

Chapter 2

Drought and industry exit assistance in Australia

National Drought Policy

2.1 In 1992, Commonwealth and state ministers agreed to the National Drought Policy (NDP), the objectives of which are to:

- encourage primary producers and other sections of rural Australia to adopt self-reliant approaches to managing for climatic variability;
- maintain and protect Australia's agricultural and environmental resource base during periods of extreme climate stress; and
- ensure early recovery of agricultural and rural industries, consistent with long-term sustainable levels.¹

2.2 The NDP states that:

During severe downturns, Governments will act to preserve the social and physical resource base of rural Australia, and will provide adjustment assistance in the recovery phase. Support will be available to those with sound projects who are temporarily in financial difficulty.²

2.3 In situations such as severe droughts, an Exceptional Circumstances (EC) declaration may be made. ECs are considered to be 'rare and severe events that are outside those that a farmer could normally be expected to manage using responsible farm management strategies. Specifically, they are events that occur on average once every 20 to 25 years and have an impact on income for a prolonged period (e.g. greater than 12 months)'.³

2.4 State and territory governments may lodge an application with the Commonwealth Minister for Agriculture, Fisheries and Forestry if they believe there is a case for EC assistance for a certain area. The Minister may then refer the application to the National Rural Advisory Council (NRAC) for assessment against

1 Department of Agriculture, Fisheries and Forestry, *National Drought Policy*, www.daff.gov.au/data/assets/pdf_file/0006/924306/national-drought-policy.pdf (accessed 14 July 2011).

2 *National Drought Policy*, www.daff.gov.au/data/assets/pdf_file/0006/924306/national-drought-policy.pdf (accessed 2 September 2011).

3 Department of Agriculture, Fisheries and Forestry, 'Background', *Exceptional Circumstances*, www.daff.gov.au/agriculture-food/drought/ec/background (accessed 14 July 2011).

the EC criteria. NRAC's recommendations are provided to the Minister who makes the decision whether to make an EC declaration.⁴

2.5 Aspects of the NDP have proved controversial. After conducting an inquiry into government drought support activities, the Productivity Commission concluded that 'in contrast to its objectives, the NDP's programs focus on providing relief primarily to farm households and farm businesses suffering hardship during severe drought'.⁵

Assistance available during exceptional circumstances

2.6 Once declared, eligible farmers in the EC-declared area may be entitled to assistance through a number of government programs. One program is the Exceptional Circumstances Exit Package which was designed to assist farmers who choose to leave farming as a result of difficult circumstances to re-establish themselves in another sector. The main component of this package is the Exceptional Circumstances Exit Grant (a one-off payment of up to \$150,000). If eligible for this grant (see paragraph 2.15), farmers may also be eligible for other advice and retraining grants and relocation grants.

2.7 Other support available to eligible farmers and small businesses in EC-declared areas includes:

- income support through the Exceptional Circumstances Relief Payment (paid at a rate equivalent to the Newstart Allowance);
- interest rate subsidies for farms;⁶ and
- assistance for small businesses that rely on business from farmers (including income support through the Exceptional Circumstances Relief Payment and interest rate subsidies).⁷

2.8 Although not strictly part of the EC measures, other assistance may also be available such as the Australian Taxation Office allowing more time to pay tax debts without incurring interest charges.

4 Department of Agriculture, Fisheries and Forestry, *Exceptional Circumstances Information Handbook: A guide to policy, processes and assistance measures*, October 2010, pp. 4-5 www.daff.gov.au/_data/assets/pdf_file/0013/150322/ec-handbook.pdf (accessed 14 July 2011).

5 Productivity Commission, *Government Drought Support*, report no. 46, February 2009, p. xxiii.

6 Exceptional Circumstance Interest Rate Subsidies (ECIRS) can be provided at 50 per cent of the interest payable on new and existing loans for the first year of an EC declaration and at 80 per cent in the second and subsequent years (up to a maximum of \$100,000 in any 12-month period and \$500,000 over five years).

