



August 22, 2011

Senate Economics Committee  
Department of the Senate  
PO Box 6100  
Parliament House  
Canberra ACT 2600

Dear Sir/Madam,

The Western Australian Farmers Federation (Inc.) (WAFarmers) thanks you for the opportunity to provide comment to the Senate Economics Committee's *'Inquiry into the Bankruptcy Amendment (Exceptional Circumstances Exit Package) Bill 2011.'*

As background, WAFarmers is the State's largest and most influential rural lobby and service organisation. WAFarmers represents approximately 4,000 Western Australian farmers from a range of primary industries including grain growers, meat and wool producers, horticulturalists, dairy farmers, commercial egg producers, pastoralists and beekeepers.

Collectively our members are major contributors to the \$5.5 billion gross value of production that agriculture in its various forms contributes annually to Western Australia's economy. Additionally, through differing forms of land tenure, our members own, control and capably manage many millions of hectares of the State's land mass and as such are responsible for maintaining the productive capacity and environmental well being of that land.

WAFarmers recognises:

- That the Exceptional Circumstances (EC) Exit Grant is designed to assist those eligible farm families in severe financial difficulty who choose to leave farming to re-establish themselves in another industry, and that whilst Western Australia operates under the Western Australian Drought Pilot Farm Exit Program, the EC Exit Grant is identical in design.
- WAFarmers also recognises that the grant is not prescribed for the purpose of sections 116 (2) (k) and 116 (2) (l) of the Bankruptcy Act 1966, which means that the EC Exit Grant is not exempt from normal bankruptcy proceedings, and that this Bill will rectify this anomaly, so long as the final orders have not been made.

As that is the case, WAFarmers agrees that under current arrangements, the proposed Amendment will be of benefit. In that support however, WAFarmers raises issues which we believe the Federal Government should be monitoring, to avoid the scheme delivering unintended consequences.

WAFarmers members have commented that they consider the EC Exit Grant as an opportunity to pay back unsecured creditors, many of whom co-exist in the same small, close knit community as the applicant, and who rely on cash flow to stimulate local employment, much of it dependant on agriculture. Thus it is the absolute desire of the grant recipients they can continue to live and work in their beloved community 'without to having to cross the street to avoid contact'.

Whilst it may be the unintended consequence of this amendment that a portion of the EC Exit Grant is used for paying unsecured creditors, WAFarmers understands that for farmers, 're-establishment' is more than a financial consideration, but a social re-integration into the local community, where maintaining pride and reputation is as important as having a 'roof over one's head'.

As such, an issue which does need further consideration is the possible behaviour of the banking sector in an environment where the grant is exempt from bankruptcy proceedings. Anecdotal evidence suggest that whilst the banks cannot demand the grant be paid to them, the EC Exit Grant gives the bank more incentive to pressure farmers to liquidate assets at a greater loss, knowing that the grant will be available. This somewhat removes the bank's social obligation to ensure that the farmer is not leaving 'homeless and destitute'. This phenomena perhaps could be exacerbated by the proposed Amendment.

One of the issues with the current EC Exit Grant system is that a farmer is ineligible for the payment, if voluntary administration has occurred and/or the farming property is under control of the bank as part of mortgagee in possession rulings.

Thus, the policy's current design discriminates against those who's remaining equity is at a low level and subsequent high risk of forcing a bank to take drastic and irrevocable action as described above.

This compares with other applicants, who have enough 'equity buffer' to allow some time to sell the property whilst paying capitalised interest, and pay back all creditors, leaving the maximum grant available.

With the added condition that farm title transfer must have occurred, which WAFarmers believes should be altered to reflect that property sales are very slow at present, the proposed amendment will give some extra time for those farmers whose property isn't selling at a fair price, to remain eligible, albeit at the risk of paying more capitalised interest to the bank – again an unintended consequence of the proposed amendment.

In fact, WAFarmers feels that to reduce the banks 'reward' from pressuring farms to liquidate assets at a lower price, knowing that the farmers will exit with a grant, that a further amendment

be introduced that allows voluntary return to the bank of farming assets be sufficient to access the grant, given the current delayed transaction times.

Further, ineligibility criteria, such as off-farm income, requirement of land ownership structures and leasing the farm out for income, all discriminates against those who are in most need of re-adjustment, but due to uncontrollable circumstances, are unable to act early.

WAFarmers understands that previous attempts to have the bankruptcy regulations amended to protect the EC Exit Grant failed from perceptions that the amendment would deter farmers from considering early action to re-establishment of their lives.

WAFarmers agree that early action is preferred, and that whilst the eligibility criteria needs reviewing, this Amendment will allow farms to remain eligible when so many factors are out of their control, such as delayed property transactions.

In closing, WAFarmers thanks you for your consideration of this submission. We note that the hearing dates for this Inquiry have not been finalised and request that, if the opportunity arises to hold a hearing date in Perth, that WAFarmers be allowed to present evidence at that time.

Yours sincerely

**Mike Norton**  
**President**