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## **FARM DEBT MEDIATION BILL (No. 2)**

### **Submission from Rabobank New Zealand August 2019**

#### **Introduction**

Rabobank is New Zealand's only specialist food and agribusiness bank. We are part of an international cooperative group based in the Netherlands, with around 350 staff working from 32 offices around New Zealand. Bringing together our deep connections to the New Zealand rural sector, our specialist research expertise and our extensive international reach, we work closely with our clients under the global mission of growing a better world together.

With our cooperative roots and longstanding connections to food and agri businesses in New Zealand and around the world, Rabobank takes a long-term view of supporting the rural sector and agribusiness exporters, who we regard as critical to New Zealand's wider economic success.

We support the Farm Debt Mediation Bill's intention to provide a fair, equitable and timely resolution of farm debt issues for farmers and secured creditors. In particular, we welcome the Bill's two key objectives:

- for farmers and secured creditors to meet in an equitable manner to constructively and objectively explore options for business turnaround; and
- to provide for a timely and dignified exit for those for whom few other options exist.

#### *Providing welcome clarity for farmers*

In setting out a structured and consistent process for resolving farm debt problems, the Bill will help to provide welcome clarity for farmers through a process in which both they and their creditors can have confidence.

We note that the proposed scheme is consistent with recommendations from the Hayne Royal Commission, which called for a national scheme of farm debt mediation to be enacted in Australia. We believe this should also occur in New Zealand.

In many ways, this legislation reflects Rabobank New Zealand's current approach to working closely alongside those New Zealand food and agribusiness clients unfortunately experiencing financial difficulties.

This includes bringing clients into the process as early as possible to identify available options before taking further action in relation to their farm debt. It also includes exploring options around restructuring loans and repayment schedules where that is appropriate and sustainable.

### *Need to be balanced and workable*

Rabobank New Zealand sees the proposed farm debt mediation scheme providing one further option for farmers and their lenders. However, it is essential the proposed scheme is both workable and balanced, particularly with respect to the practical issues we have highlighted below.

We believe the farm debt mediation scheme would be triggered by only a very small number of our clients each year, given our focus and preference to find other workable options where at all possible. This is confirmed by Rabobank's experience in New South Wales, where a scheme similar to that proposed in this Bill has operated for a number of years.

While we have contributed to the New Zealand Bankers' Association submission on this Bill, we are also making our own submission to provide added perspectives as a specialist food and agribusiness bank with a deep interest in the success of our clients in this sector.

## **Recommendations**

We make a number of practical recommendations below aimed at improving some key provisions of the Bill.

They are:

### **1. Availability and suitability of mediators**

- We believe mediation should be collaborative. Therefore, we seek a change to the proposed mediator selection process: the first objective should be an agreement between the parties but, if this cannot happen, the mediator should be appointed by the Ministry for Primary Industries' CEO. Under this approach, farmers and banks should both be able to propose a mediator. In this respect, we note that banks are generally more experienced in this area than farmers and more familiar with the pool of mediators, specifically those with experience in rural debt.
- We also believe the Bill should specify a preference for mediators with rural banking knowledge, experience and expertise. As the Bill's General Policy Statement states: "*Farm debt is often complex, and resolving the debt problems of financially struggling farms can be a challenging and drawn out process...*" Therefore, where mediators do not have a rural background and experience, their ability to influence and achieve a satisfactory outcome for both parties in these situations may be more challenging. This does not preclude qualified mediators with dispute resolution or facilitation experience being used.

## **2. Initiation of mediation**

- We support a bank's ability to initiate mediation earlier in the process where a farmer agrees. This is particularly relevant where there may be concerns over non-financial aspects of the business – for example, around environmental or animal welfare issues – but where the farmer is not technically in financial default. Allowing the mediation process to start early, on agreement of both parties, would provide protection to farmers in those situations through the statutory regime.

## **3. Addressing emergency situations**

- It is important that the Bill is clear about how it will address emergency measures and situations. From our experience, they can arise, for example, when a farmer abandons a property or is incapacitated, where there are animal welfare issues, or where stock or other assets on a property are being removed or damaged. We suggest the Bill includes the concept of a Protection Order allowing a creditor, when applying for an enforcement order or requesting mediation, to at the same time seek a Protection Order in those emergency situations. Such an order would permit a creditor to take specified actions to address those risks, for example by placing a farm under temporary management while the mediation or enforcement order process plays out, without prejudicing those processes.

## **4. Timeframes**

- We consider that 20 working days to respond to a mediation request is reasonable, for example, to account for situations where a farmer may be absent from the farm, or busy periods such as calving or lambing. However, we recommend the right of extension should be reduced from 20 working days to 10 working days.
- We also consider there should be a timeframe within which the Ministry for Primary Industries' Chief Executive must issue an enforcement certificate after receiving an application. This should not be left open-ended and we suggest it should be up to 10 working days, with an emergency enforcement certificate, to preserve assets, able to be issued within 24 hours.

## **Conclusion**

Rabobank New Zealand welcomes the stated objectives of this Bill and, in particular, the extra clarity provided to farmers by the proposed structure and process for resolving farm debt issues.

The proposed scheme is consistent with a call by the Hayne Royal Commission for a national farm debt mediation scheme in Australia. It also reflects Rabobank New Zealand's current approach to bringing clients into the process as early as possible to identify available options before taking further action in relation to their farm debt.

In this submission, we have made a number of practical suggestions aimed at improving the process for appointing mediators, initiating mediation, accounting for emergency situations and also optimising the timeframe for responding to mediation requests.

We have also contributed to the New Zealand Bankers' Association's submission on the Bill in the interests of providing sector perspectives as New Zealand's only specialist food and agribusiness bank.