7 Department of Agriculture, Fisheries and Forestry, 'Drought assistance', www.daff.gov.au/agriculture-food/drought/assistance (accessed 15 July 2011).

2.9 As shown by Figures 2.1 and 2.2, the area of Australia subject to an EC declaration has reduced significantly in recent years. In June 2011 such measures were restricted to parts of South Australia and New South Wales.

Figure 2.1: Exceptional Circumstances declared areas in 2008–09

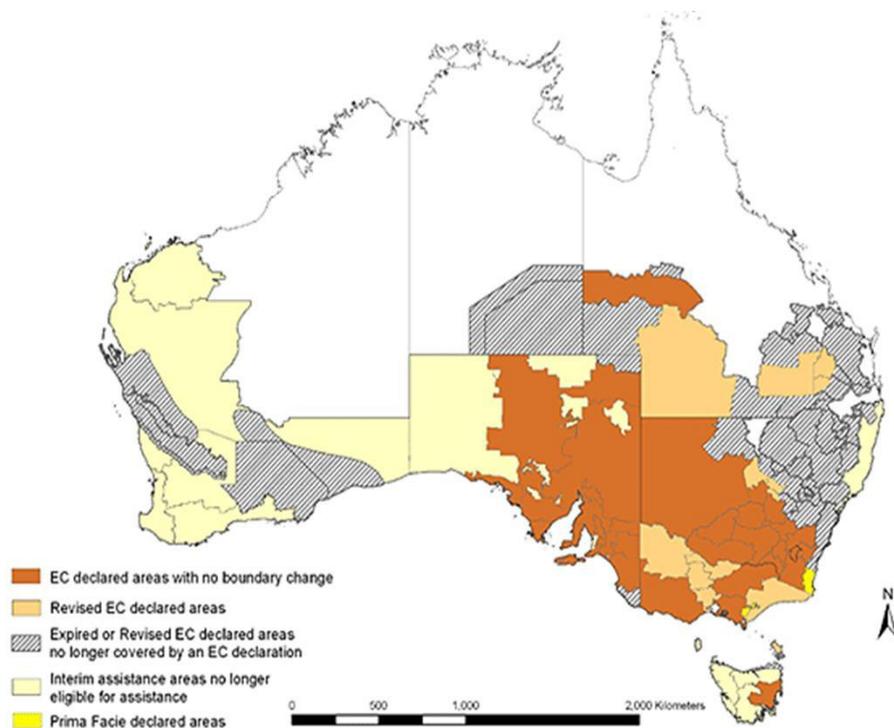
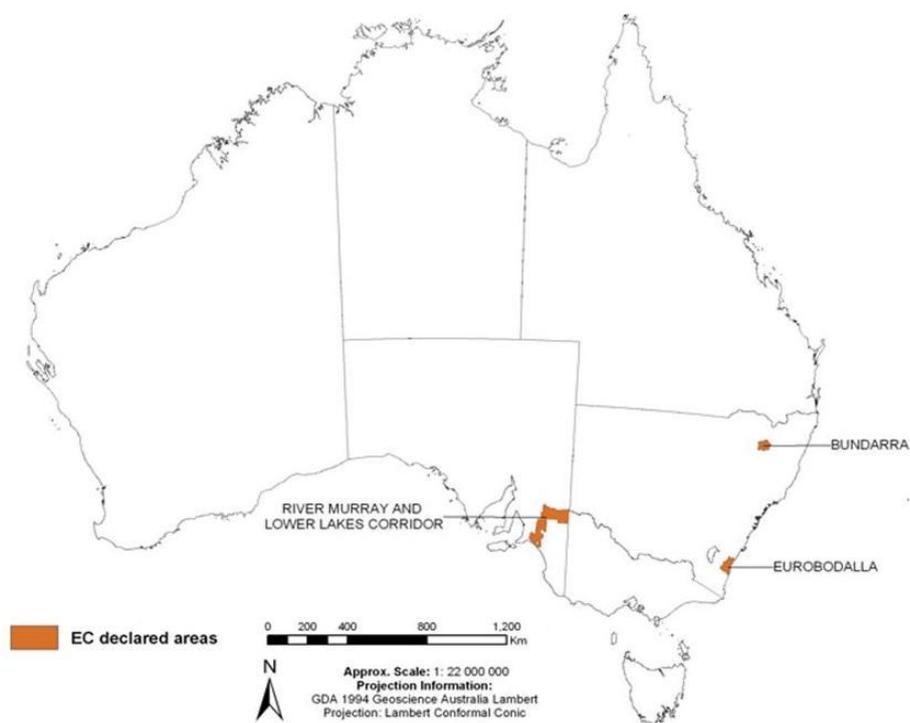


