

In Confidence

Office of the Minister of Agriculture
Chair, Cabinet Economic Development Committee

Government Farm Debt Mediation Bill: Approval for Introduction

Proposal

1. This paper seeks approval to introduce the Farm Debt Mediation Bill, as well as the final policy approvals required to support the introduction of the Bill into Parliament.

Executive Summary

2. The farming sector is a major contributor to the New Zealand economy and a majority of farm businesses carry some debt. Farm businesses are vulnerable to a number of key risks outside of their control, such as climate change, biosecurity threats, and market volatility.
3. Farm debt is often complex, and resolving the debt problems of farms struggling financially can be a challenging and drawn-out process for farmers and lenders, especially as farmers face a significant power imbalance in their dealings with lenders.
4. In December 2019, Cabinet agreed to develop the Farm Debt Mediation Bill ("the Bill") to provide for the fair, equitable and timely resolution of farm debt issues [CABMIN-18-MIN-0608].
5. This proposal is broadly consistent with the priority of the Labour-New Zealand First Coalition Agreement for the 52nd Parliament: the "examination of agricultural debt mediation as well as receivership fees and charges."
6. Farm debt mediation has two key objectives:
 - for farmers and secured creditors to have a facilitated and supported discussion to constructively and objectively explore options for business turnaround; and
 - to provide for a timely and dignified exit on the best terms possible for farmers and creditors where few other options exist.
7. Last December, Cabinet directed officials from the Ministry for Primary Industries (MPI) and the Ministry of Business, Innovation and Employment (MBIE) to simultaneously develop a farm debt mediation system and work with the Parliamentary Counsel Office to draft a Bill. Stakeholder support for the regime has been unanimous throughout this period. Cabinet agreed to establish the regime based on the New South Wales Farm Debt Mediation Act 1994.

8. Cabinet has previously agreed to the high level policy decisions that are reflected in the Bill [CABMIN-18-MIN-0608]. A small number of these decisions require reconsideration, following the drafting of the Bill and the development of the system design. These include making changes and additions in relation to mediator's independence and the process for selecting a mediator.
9. Cabinet approval is now being sought for the system design and for the introduction of the Farm Debt Mediation Bill.

Background

10. Cabinet has previously agreed to the high level framework that has been included in the Bill [CABMIN-18-MIN-0608].
11. This proposal is broadly consistent with the priority of the Labour-New Zealand First Coalition Agreement for the 52nd Parliament: the "examination of agricultural debt mediation as well as receivership fees and charges."
12. The Government is committed to supporting the primary sector in a just transition to an environmentally, socially and financially sustainable future. Farm debt mediation is one of the government initiatives to support individual farmers, and the primary sectors as a whole, in this transition.¹
13. Levels of farm debt have risen over recent years and farming is vulnerable to factors outside the control of farmers such as climate fluctuations, market volatility, and disease or pest incursions.
14. The key features agreed by Cabinet last year include that the regime should:
 - 14.1. apply to farm businesses that are solely or principally engaged in one or more of the following: agriculture (including sharemilking), horticulture, aquaculture, or any activity involving primary production carried out in connection with these;
 - 14.2. exclude lifestyle farming, forestry, wild fish harvesting, and the hunting and trapping of animals;
 - 14.3. apply to financial arrangements secured against farmland (including buildings), farm machinery, livestock and harvested crops and wool;
 - 14.4. be triggered by lenders where the farmer is in default and the lender intends to take any form of enforcement action in relation to relevant debt, and by farmers without any statutory requirements, but with a restriction on how frequently they can mediate; and
 - 14.5. utilise the prohibition and exemption certificate used in New South Wales as the basis for a structured and transparent method for determining the mediation outcome, without compromising a mediator's independence.

¹ Other initiatives within the suite include the integrated farm planning programme, development of farmer centred agricultural support services, improved environmental and climate change regulation, and the establishment of a Primary Sector Council.

