the regime [B19-0248].
12. The draft Cabinet Paper currently recommends that MPI carry out the administration of farm debt mediation (see pages x and y, paragraphs F and G). The draft Cabinet Paper recommends two commencement dates (see pages x and y, paragraphs F and G), as follows:

Commencement Stage 1 (1 February 2020)

Prior to the Act coming into force as a whole, the preliminary and mediator provisions will need to come into force.

Commencement Stage 2 (1 October 2020)

The remainder of the Bill would then come into force later that year.

13. These recommendations need to be confirmed to complete drafting of the Bill.

Approval is required for a number of minor and technical policy decisions

14. Last December, Cabinet authorised you and the Minister of Commerce and Consumer Affairs to make minor and technical policy decisions. We are recommending that you make in-principle decisions now to support introduction of the Bill in June, with a view to enactment before the end of 2019.

15. These decisions are set out in the Appendix to the draft Cabinet Paper and include the detail of:

- eligible property and security interest under the regime;
- transitional provision, in particular that the Bill will apply to all debt whether incurred before or after the commencement of the Act;
- mediation costs, in particular that parties can agree to alternative arrangements to equal contributions, but that parties cannot agree to the farmer contributing more than half the cost; and
- the operation of good-faith in the scheme, in particular the requirement to mediate in good faith and the relationship between good faith and mediation agreements and the issuing of prohibition and enforcement certificates.

16. Minor changes to the minor and technical policy decisions may be required when the draft Bill is complete.

Next steps

17. An indicative timeframe for next steps is set out below

Milestone	By date
Minister provides feedback on draft Cabinet paper to MPI and consults colleagues on the draft Cabinet paper	31 May 2019
Minister lodges Cabinet paper	6 June 2019
Cabinet Economic Development Committee	12 June 2019
Cabinet consideration	17 June 2019