Figure 2.2: Exceptional Circumstances declared areas (as at 16 June 2011)



Sources:

Figure 1: Australian Bureau of Agricultural and Resources Economics and Sciences, www.daff.gov.au/agriculture-food/drought/ec (accessed 15 July 2011).

Figure 2: Bureau of Rural Sciences, 'Operation of the Rural Adjustment Scheme' www.daff.gov.au/agriculture-food/drought/ec/nrac/nrac_2008-09_annual_report/operation_of_the_rural_adjustment_scheme (accessed 15 July 2011).

The Exceptional Circumstances Exit Package

2.10 On 25 September 2007, the Howard Government announced additional drought assistance measures worth \$714 million to 'support farmers through the worst drought in living memory and in the interests of Australia's long-term food security'.⁸ Part of the package of measures was the Exceptional Circumstances Exit Package (EC Exit Package). The main component of the package is the Exceptional Circumstances Exit Grant (EC Exit Grant)—a grant of \$150,000 for eligible farmers (targeted at low-income and low-asset farm owners) who have decided to leave the land.⁹

2.11 If eligible for the EC Exit Grant, farmers may also be eligible for the:

- EC Advice and Retraining Grant (a payment of up to \$10,000 for professional advice and retraining to help them plan for life after farming); and
- EC Relocation Grant (up to \$10,000 to help with relocation expenses and to access job seeking services after they have sold the farm).¹⁰

2.12 Under the Rudd and Gillard Governments, additional funding was provided in various federal budgets to extend the duration of the EC Exit Package. Between 25 September 2007 and 30 June 2011, 456 EC Exit Grants were paid.¹¹

2.13 The Department of Agriculture, Fisheries and Forestry (DAFF) has advised the committee that the program was closed to new applications on 10 August 2011.¹²

Eligibility criteria

2.14 The policy guidelines for the EC Exit Package have been revised at various times. The most recent version was issued in July 2011, and covers the period 1 July

8 The Hon Mark Vaile MP, Deputy Prime Minister; Minister for Transport and Regional Services, 'Stick by Farmers to Guarantee Food Security' *Media release 150MV/2007*, 25 September 2007.

9 Department of Agriculture, Fisheries and Forestry, 'Exceptional Circumstances Exit Package', www.daff.gov.au/agriculture-food/drought/assistance/exit-grants (accessed 18 July 2011).

10 Department of Agriculture, Fisheries and Forestry, 'Exceptional Circumstances Exit Package', www.daff.gov.au/agriculture-food/drought/assistance/exit-grants (accessed 18 July 2011).

11 Department of Agriculture, Fisheries and Forestry, *Submission 3*, p. 3.

12 Department of Agriculture, Fisheries and Forestry, *Submission 3*, p. 3.

2011 to 30 June 2012. Claims lodged prior to that period continue to be assessed under previous versions of the guidelines.