Detailed second-order policy decisions taken by Ministers

15. Last December, Cabinet authorised the Ministers of Agriculture and Commerce and Consumer Affairs to jointly make any minor and technical policy decisions that may arise during the drafting process. These decisions relate to:
 - defining the scope of the farm debt mediation scheme;
 - the system design requirements set out in legislation; and
 - good faith being central to mediation and the regime.
16. A full schedule of the minor and technical policy decisions is attached at Appendix One.

Tikanga provided for through flexibility in mediation process

17. Cabinet instructed officials to ensure tikanga principles were provided for, where appropriate, in the farm debt mediation process. Officials from MPI, MBIE and Te Puni Kōkiri (TPK) have worked together to ensure that the approach incorporating tikanga is consistent across farm debt mediation and the proposed introduction of dispute resolution in the Māori Land Court.
18. The mediation process has been designed to allow for tikanga principles to be incorporated where parties consider it appropriate. This approach acknowledges that tikanga differs across regions.
19. Ensuring parties have access to culturally appropriate and relevant mediators is fundamental to the operation of the regime. Currently, there is a lack of suitably qualified people skilled in both mediation and tikanga. Officials will continue to work with TPK and the Ministry of Justice as they progress work on this as part of proposed changes to the Te Ture Whenua Māori Act 1993.

Matters for Cabinet's reconsideration

20. There a number of decisions made last year that require reconsideration, following the drafting of the Bill and the development of the system design. These are the:
 - approach to mediator's independence; and
 - process for selecting a mediator.

Ensuring a consistent approach to mediator's independence

21. Independent mediators are a key feature of a robust and transparent mediation scheme. Cabinet has agreed that mediators should be required to decline to act where there have any conflict of interest, including perceived conflict of interests.

22. This requirement is a significantly more stringent approach than other mediation schemes in New Zealand, and may unnecessarily restrict the mediators that parties can select from. Maintaining mediator independence is already provided for through mediators' obligation to disclose any conflict of interest (including perceived conflicts). Mediation organisations' codes of conduct also set standards for mediator's behaviour where there is a conflict of interest.
23. Therefore, maintaining mediator independence is provided for by the Bill through requiring mediators to:
- 23.1. act independently when deciding how to deal with any particular matter;
 - 23.2. be independent of parties to the mediation; and
 - 23.3. disclose any conflict of interest to mediating parties, and withdraw from the mediation unless parties agree otherwise.

Ensuring a simple and effective process for selecting a mediator

24. Cabinet agreed to a process for selecting a mediator, based on the approach in New South Wales. The process is as follows:
- a. the farmer nominates one mediator from register of accredited mediators;
 - b. the 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.
25. Stakeholders raised concerns that the process was unnecessarily complicated and will create additional work and stress for farmers at an already potentially difficult time. A simple system with as few barriers as possible (including perceived barriers) is crucial to encourage farmers to utilise mediation.
26. The Bill has a more streamlined process for selecting a mediator, based on the process for the Construction Contracts Act 2002 mediation scheme; this is:
- a. in the first instance farmers nominate three mediators; and
 - b. creditors must select one of these mediators.

Further matters included to progress system design

27. Last December, Cabinet directed the simultaneous drafting of the Bill and the development of the system design. In accordance with Cabinet's direction the system has been designed to be 'light touch' and support high quality, effective mediations and enduring agreements, without creating unnecessary cost or administration.
28. Cabinet agreement is now sought for the farm debt mediation system design, as outlined below.

The Rural Communities and Farming Support Directorate of MPI can provide effective and cost-efficient administration of the regime

