



# Cabinet Economic Development Committee

## Minute of Decision

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### Government Farm Debt Mediation Bill: Approval for Introduction

Portfolio                      Agriculture

On 12 June 2019, the Cabinet Economic Development Committee (DEV):

#### Background

- 1        **noted** that the Farm Debt mediation Bill (the Bill) will provide for the fair, equitable and timely resolution of farm debt issues by:
  - 1.1     requiring secured creditors to offer farm debt mediation to farmers before taking enforcement action;
  - 1.2     allowing farmers to request farm debt mediation without any statutory requirements, but with a restriction on how frequently they can mediate;

#### Minor and technical policy decisions

- 2        **noted** that on 5 December 2018, DEV:
  - 2.1     agreed to the establishment of a farm debt mediation regime, based on the New South Wales Farm Debt Mediation Act 1994, and agreed to the overall framework of the regime;
  - 2.2     authorised 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 Bill and in relation to its implementation;
  - 2.3     invited the Minister of Agriculture and the Minister of Commerce and Consumer Affairs to submit a further paper to DEV seeking approval to introduce the Bill, and detailing implementation options and any associated costs;

[DEV-18-MIN-0290]

- 3        **confirmed** the minor and technical policy decisions taken by the Minister of Agriculture and the Minister of Commerce and Consumer Affairs, on the following areas:
  - 3.1     the detail of eligible property and security interest under the regime, based on the definitions of “enforcement action”, “farm debt”, “farm property”, “primary production operation”, “property” and “security interest”;

- 3.2 the detailed operation and process of the mediation regime, including requirements to enter into a procedure agreement, and to sign the mediation agreement;
- 3.3 the detail of 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;
- 3.4 the detailed process and operation of enforcement and prohibition certificates, including the application process, grounds for issuing, and content of certificates;
- 3.5 the detail of transitional provision, in particular that the Bill will apply to all debt whether incurred before or after the commencement of the Act;
- 3.6 the detailed administration of farm debt mediators, in particular the approved organisation model and the provision to issue the requirements of approved organisations and accredited mediators through notice by the Chief Executive;
- 3.7 the detail of administrative review of enforcement and prohibition certificates and decisions about mediation organisations;
- 3.8 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;
- 3.9 the ability to apply for additional time throughout the mediation process;

#### **System design and reconsideration of previous decisions**

#### **4 agreed that:**

- 4.1 the Rural Communities and Farming Support Directorate of the Ministry for Primary Industries will administer the Farm Debt Mediation regime;
- 4.2 the Ministry for Primary Industries will administer the Farm Debt Mediation legislation;

#### **5 noted that there are a number of decisions made in 2018 that require reconsideration, following the drafting of the Bill and the development of the system design:**

- 5.1 Cabinet agreed that forestry not be included in the farm debt mediation regime [DEV-18-MIN-0290, paragraph 5.2.1], but acknowledged that it may be appropriate to include forestry in the future. The Bill does not specifically refer to forestry;
- 5.2 Cabinet agreed that mediators be required to decline to act where there have any conflict of interest, including perceived conflict of interests [DEV-18-MIN-0290, paragraph 6 of Schedule 2]. The Bill requires mediators to disclose any conflicts of interest, including perceived conflicts, and to withdraw from mediation unless parties agree otherwise;
- 5.3 Cabinet agreed that the process for selecting a mediator be based on the New South Wales Farm Debt Mediation Act 1994 provision [DEV-18-MIN-0290, paragraph 2]. The Bill has a provision based on the process for the (New Zealand) Construction Contracts Act 2002, wherein the farmer nominates three mediators, and creditors must select one of these mediators;

- 6 **agreed** that mediators be required to disclose any conflicts of interest, including perceived conflicts, and to withdraw from mediation unless parties agree otherwise;
- 7 **agreed** that the process for selecting a mediator be modelled on the Construction Contracts Act 2002, wherein the farmer nominates three mediators, and a creditor must select one of these mediators;

### Approval to introduce the Bill

- 8 **noted** that the Farm Debt Mediation Bill has a category 2 priority on the 2019 Legislation Programme (must be passed in 2019);
- 9 **approved** the Farm Debt Mediation Bill [PCO 21645/7.0] for introduction, subject to:
- 9.1 any minor consequential amendments, through the Farm Debt Mediation Bill, that may be authorised by the Minister of Agriculture;
- 9.2 the final approval of the government caucuses and sufficient support in the House of Representatives;
- 10 **agreed** that the Farm Debt Mediation Bill be introduced by 20 June 2019;
- 11 **agreed** that the government propose that the Bill be:
- 11.1 referred to the Primary Production Select Committee for consideration;
- 11.2 enacted by December 2019;
- 12 **agreed** that:
- 12.1 the Preliminary provisions and Mediation Organisations and Mediators (Part 3, Subpart 1) of the Bill will come into force on 1 February 2020;
- 12.2 the rest of the Bill will come into force on 1 October 2020.

Janine Harvey  
Committee Secretary

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**Present:**

Hon Kelvin Davis  
Hon Grant Robertson (Chair)  
Hon Phil Twyford  
Hon Dr Megan Woods  
Hon Iain Lees-Galloway  
Hon Jenny Salesa  
Hon Shane Jones  
Hon Kris Faafoi  
Hon Willie Jackson  
Hon James Shaw  
Hon Eugenie Sage

**Officials present from:**

Office of the Prime Minister  
Officials Committee for DEV

**Hard-copy distribution:**

Minister of Agriculture