2.15 Farmers who were eligible for the EC Exit Grant must have satisfied various criteria including:

- being an Australian resident;
- being a farmer, whose farm enterprise is or was located in an EC declared area (includes prima facie and interim declared areas);
- having contributed a significant part of his or her labour and capital to the farm enterprise, and deriving a significant part of his or her income from the farm enterprise;
- having met the requirements of the asset test;¹³ and
- having sold their farm.¹⁴

'Effectively in control' requirement

2.16 The eligibility criteria for the EC Exit Grant also requires that the owner of the farm be 'effectively in control' of the farm enterprise immediately before the sale.¹⁵ DAFF explained that effectively in control means:

... the person has a legal title or interest in the farm enterprise and an ability to transfer it to another. This means an applicant cannot:

- be involved in bankruptcy proceedings
- have been issued an eviction order
- have been threatened with foreclosure or
- have in any other way lost management control of the farm.¹⁶

13 To receive the maximum amount of \$150,000, total net assets need to be \$350,000 or less. A reduced grant may be available to those whose assets are above this limit—in these cases for every \$3 in assets above the threshold limit, the grant reduces by \$2 (based on this formula, an applicant cannot receive a grant if their net assets are more than \$575,000).

14 Department of Agriculture, Fisheries and Forestry, *Exceptional Circumstances Exit Package: Policy Guidelines*, revised July 2011, pp. 4-5, www.daff.gov.au/_data/assets/pdf_file/0010/1867510/ec-exit-guidelines-july11.pdf (accessed 14 July 2011).

15 Department of Agriculture, Fisheries and Forestry, *Exceptional Circumstances Exit Package: Policy Guidelines*, revised July 2011, p. 5, www.daff.gov.au/_data/assets/pdf_file/0010/1867510/ec-exit-guidelines-july11.pdf (accessed 18 July 2011).

16 Department of Agriculture, Fisheries and Forestry, *Submission 3*, p. 4. The November 2010 Guidelines included a note which clarified that if the owner of the farm entered into a personal insolvency agreement under Part X of the Bankruptcy Act (an alternative to bankruptcy where a person enters into an agreement with their creditors without being made bankrupt) they generally would still be considered to have been 'effectively in control'. The July 2011 Guidelines, however, did not include this note.

2.17 Past government rural assistance schemes have also taken this approach—the Dairy Exit Program Scheme 2000 included a provision that a person would not be qualified, or would cease to be qualified, for farm help income support under that scheme if it was determined they were not effectively in control of the farm enterprise. A non-exhaustive list of examples where it may be determined that a person was not effectively in control of the farm included 'when a mortgagee has taken possession of a farm, when a person is a bankrupt or when an eviction notice has been served on a person in respect of a farm'.¹⁷

2.18 Payments made under both of the remaining two grants comprising the EC Exit Package (i.e. the EC Advice and Retraining Grant and the EC Relocation Grant) are only available to farmers who have already sold their farm in accordance with the eligibility criteria for the EC Exit Grant. The requirement that the farmers be effectively in control of the farm enterprise immediately before the sale therefore also applies to those payments.

Other current rural support schemes

2.19 The NDP has been subject to a number of reviews since it was agreed to, as shown by Table 2.1.

Table 2.1: Reviews of the National Drought Policy

Year	Review
1997	Drought Policy Task Force, <i>Review of the National Drought Policy</i>
1997	Department of Primary Industries and Energy, <i>Rural Adjustment—Managing Change</i>
2004	Drought Review Panel, <i>Consultations on National Drought Policy</i>
2006	Agriculture and Food Policy Reference Group, <i>Creating our Future: Agriculture and Food Policy for the Next Generation</i>
2008–09	<p><i>National Review of Drought Policy</i>, including:</p> <ul style="list-style-type: none"> • an economic assessment of drought support measures: Productivity Commission, <i>Government Drought Support</i>, Report no. 46, February 2009; • an assessment of the social impacts of drought: Drought Policy Review Expert Social Panel, <i>It's About People: Changing Perspectives on Dryness, A Report to Government by an Expert Social Panel</i>, September 2008; and • a climatic assessment: CSIRO and Bureau of Meteorology, <i>An assessment of the impact of climate change on the nature and frequency of exceptional climatic events</i>, July 2008.

¹⁷ *Farm Household Support Act 1992*, s. 8C. This definition is applied to the program by section 3 of the Dairy Exit Program Scheme 2000.