29. Effective administration is an important component of the farm debt mediation regime. A low number of farm debt mediations is expected, and ensuring administration is low cost and efficient is important.
30. MPI and MBIE officials consider that the Rural Communities and Farming Support Directorate of MPI is the most appropriate agency to administer the regime, 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 its connections with the rural sector and farmer resilience, including work to improve financial and farm planning.
31. While the Rural Communities and Farming Support Directorate does not currently carry out similar administration functions, the administration has been designed to be 'light touch' and focused on procedural decisions. As a result, the functions do not require expertise in mediation or tribunals.
32. On balance, the Rural Communities and Farming Support Directorate was identified as the option which would best deliver effective and cost efficient administration. Farm debt mediation fits within the Rural Communities and Farming Support Directorate existing primary sector and rural affairs responsibilities, and the regime will benefit from MPI's significant understanding and experience with farmers and existing stakeholder relationships.
33. A number of other options were considered for the administration of farm debt mediation, including: the Ministry of Justice (MoJ), MBIE, the Banking Ombudsman Scheme (the Ombudsman) and establishing a new entity.
34. MoJ administers tribunals where the where the administration must be seen to be independent from the relevant sector agency.² This is not required for farm debt mediation, as the administration agency would be facilitating an independent mediation process between two private parties.
35. The Ombudsman was not considered to be the best option as non-bank lenders are not currently members of this scheme and farm debt mediation applies to all secured creditors.
36. While MBIE has expertise in mediation services and consumer protection, it does not have expertise in farming or rural communities. Therefore, it was considered that MBIE was not best placed to meet the overall objectives of the regime.

² For example, the tribunal that reviews Ministry of Social Development decisions on benefits is administered by Ministry of Justice to avoid the perception that Ministry of Social Development controls the appeal process.

The approved mediator model will ensure highly qualified, independent and accessible mediators

37. Well-qualified and experienced mediators are key to the success of farm debt mediation. To ensure all farm debt mediators have the necessary skills and experience, only authorised mediators will be able to carry out farm debt mediation.
38. Currently, New Zealand does not have a national mediation accreditation scheme. National accreditation has not been considered necessary for existing mediation schemes. In line with this, farm debt mediation seeks to utilise existing mediation organisations in New Zealand that currently carry out accreditation, training and oversight for mediators in New Zealand.
39. The Bill provides for an Approved Mediator Model, based on the Family Dispute Resolution Mediation model. The Approved Mediator Model allows for mediation organisations to apply to the Administrator to become approved where they meet certain terms and conditions.³ Approved organisations have the authority to authorise individual mediators to carry out farm debt mediation, where they meet certain terms and conditions.⁴
40. This allows for effective regulation of mediators, ensuring quality and consistency, with relatively low cost, fitting with the light touch model for farm debt mediation. It also supports a competitive market which is a key factor in minimising costs.

Consultation

41. In developing the draft Bill and the system design officials met with a range of stakeholders who have provided important insight and feedback that was incorporated throughout the process. These stakeholders include:
 - the Federation of Māori Authorities and a number of Māori agribusiness and rural professionals;
 - Mediation accreditation bodies and a number of rural mediators;
 - Financial oversight bodies, including, the Banking Ombudsman, Financial Services Federation and Financial Services Complaints Limited;
 - agriculture and horticulture sector groups;
 - rural support groups;
 - banks and secondary lenders; and
 - rural and legal professionals, including lawyers, accountants and bankers.

³ For example, robust accreditation, ongoing training, internal complaints process. These requirements will be set in Notices issued by the Chief Executive of the Ministry for Primary Industries.

⁴ For example, accreditation as a mediator, financial and rural understanding, demonstrated experience in mediation. These requirements will be set in Notices issued by the Chief Executive of the Ministry for Primary Industries.

42. MPI and MBIE consulted the Ministry of Justice (including Te Arawhiti), Land Information New Zealand (LINZ), the Treasury, Te Puni Kōkiri, the Reserve Bank, the Ministry for Foreign Affairs and Trade, Ministry for Women, Inland Revenue (IRD), and the Office of the Ombudsman. The Department of Prime Minister and Cabinet was informed.
43. LINZ will need to update the Certification of Electronic Instruments (Statutory Requirements and Retention of Evidence) Standard 2018 and associated sale transfer instruments to include the Farm Debt Mediation Bill. LINZ and MPI will work together to ensure that the updates are consulted on and completed in time for the Acts' commencement.
44. LINZ has also requested that an additional provision be included in the Bill to clarify that the Crown is not liable under the Land Transfer Act 2017 for registering a transfer that does not comply with the Bill. Officials will work with PCO to include this in the Bill, either at introduction or at Select Committee.
45. Treasury consider that the regime should only apply to debt incurred (or restructured/renewed) after the commencement of the scheme. The regime could add costs for some lenders, particularly for smaller lenders (e.g. farm supplies and vehicles/machinery), which will not have been factored into existing debt. They also note there is nothing preventing banks from voluntarily following a farm debt mediation process for existing debt.
46. Treasury consider that the regulation making power for adding a business activity as a primary production operation is unreasonably broad and requires some criteria/factors to better define the type of activities the regime is intended to address.

