

## Farm Debt Mediation Bill – Frequently Asked Questions

Updated: 17 June 2019

### What is the Farm Debt Mediation Bill?

The Farm Debt Mediation Bill aims to provide fair, equitable and timely resolution of farm debt issues. The Bill will create a mandatory mediation scheme, requiring secured creditors to offer farmers who default on payments mediation before they take any enforcement action. Farmers are also able to initiate mediation if they wish. The objectives of the Bill are to:

- Support farmers in financial distress in their dealings with secured creditors;
- Enable exploration of options for turning around a failing farm business; and
- Enable a farmer with an unviable business to 'exit with dignity'.

### Who will administer the farm debt mediation scheme?

The Rural Communities and Farming Support Directorate within the Ministry for Primary Industries will administer the scheme. They will oversee:

- The efficient operation of the scheme (e.g. setting rules, issuing certificates);
- oversight of mediators;
- ensuring farmers have ready access to appropriate financial, business planning support;
- raising and maintaining awareness of the scheme; and
- monitoring, evaluating and reporting on the effectiveness of the scheme, with a view to continuous improvement in the schemes performance.

### Who will pay for the mediation service? How much will it cost?

The estimated cost to set-up the scheme is \$350,000, and the estimated annual cost for administering the scheme is \$250,000 to \$300,000.

We expect each case of mediation to cost about \$6000. This will be split between the lender and the farmer.

### Who is eligible for the service? What types of loans will be included?

The scheme will apply to farm businesses that are solely or principally engaged in agriculture, horticulture or aquaculture, or any activity involving primary production carried out in connection with these.

Debt associated with lifestyle farms, forestry, wild harvest fishing, and hunting or trapping of animals will not be included in the scheme.

The scheme will apply to loans that are secured against farmland, farm machinery, livestock and harvested crops and wool.

### How long will mediation take?

Once initiated, farmers and creditors will have up to 60 working days to complete the mediation process, unless both parties agree to an extension. This provides time to agree mediation procedures (including who can participate), gather and share information and documents, mediated meetings, and preparation of the mediation agreement.

### What is a mediation agreement?

The mediation agreement is produced at the end of the mediation process. It sets out the agreed actions for future management of the debt. The agreement must be agreed to by both sides and is binding.

### What if farmers don't want to take part in mediation?

If a farmer declines to mediate, creditors can apply for an Enforcement Certificate, which will allow the creditor to proceed with enforcement action in line with the terms and conditions of the loan agreement.

### What if lenders don't want to take part?

If the creditor declines to mediate, the farmer can apply for a Prohibition Certificate, and the creditor will not be able to take any enforcement action related to that debt for six months.

### What happens after that six month period?

After the six month period, the creditor will need to offer mediation before enforcement action related to that debt can be taken.

### What if there is no resolution between the parties during mediation?

It is important all parties in mediation take part in good faith. If the parties don't agree on a mediation agreement, the parties can apply to make a determination on whether enforcement action can proceed or not. Either party can apply within 10 days for an administrative review of the determination by the government department responsible.

- Farmers can apply for a Prohibition Certificate, which if issued has the effect of suspending any enforcement action for that debt for six months.

A Prohibition Certificate is issued when the creditor has declined to mediate or the creditor has not acted in good faith during the mediation process.

- Creditors can apply for an Enforcement Certificate which allows the creditor to proceed with enforcement actions related to the debt. The certificate has a duration of three years from the date of mediation concluding. The farmer will not be able to initiate further mediation processes in relation to that debt during this period.

An Enforcement Certificate is issued when the farmer has declined to mediate or the creditor has acted in good faith during the mediation process.

### What are the implications of the scheme for tangata whenua?

In the past, iwi, hapū and whānau farmland has tended not to be mortgaged. However, this is changing as Māori farming businesses expand their operations and land holdings.

Collectively owned Māori farms also tend to have sophisticated governance structures and utilise professional financial advice more regularly than other non-corporate farmers, and so are less likely to encounter issues with farm debt.

For these reasons, and difficulties accessing capital, it is expected that Māori are less likely to need to use farm debt mediation for land-related debt. However, Māori may opt to make use of the farm debt mediation scheme for financial arrangements for non-land property (e.g. farm machinery, stock).

### How are the interests of Māori provided for?

Tikanga principles have been incorporated into the design of the scheme. They will also be incorporated into the mediation process where the parties consider it appropriate.

### How can I have my say on this legislation before it passes into law?

Farmers and lenders will have the opportunity to have their say on the Bill during the Select Committee stage.

### When will the Farm Debt Mediation Bill pass into law?

The Bill will need to go through the legislative process before it passes into law. We expect the bill to pass into law before the end of the year.

### When will the mediation service be available to farmers and lenders?

Once the Bill has become law, a period of time is required to approve mediation organisations and mediators. We expect farmers will be able to access farm debt mediation from 1 October 2020.