2.20 Arising from the *National Review of Drought Policy* is a pilot of drought reform measures being undertaken in part of Western Australia as a partnership between the Australian Government and the Western Australian Government. The measures under the program are:

... designed to move from a crisis management approach to risk management. The aim is to better support farmers, their families and rural communities in preparing for future challenges, rather than waiting until they are in crisis to offer assistance.¹⁸

Figure 2.3: Region covered by the pilot of drought reform measures in part of Western Australia for 1 July 2011 to 30 June 2012



Source: Department of Agriculture, Fisheries and Forestry, 'pilot of drought reform measures in part of Western Australia', www.daff.gov.au/agriculture-food/drought-pilot (accessed 31 August 2011).

2.21 One of the programs under the pilot scheme is Farm Exit Support, which includes:

- Farm Exit Support Grants;
- Farm Exit Support Advice and Re-training Grants; and

18 Department of Agriculture, Fisheries and Forestry, 'Pilot of drought reform measures in Western Australia', www.daff.gov.au/agriculture-food/drought-pilot (accessed 30 August 2011).

- Farm Exit Support Relocation Grants.

2.22 DAFF advised the committee:

Farm Exit Support is similar to EC Exit Grant in all respects, except that it is available to eligible farmers in financial difficulty, regardless of the cause of difficulty, and is not linked to EC declarations. It is available to farmers in the pilot of drought reform measures in Western Australia. The Australian Government has allocated \$1.44 million for Farm Exit Support for 2011-12. The program will close on 30 June 2012 or earlier if all funds are expended before that date.¹⁹

Treatment of government rural support schemes under bankruptcy law

Overview of bankruptcy law

2.23 The primary legislation governing bankruptcy matters in Australia is the *Bankruptcy Act 1966*. The Act outlines the processes associated with formal bankruptcy (either voluntary or involuntary) and voluntary legally-binding agreements which can allow debtors to avoid formal bankruptcy. These are under Part X of the Act (Personal Insolvency Agreements) and Part IX (Debt Agreements).²⁰

2.24 Of most relevance to this Bill are the provisions in the Bankruptcy Act regarding the division of a bankrupt's property among creditors.

2.25 The Attorney-General's Department described how property is treated under the Bankruptcy Act:

When a person becomes bankrupt the property of the bankrupt vests in the trustee who is administering the debtor's bankruptcy on the date of the bankruptcy (paragraph 58(1)(b) of the *Bankruptcy Act 1966* (the Act)). The property of the bankrupt which is divisible among the bankrupt's creditors is specified in s 116(1) of the Act.

Property acquired by the bankrupt after the date of bankruptcy but before the date of discharge is also available to the trustee (s 116(1)). This type of property is referred to as "after-acquired property".²¹

19 Department of Agriculture, Fisheries and Forestry, *Submission 3*, p. 3.

20 A Personal Insolvency Agreement is an arrangement between a debtor and their creditors where the debtor offers to pay them in full or part by instalments or a lump sum. A Debt Agreement is similar in many respects, however, the debtor can offer to pay their creditors an amount which may be less than the full sum of their debts. There are income, asset and debt limits that apply for Debt Agreements (but not for Personal Insolvency Agreements). If a proposal for either a Personal Insolvency Agreement or Debt Agreement is accepted, then the creditors are bound by the terms of the agreement.

21 Attorney-General's Department, *Submission 6*, p. 1. Bankruptcy, and therefore consideration of after-acquired property, generally lasts for a period of three years although it can be extended in certain circumstances.

2.26 Subsection 116(2) of the Bankruptcy Act provides that certain property cannot be divisible amongst the creditors of a bankrupt.²²

2.27 Additionally, section 139L of the Bankruptcy Act limits certain forms of income from being subject to compulsory income contributions. Section 139L of the Bankruptcy Act provides that in relation to compulsory income contributions by a bankrupt post-bankruptcy, income has 'its ordinary meaning', subject to certain qualifications. Paragraph 139L(1)(b)(v) allows the regulations to provide that certain payments or amounts are not the income of the bankrupt. A number of types of income are currently prescribed by the regulations and thus excluded from compulsory income contributions.

