

Further information on the administration of farm debt mediation

1. Effective administration is an important component of the farm debt mediation regime. While forecasting is difficult, we anticipate around 50 – 100 mediations per annum. Due to the low number of expected farm debt mediations, ensuring administration is low cost and efficient is important.
2. The anticipated small scale of the scheme would not justify establishment of a new entity, while contracting a third party with mediation expertise (e.g. Confidentiality) may raise the risk of market capture. It would also likely create issues given judgements are needed to issue certificates which would likely be in conflict with its role as a mediation organisation.

Justice was not considered to be an appropriate administrator

3. The Ministry of Justice administers tribunals where the administration must be seen to be independent from the relevant sector agency.¹ This is not required for farm debt mediation, as the administration agency would be facilitating an independent mediation process between two private parties. This option was not progressed.

MPI is the preferred option for administrative responsibility

4. Officials have considered a number of existing government agencies, including the Ministry for Primary Industries (MPI), the Ministry of Business Innovation and Employment (MBIE), and the Banking Ombudsman Scheme. The high-level analysis of these options is in the attached table.
5. MPI and MBIE officials consider that MPI is the most appropriate agency as farm debt mediation fits within its existing primary sector and rural affairs responsibilities. The farm debt mediation programme will complement a number of initiatives being undertaken by MPI to build and sustain rural resilience, including work to improve financial and farm planning².
6. MPI will also be able to leverage existing networks and stakeholder relationships, which the other agencies do not have, to promote and educate farmers about the benefits of the regime. Stakeholders have indicated that farmers will need a significant behaviour shift, particularly around early access to the regime, to realise the full benefits of farm debt mediation. Experience from New South Wales suggests that farm debt mediation can promote

¹ For example, the tribunal that reviews MSD decisions on benefits is administered by MOJ to avoid the perception that MSD controls the appeal process.

² Other initiatives include MPI's integrated farm planning programme, development of farmer centred agricultural support services, improved environmental and climate change regulation, and establishment of Primary Sector Council.

desired behavioural changes in farmers and creditors, particularly when it is accompanied by related policy initiatives.

7. While MPI does not currently carry out similar administration functions, the administration of the scheme has been designed to be 'light touch' and focused on procedural decisions. For example, the decision to accredit a mediation body is focused on whether the body has demonstrated particular criteria (e.g. have a code of conduct, ongoing competence requirements etc).³ The procedural, rather than substantive, focus of decisions means that the functions do not require expertise in mediation or tribunals.
8. The current realignment at MPI has established a Rural Communities and Farming Support Directorate. This new directorate is focused on supporting farmers through changes that will impact their farm practice and financial viability. Farm debt mediation could form an important component of supporting farmers through these transitions, in terms of:
 - a. encouraging early discussions about finances and business practice between farmers and creditors; and
 - b. facilitating farmers to exit from the industry, on advantageous terms, where this is appropriate.

Process for selecting a mediator

9. Currently, the process for selecting a mediator is based on the NSW model and is as follows:
 - a. farmer nominates one mediator from register of accredited mediators;
 - b. creditor can accept or reject this mediator; and
 - c. if the creditor rejects the nominated mediator, the farmer must nominate a panel of at least three other mediators from which the creditor must agree to appoint one.
10. In our discussions with stakeholders, they have suggested this process is unnecessarily complicated and will create additional work and stress for farmers. We consider that having a simple system with as few barriers as possible (including perceived barriers) is crucial to encourage farmers to utilise mediation. Therefore, we recommend streamlining this process as follows:
 - a. in the first instance farmers nominate three mediators; and
 - b. creditors must select one of these mediators.

³ See B19-0248 paragraphs 36 – 41.

11. This process is similar to the selection processes for other mediation regimes which have similar power imbalances between parties, such as the Construction Contracts Act 2002 mediation scheme. We have discussed this amendment with the Government Dispute Resolution Centre who support the streamlined process.

Proactively Released

Appendix One: Options Table

Areas of consideration	MPI	MBIE	Banking Ombudsman scheme
Strategic fit	Subject matter 'fit' with farming, & expertise in farming sector Rural communities portfolio	Subject matter 'fit' with dispute resolution and also with consumer protection	Expertise in banking sector and dealing with disputes (including in farming sector) Free and Frank Expression [Redacted] [Redacted] [Redacted] Would require change to terms of reference as currently: <ul style="list-style-type: none"> • only cover banking sector • can't look at matters of commercial judgement eg bank lending decisions • claims for direct losses limited to \$350,000 Free and Frank Expression [Redacted] [Redacted] [Redacted] [Redacted]
Capability	Organisational infrastructure & capability to support administration of scheme No expertise in running mediation schemes Free and Frank Expression [Redacted]	Organisational infrastructure & capability to support administration of scheme Expertise in dispute resolution & running mediation schemes Free and Frank Expression [Redacted]	May have to build organisational capability
Structural fit	Rural communities and support directorate	No obvious place for it to sit within MBIE	
Link to other support	Existing networks and relationships with farming sector Rural trusts Farm business planning Agricultural services Industry organisations	Free and Frank Expression [Redacted] [Redacted] [Redacted] [Redacted]	