

Farm Debt Mediation Bill

Member's Bill

Explanatory note

General policy statement

The purpose of this Bill is to introduce Agricultural Debt Mediation as a mandatory step before the appointment of a receiver in respect of Agricultural Debt. The recent mis-selling of Interest Rates Swaps, which saw the Commerce Commission reach a settlement with affected banks, points to a need for mediation ahead of any action under a security.

Furthermore, agricultural debt is a large amount of money concentrated into very few hands standing at over \$54 billion in the year to January 2015. Many farmers, according to Federated Farmers, are dissatisfied with existing dispute resolution options within the Banking Ombudsman Scheme. This Bill places obligations on the Banking Ombudsman Scheme to administer Agricultural Debt Mediation and through the Receivership Act, removes any financial limit for compensation.

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause. It provides for the Bill to come into force on the day after the date on which it receives Royal assent.

Clause 3 states the purpose of the Bill to amend the Receiverships Act 1993.

Clause 4 states the insertion of the new Part 2 after section 42.

Darroch Ball

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Farm Debt Mediation Act **2018**.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

3 Principal Act

This Act amends the Receiverships Act 1993 (the **principal Act**). 5

4 New Part inserted

After section 42 insert as new Part 2:

Part 2 Agricultural Debt Mediation

43 Interpretation 10

In this **Part**, unless the context otherwise requires,—

agricultural debt means lending to farmer(s) by registered banks and non-bank lending institutions as defined by the Reserve Bank of New Zealand

AMINZ means the Arbitrators' and Mediators' Institute of New Zealand, its successors or another body appointed under delegated legislation 15

Banking Ombudsman means the Banking Ombudsman Scheme

mediator means an independent AMINZ mediator for the time appointed by Banking Ombudsman

mediation means mediation by an accredited AMINZ mediator.

44 Deferred appointment of receivers under deeds and agreements until Agricultural Debt Mediation 20

Parts 5 to 7 of this Act are deferred until at least 10 working days following the Mediator's summary of mediation.

45 Role of the Banking Ombudsman Scheme

(1) The Banking Ombudsman is to institute arrangements for the accreditation of suitably qualified and experienced persons as mediators for the purposes of this Act and is to consult with the New Zealand Bankers Association and AMINZ on those arrangements. 25

(2) The Banking Ombudsman is not liable for any of the costs of or associated with mediation for the purposes of this Act, except in its capacity as a creditor. 30

(3) The Banking Ombudsman receives fair and reasonable cost-recovery from a lender in respect of a mediation.

(4) This Act removes any financial limit from the Banking Ombudsman Scheme.

- (5) Should the Banking Ombudsman Scheme be wound up, then registered banks and non-bank deposit takers regulated by the Reserve Bank of New Zealand, will be levied to provide a similar service.
- 46 Farmer(s) to nominate mediator**
- (1) When given notice that creditor(s) wish to appoint a receiver, farmer(s) must nominate a mediator within 10 business days from the list of accredited persons. 5
- (2) Creditor(s) cannot nominate a mediator but must accept or reject the mediator nominated by the farmer(s).
- (3) If creditor(s) reject a mediator nominated by the farmer(s): 10
- (a) the farmer(s) must nominate a panel of at least 3 other accredited mediators; and
- (b) the creditor must choose from the panel one mediator to mediate between the farmer(s) and creditor(s).
- (4) Where farmer(s) fail to appoint a mediator within 10 business days, one will be randomly selected from the list of accredited persons by the Banking Ombudsman. 15
- 47 Functions of mediators**
- (1) The function of a mediator is to mediate impartially or attempt to mediate impartially between the farmer(s) and creditor(s) for the purpose of arriving at an agreement for present arrangements and for the future conduct of financial relations among them. 20
- (2) It is not a function of a mediator:
- (a) to advise farmer(s) or creditor(s) about the law; or
- (b) to encourage or assist farmer(s) or creditor(s) in reserving or establishing legal rights; or 25
- (c) to act as an adjudicator or arbitrator.
- 48 Conduct of mediation sessions**
- (1) A mediator may:
- (a) call a pre-mediation conference; and 30
- (b) adjourn a mediation session if it appears that a party would be significantly disadvantaged because of the length of the session.
- (2) Mediation sessions are to be conducted with as little formality and technicality, and with as much expedition, as possible.
- (3) Rules of evidence do not apply to mediation sessions. 35
- (4) A mediation session is not open to the public.

- (5) Persons who are not parties to a mediation session may be present at or participate in the session in an advisory or representative capacity if authorised to do so by the mediator.
- 49 Confidentiality of mediation sessions**
- (1) Evidence of anything said or admitted during a mediation session and a document prepared for the purposes of, in the course of or pursuant to, a mediation session are not admissible in any proceedings in a court or before a person or body authorised to hear and receive evidence. 5
- (2) In this section, **mediation session** includes any steps taken in the course of making arrangements for a mediation session or in the course of the follow-up of a mediation session. 10
- 50 Disclosure of information**
- A person must not disclose any information obtained in a mediation session or in connection with the administration or execution of this Act unless the disclosure is made: 15
- (a) with the consent of the person from whom the information was obtained; or
- (b) in connection with the administration or execution of this Act; or
- (c) as reasonably required for the purpose of referring any party or parties to mediation to any person, agency, organisation or other body and, with the consent of the parties to the mediation, for the purpose of aiding in the resolution of an issue between those parties; or 20
- (d) in accordance with a requirement imposed by or under law.
- 51 Representation and assistance during mediation**
- (1) A party to mediation is not entitled to be represented by an agent unless it appears to the mediator that: 25
- (a) an agent should be permitted to facilitate the mediation; and
- (b) the agent proposed to be appointed has sufficient knowledge of the issue concerned to enable the agent to represent the party effectively, and the mediator so approves. 30
- (2) Farmer(s) party to mediation is entitled to have present at any mediation session an advisor, who may but need not be legally or otherwise professionally qualified, and is entitled to call upon that advisor for advice and counsel during the session.
- 52 Exclusion of personal liability of mediators and certain other persons** 35
- A matter or thing done or omitted to be done by a mediator or any person acting under the direction of a mediator does not, if the matter or thing was done or omitted to be done in good faith for the purposes of executing this Act,

subject the mediator or a person so acting personally to any action, liability, claim or demand.

53 Summary of Mediation

- (1) At the end of a mediation, the mediator must, within 1 business day, complete and lodge the Summary of Mediation to the Banking Ombudsman and on a form approved by the Banking Ombudsman setting out a summary of the conduct and results of the mediation. 5
- (2) This Summary of Mediation is to be published contemporaneously to the farmers(s) and creditor(s) party to the mediation on the next business day.