Application to existing debt

47. I do not support the Treasury's position on commencement. Farm debt agreements, particularly larger land and capital item related debt, are generally long term and not subject to regular re-financing. Therefore, it is important that farm debt mediation applies to farm debt that exists prior to the commencement of the Act to ensure that the benefits of the scheme are able to be realised promptly.
48. The potential impact of the scheme on smaller lenders should be mitigated to an extent by the obligation to share the costs of mediation equally, i.e. the smaller the debt the less likely a farmer will accept an offer to mediate as they will need to fund 50% of the costs. These costs will still be relatively more significant for the farmer than a small secondary creditor. The Rural Communities and Farming Support Directorate will monitor and report to me on the impact of the farm debt mediation scheme on secondary creditors as part of their wider monitoring and reporting responsibilities.


Better specification of primary production operation

49. I propose that officials work with Select Committee to ensure the regulation making power for adding a business activity as a primary production operation is sufficiently bounded, while still providing sufficient flexibility to respond to changes in circumstances for farming activities not currently covered by the Bill (e.g. forestry).

Financial Implications

50. Last December, Cabinet agreed that farm debt mediation should be delivered within baseline and should not require any additional funding. Cabinet requested that a fully costed proposal for the implementation of farm debt mediation was provided. Due to the 'light touch' model for farm debt mediation and the low number of projected mediations, we consider that the regime can be delivered within baseline. However, this may change if there was a significant increase in annual mediations.
51. The estimated annual cost for administering the scheme is \$250,000 - \$300,000. The establishment cost is estimated at \$350,000.

Consequential amendments

52. Under active consideration
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Impact Analysis

53. The Ministry for Primary Industries and the Ministry for Business, Innovation and Employment confirm that the Impact Analysis Requirements apply and, therefore, a Regulatory Impact Assessment is required. This is attached to this paper (Appendix two).
54. A Quality Assurance Panel with representatives from the Ministry of Primary Industries, Ministry for Business, Innovation and Employment, and the Treasury has reviewed the Regulatory Impact Assessment (RIA) "Farm Debt Mediation" produced by the Ministry for Primary Industries. The Quality Assurance panel considers that the RIA partially meets the quality assurance criteria.
55. The Panel considers that on its own, the evidence presented in the RIA on the nature and magnitude of the problem is insufficient to make the case for intervention in relation to the farming sector over other sectors that may face similar challenges. The analysis also has other limitations. The impact analysis, for example, largely relies on the Australian experience of farm debt mediation schemes, and the impact on smaller non-bank lenders has not been fully explored (the cost of mediation could have a greater effect on business decisions for this group).

56. These limitations, however, are clearly articulated in the RIA and the panel considers they are mitigated by apparent wide stakeholder support for the proposal in the context of social licence for initiatives to support farming communities. If there was more dispute about the proposal, the Panel would consider that more analysis should be provided to inform the debate.
57. The panel also notes the stated intention to mitigate the risk of any unintended impacts for non-bank lenders through monitoring and evaluation. We recommend that the Ministry for Primary Industries also consider specific monitoring and reporting on the availability of credit to farming businesses in general.

Compliance

58. The Bill complies with:
- 58.1. the principles of the Treaty of Waitangi;
 - 58.2. the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
 - 58.3. the disclosure statement requirements;
 - 58.4. the principles and guidelines set out in the Privacy Act 1993;
 - 58.5. relevant international standards and obligations; and
 - 58.6. the [Legislation Guidelines](#) (2018 edition), which are maintained by the Legislation Design and Advisory Committee.
59. A disclosure statement has been prepared as required by CO(13(3) *Disclosure Requirements for Government Legislation* and is attached to this paper.