Excluded government rural support schemes

2.28 Paragraphs 116(2)(k), (l), (m) and (ma) of the Bankruptcy Act allow the regulations to exclude payments paid to a bankrupt under rural support schemes from counting as property divisible among a bankrupt's creditors.

2.29 Although the specific rural support schemes are prescribed by the regulations, a general definition of a rural support scheme is provided in the Bankruptcy Act as being a program or scheme that:

- (b) is administered by or on behalf of the Commonwealth, a State or a Territory; and
- (c) relates to:
 - (i) agriculture or the cultivation of land; or
 - (ii) the maintenance of animals for commercial purposes; or
 - (iii) horticulture; or
 - (iv) any other primary industry activity.²³

2.30 The following rural support schemes are currently prescribed and are accordingly excluded from the definition of property:

- Dairy Exit Program Scheme 2000 (see paragraph 2.33);
- Farm Help Re-establishment Grant Scheme (see paragraph 2.35);
- 1985 Rural Adjustment Grant Scheme*;

22 Additionally, section 139L of the Bankruptcy Act limits certain forms of income from being subject to compulsory income contributions. Section 139L of the Bankruptcy Act provides that in relation to a compulsory income contributions by a bankrupt post-bankruptcy, income has 'its ordinary meaning', subject to certain qualifications. Paragraph 139L(1)(b)(v) allows the regulations to provide that certain payments or amounts are not the income of the bankrupt. A number of types of income are currently prescribed by the regulations and thus excluded from compulsory income contributions.

23 *Bankruptcy Act 1966*, s. 5.

- 1988 Rural Adjustment Grant Scheme*;
- Rural Adjustment Grant Scheme*;
- Rural Adjustment Scheme*;
- Rural Reconstruction Grant Scheme*;
- Sugar Industry Reform Program*; and
- Tobacco Grower Adjustment Assistance Package* (see paragraph 2.34).²⁴

2.31 All of these above programs are now closed. DAFF notes:

The Farm Help Re-establishment Grant was the last exit grant exempt from bankruptcy proceedings. Farm Help closed on 30 June 2008, with no further payments made after 30 June 2009.²⁵

2.32 Accordingly, only the EC Exit Program and the pilot of drought reform in Western Australia are current rural support schemes that include an exit grant component. No grants made under either program are exempt from bankruptcy proceedings.²⁶

Past treatment of various exit grants

2.33 The Dairy Exit Program Scheme 2000 (DEP Scheme) was introduced at the time of dairy deregulation with the passage of the *Dairy Industry Adjustment Act 2000*. The program provided a grant of up to \$45,000 (tax free) to people on the sale of dairy farm enterprises, or rights or interests in dairy farm enterprises, where a dairy farmer decided to leave the industry.

2.34 The Tobacco Grower Adjustment Assistance Package (TGAAP) was announced in 2006 as a grant to enable a person engaged, or previously engaged, in the tobacco industry as a grower to exit all agricultural industries. The grants were capped at \$150,000 per grower and were available to former tobacco growers in

* Only the amounts paid under these programs in the circumstances specified in the regulations are excluded from the definition of property. For example, the Sugar Industry Reform Program is exempted for the circumstance where 'assistance is required in the form of a grant to enable a person engaged in the sugar industry, as a grower or harvester, to exit all agricultural industries'.

24 Bankruptcy Regulation 1996, rr. 6.04A, 6.04B. Certain primary industry rural support schemes are also excluded from income contributions under regulation 6.12D—these include:

- an amount paid to a person under the DEP Scheme;
- an amount paid to a person under the Sugar Industry Reform Program for the circumstance mentioned in the regulations;
- an amount paid to a person under the TGAAP for the circumstance mentioned for it in the regulations.