Binding on the Crown

60. Cabinet has agreed that the Bill will bind the Crown [CAB-18-MIN-0608 refers].
61. The Bill will not impact the existing coverage of the Ombudsmen Act 1975.

Allocation of decision making powers

62. The Bill allocates decision-making powers between the executive and the courts. The Bill allocates powers to the Ministry authorised to administer the Bill by the Prime Minister. I am seeking Cabinet agreement that this function be carried out by the Rural Communities and Farming Support Directorate of the Ministry for Primary Industries. The Bill has a right of appeal to the High Court on matters of law.

Associated regulation

63. No regulations are needed to bring the Bill into operation.
64. The Bill empowers regulations to be made for the purposes of:

- 64.1. specifying business undertakings to be included in the definition of primary production operation;
- 64.2. requiring payment of fees or charges for the administration of farm debt mediation; and
- 64.3. any other related matters necessary for the administration of the Act, or to give it full effect.

Other instruments

- 65. The Bill empowers instruments to set out the:
 - 65.1. criteria for approving organisations as approved mediation organisations;
 - 65.2. grounds for this approval to be suspended or cancelled;
 - 65.3. requirements for individuals to be authorised mediators; and
 - 65.4. form and content of mediation requests and replies; mediator reports and mediation agreements.
- 66. Empowering the making of these instruments is appropriate and consistent with the relevant principles for making such instruments because:
 - 66.1. Each instrument relates to matters that are technical in nature and/or that require flexibility;
 - 66.2. Each instrument applies only to the Bill and the operation of the Farm Debt Mediation Bill;
 - 66.3. The subject matter of the instruments is limited because they cannot be inconsistent with the relevant provisions of the Bill; and
 - 66.4. The power to create such instruments is bested in the most appropriate person to make it: the Chief Executive of the Ministry which will administer farm debt mediation.
- 67. The instruments 'set out in 59.4' are the notices issued by the chief executive under clause 59. These do not meet the definition of legislative instrument under the Legislation Act. These notices must be notified in the Gazette and published on the Ministry's website. Because they are not legislative instruments or otherwise disallowable, they do not need to be presented to the House.
- 68. The instruments 'set out in 59.1 to 59.3' are the requirements notified by the chief executive under clause 46. They are disallowable instruments but not legislative instruments for the purposes of the Legislation Act. The instruments are made by the chief executive, must be notified in the Gazette and published on the Ministry's website. Because they are disallowable instruments, they must be presented to the House.

Commencement of legislation

- 69. If passed, Clause 2 (1) of the Bill provides that the provisions of the Act will come into force on the following dates:

69.1. Preliminary provisions and Mediation Organisations and Mediators (Part 3, Subpart 1) will come into force on 1 February 2020.

69.2. The rest of the Bill will come into force on 1 October 2020.

Parliamentary stages

70. If passed, the Bill should be introduced by 20 June 2019 and passed by 16 December 2019.

71. It is proposed that the Bill be referred to the Primary Production Select Committee for a four month select committee process.

Publicity

72. I will announce the proposal to establish a statutory Farm Debt Mediation Scheme and release a media statement following the Cabinet decisions.

Proactive Release

73. Following Cabinet consideration I intend to consider the release of this paper, with certain redactions in line with the Official Information Act 1982.

Recommendations

The Minister of Agriculture recommends that the Committee:

1. Note that the Farm Debt mediation 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; and
 - 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. Note that Cabinet agreed to the establishment of a farm debt mediation regime, based on the New South Wales Farm Debt Mediation Act 1994, and the overall framework of the regime. Cabinet has also delegated authority to the Ministers of Agriculture and Commerce and Consumer Affairs to take any minor and technical policy decisions prior to Cabinet approving the introduction of the Bill [CABMIN-18-MIN-0608];
3. Confirm the minor and technical policy decisions taken by the Ministers of Agriculture, and 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; and
 - 3.9. the ability to apply for additional time throughout the mediation process;