25 Department of Agriculture, Fisheries and Forestry, *Submission 3*, p. 2.

26 Department of Agriculture, Fisheries and Forestry, *Submission 3*, p. 2.

northern Queensland following the cancellation of their growing licences in 2004 by the Australian Taxation Office (ATO) after the withdrawal of manufacturers in Queensland, as well as Victorian growers after they exited the industry.²⁷

2.35 DAFF described the treatment of the Farm Help Re-establishment Grant, the last rural support grant introduced with an exemption from bankruptcy proceedings:

The Farm Help Re-establishment Grant was intended to provide a head start to help farmers in financial difficulty successfully establish a life after farming. The grant was exempt from bankruptcy proceedings under the bankruptcy legislation. This recognised the intent of the re-establishment grant to assist farmers to re-establish outside of farming and the decision to exempt the grant from bankruptcy was to guarantee some financial security for the farm family after exiting.²⁸

2.36 In April 2007, amendments to the Bankruptcy Regulations were made to 'align the treatment of a number of rural support grants'.²⁹ One of the effects of the amendments was to reinstate the status of the Sugar Industry Reform Program, TGAAP and the DEP program as being non-divisible property (a status they held prior to the passage of the *Bankruptcy Legislation Amendment (Superannuation Contributions) Act 2007*).³⁰ These amendments ensured these grants received 'similar treatment in bankruptcy to grants pursuant to the Farm Help scheme'.³¹

Why is the EC Exit Package not excluded?

2.37 As noted, since the closure of the Farm Help Re-establishment Grant, no exit grant made under a rural support scheme has been exempted from counting as property divisible among a bankrupt's creditors.

2.38 DAFF summed up the rationale for the EC Exit Grant being subject to normal bankruptcy proceedings as follows:

The EC Exit Package guidelines were designed to assist farmers in significant financial difficulty. The grant assists farmers to make the hard

27 The Hon. Peter McGauran MP, Minister for Agriculture, Fisheries and Forestry, '\$40 million to help tobacco growers look to the future', *Media release DAFF06/160PM*, 26 October 2006; Cancer Council Victoria, *Tobacco in Australia: Facts and Issues*, eds. Scollo, M. M. and Winstanley, M. H., 3rd edition, section 10.9.1, p. 28, www.tobaccoinaustralia.org.au (accessed 15 July 2011).

28 Department of Agriculture, Fisheries and Forestry, *Submission 3*, p. 3.

29 *Explanatory Statement*, Bankruptcy Amendment Regulations 2007 (No. 1), p. 1.

30 Until 2007, certain rural support schemes were declared to be non-divisible property within the text of the Bankruptcy Act itself. After the passage of the *Bankruptcy Legislation Amendment (Superannuation Contributions) Act 2007*, these provisions were repealed and instead the payments under rural support schemes that would not be considered divisible property would be determined by the regulations.

31 *Explanatory Statement*, Bankruptcy Amendment Regulations 2007 (No. 1), p. 2.

decisions about their future in farming before they reach a point, financially, from which it would be very hard to recover. Some farmers remain, hoping for a good season to repay their debts, but this is very risky if they are already burdened by debt. The guidelines encourage farmers to consider their position before it is too late by requiring that, to receive a grant, an applicant must be effectively in control of the farm enterprise immediately before the sale of the farm. The EC Exit Grant was not made exempt from any future bankruptcy action so as to avoid deterring farmers from taking early action.³²

2.39 Some applicants for the EC Exit Package, however, may have found a way around some of the implications of the grants counting as divisible property. A Rural Financial Counsellor advised DAFF:

One strategy known to be used by farmers is to sell the farm, then file for bankruptcy and then once bankrupt apply for the exit grant. This is possible under the guidelines because the farmer was still in control of the farm at time of settlement of sale of the farm. The bankruptcy trustee then treats the exit grant as income and accordingly distributes only part of the exit grant to the creditors. This could leave the farmer with around \$100,000 out of the \$150,000 (income tax also needs to be taken into account).³³

32 Department of Agriculture, Fisheries and Forestry, *Submission 3*, p. 3.

33 Department of Agriculture, Fisheries and Forestry, *Submission 3*, p. 6. This statement was an observation made by a Rural Financial Counsellor and does not necessarily represent the views of DAFF.