System design and reconsideration of previous decisions

4. Agree that
 - 4.1. the Rural Communities and Farming Support Directorate of the Ministry for Primary Industries should administer the Farm Debt Mediation regime; and
 - 4.2. the Ministry for Primary Industries should administer the Farm Debt Mediation legislation
5. Note that there are a number of decisions made last year that require reconsideration, following the drafting of the Bill and the development of the system design;
 - 5.1. Cabinet agreed that forestry should not be included in the farm debt mediation regime, 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 should be required to decline to act where there have any conflict of interest, including perceived conflict of interests. 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 should be based on the New South Wales Farm Debt Mediation Act 1994 provision. The Bill has a provision based on the process for the Construction Contracts Act 2002, wherein the farmer nominates three mediators; and creditors must select one of these mediators;
6. Agree that mediators should be required to disclose any conflicts of interest, including perceived conflicts, and to withdraw from mediation unless parties agree otherwise;
7. Agree that the process for selecting a mediator should 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. Note the Farm Debt Mediation Bill holds a category 2 priority on the 2019 Legislation Programme (must be passed in 2019);
9. Approve the Farm Debt Mediation Bill for introduction, subject to the final approval of the government caucus and sufficient support in the House of Representatives;
10. Agree that the Farm Debt Mediation Bill be introduced by 20 June 2019;

11. Note the Minister of Agriculture will not be in the country to introduce the Bill, but an acting Minister or delegate will do so on his behalf;
12. Agree that the Government propose that the Bill be:
 - 12.1. referred to the Primary Production Select Committee for consideration;
 - 12.2. enacted by December 2019;
 - 12.3. the Preliminary provisions and Mediation Organisations and Mediators (Part 3, Subpart 1) will come into force on 1 February 2020; and
 - 12.4. the rest of the Bill will come into force on 1 October 2020.

Authorised for lodgement
Hon Damien O'Connor
Minister of Agriculture

Proactively Released

Appendix One: Farm Debt Mediation – Schedule of second order and technical policy decisions made by Ministers

Clause	Second order or technical policy decision	Rationale
N/A	Ensure tikanga principles are provided for in mediation process	<ul style="list-style-type: none"> The mechanism provided for mediation is considered to be sufficiently flexible to allow tikanga principles to be incorporated in the mediation process on an individual case by case basis (e.g. time allowed to provide and accept notice, process for developing and agreeing procedure agreements). Officials have worked with TPK to ensure that the approach for incorporating tikanga in Farm Debt Mediation is consistent with that proposed for mediation in the Maori Land Court. Guidance material on incorporation of tikanga will be developed by MPI with in collaboration with Maori and TPK
Clause 4 Farm debt	Eligibility of farm debt is determined at the point the contract is entered into	<ul style="list-style-type: none"> Mixed feedback on this during targeted engagement. However, the benefit of certainty outweighs the potential for inequity where property is either wrongfully in or out.
Clause 4 Property	Inclusion of licence, consents and permits	<ul style="list-style-type: none"> Importance of these forms of property to the operation of farms, in particular aquaculture, and can be used as security for loans.
Clause 4 Enforcement action	Include notices as part of enforcement action	<ul style="list-style-type: none"> Inconsistent to allow notices for enforcement action that would be considered void under the Bill. Failure to comply with notice requirements under the Property Law Act does not make the enforcement action void. To avoid property being sold without compliance with farm debt need to include issuing of notices as enforcement action.
Clause 4 Primary	Explicit exclusion of lifestyle blocks as per Cabinet agreement. No explicit exclusion of	<ul style="list-style-type: none"> Lifestyle blocks are effectively excluded in that a farmer is defined as someone 'solely engaged in primary

Clause	Second order or technical policy decision	Rationale
production operation	forestry. Ability to add business activity (e.g. forestry) by regulation	production activity' and primary production activity definition involves a 'business undertaking' <ul style="list-style-type: none"> Cabinet agreed that forestry should be excluded from the farm debt mediation regime at this time, but acknowledged that it may be appropriate to include forestry in the future. Particularly if the Government's pro-afforestation policies led to increasing number of family-owned farms became more involved in forestry in the future. To ensure the Bill is fit for purpose in a dynamic environment (i.e. to avoid unnecessary complexity and time); any changes will still be subject to Regulations Review Committee oversight.
Clause 14 Extension	Allowing for an extension of farmer response	<ul style="list-style-type: none"> The ability to apply for an extension was introduced to allow for extra time to secure support for the mediation process, for example in instances where there are a number of family members involved or iwi/hapu owned farms
Clause 17 Procedure agreement	Requirement for parties to enter into a procedure agreement before commencing mediation	<ul style="list-style-type: none"> NSW Act prescribes the procedural approaches. Feedback from stakeholders, especially organisations and government agencies directly involved in mediation, that this is inconsistent with usual professional mediation practise and can limit the flexibility to mediate according to specific circumstances. <p>Bill provides what may be included in a procedure agreement (based on NSW Act) while administering agency and AMO are expected to provide template</p>

Clause	Second order or technical policy decision	Rationale
		examples
Clause 18 Costs	Provision to allow for parties to enter into different arrangement regarding costs.	<ul style="list-style-type: none"> In response to significant stakeholder feedback that farmer's ability to access capital could be a major disincentive to participating in the scheme and that parties could make arrangements to share costs without the requirement for farmers to pay upfront.
Clause 23 Confidentiality	Procedure agreement prevails over confidentiality.	<ul style="list-style-type: none"> This recognises that both parties may agree to less stringent confidentiality if they BOTH agree that this will benefit the mediation process and likelihood of good outcome. Unwillingness to waive elements of effect of Cl23 confidentiality provisions should not be considered as not acting in good faith
Clause 24 Mediation agreement	Failure to reach agreement not grounds of bad faith	<ul style="list-style-type: none"> There can be a number of valid reasons why an agreement is not reached even though both parties have engaged constructively in mediation process (eg genuine belief by one or both parties that there is valid basis to their position – agree to disagree, family/business partners not in agreement of final outcome despite farmer following best practise)
Clause 29 Enforcement certificate	Change from 'exemption' to 'enforcement' certificate	<ul style="list-style-type: none"> This is to reflect what it actually allows – it lifts the prohibition created by the FDM on enforcement activities legally available to the creditor under the loan agreement. It is not exempting the creditor from anything, just a recognition that FDM process has concluded and enforcement action under the loan agreement can proceed.
Clause 31 Application	Chief Executive has the ability to request further information from the applicant	<ul style="list-style-type: none"> This was based on advice from NSW where the Authority requests further information from some applicants.

Clause	Second order or technical policy decision	Rationale
Clause 34 Notice	Requirement to provide notice to the other party when an application for certificate has been made.	<ul style="list-style-type: none"> This allows the other party to determine whether they wish to apply for a certificate themselves.
Clause 35 Content	Content of certificate	<ul style="list-style-type: none"> Content required for certificate to operate.
Clause 52 No Contracting out		<ul style="list-style-type: none"> Overrides any provision in a financial agreement which attempts to circumvent the Farm Debt Mediation mechanism
Clause 54 Power to make regulations by Order in Council	Regulation making powers relating to specifying a business undertaking for the purposes of the definition of primary production operation, any fees and charges, and other matters necessary for the administration of the Act or for giving it full effect.	<ul style="list-style-type: none"> Recognises that situations in which the Farm Debt Mediation regime may change in the future and additional secondary legislation may be needed to clarify or give full effect to intent of the Bill.
Schedule 1 Transitional, savings and related provisions		
1 Application of Act	Applies to all debt, whether incurred before or after the commencement of the Act	
2 Enforcement actions in progress before act may continue		<ul style="list-style-type: none"> Unrealistic and impractical to suspend enforcement processes that are underway. Potentially may lead to a mini gold rush, but not considered to be major risk as the usual issues around credibility and reputation of creditors that exists now will apply. Some secondary/tertiary lenders may act early to avoid but considered low risk.