

1994

PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

PRIMARY INDUSTRIES AND ENERGY LEGISLATION  
AMENDMENT BILL 1994

ADDITIONAL EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Primary  
Industries and Energy,  
Senator the Hon Bob Collins)

THIS MEMORANDUM TAKES ACCOUNT OF AMENDMENTS MADE BY THE HOUSE  
OF REPRESENTATIVES TO THE BILL AS INTRODUCED

AMENDMENTS TO THE PRIMARY INDUSTRIES AND ENERGY LEGISLATION  
AMENDMENT BILL 1994

OUTLINE

1. The proposed amendment to the Primary Industries and Energy Legislation Amendment Bill 1994 is a technical amendment relating to the application of the amendments to the Bankruptcy Act 1966 contained in the Law and Justice Legislation Amendment Act 1994.
2. The Law and Justice Legislation Amendment Act 1994 amended the Bankruptcy Act 1966 to ensure that recipients of Rural Adjustment Scheme payments (RAS payments) are able to retain those payments, or property purchased with those payments where the payment is received after 28 April 1994, and where bankruptcy action is initiated after that date.
3. Some farmers are eligible to apply for and receive a RAS payment, notwithstanding that they have become bankrupt before making an application or receiving a RAS payment. The amendments to the Bankruptcy Act 1966 by the Law and Justice Legislation Amendment Act 1994 would not be effective to enable a farmer who became bankrupt before 28 April 1994 to retain a grant made after that date. The proposed amendment to the application provision of the Law and Justice Legislation Amendment Act 1994 will ensure that where a bankrupt farmer applies for and receives a RAS grant, he or she will be able to keep the grant or any property acquired with it, whether his or her bankruptcy occurred before or after 28 April 1994.
4. The proposed amendment inserts new provisions in the Primary Industries and Energy Legislation Amendment Bill 1994 to correct a technical error in the Offshore Minerals Act 1994. Section 7 of schedule 1 of the Offshore Minerals Act 1994 preserves exploration permits granted under the Minerals (Submerged Lands) Act 1981. It was intended that subsection 7(3) of the 1994 Act should preserve subsection 29(1) of the 1981 Act which provides that renewal of a permit should be for 75% of the area of the permit. The proposed amendment corrects an error in subsection 7(3) to provide that the figure for surrender of part of the permit upon renewal should be "25%" not "75%".
5. The proposed amendments insert additional words in the amendments to the Quarantine Act 1908 to be made by the Primary Industries and Energy Legislation Amendment Bill. Proposed subsection 16AD(1) is to be amended to provide that a notice given to an importer by a quarantine officer requesting additional information should also be able to be given to the agent of the importer.

3. Proposed subsection 16AD(3) is to be amended to ensure that it extends to the Territories. It is currently limited to the States.

FINANCIAL IMPACT STATEMENT

4. The proposed amendments will not affect Government expenditure and will have no staffing implications for the Department of Primary Industries and Energy.

# NOTES ON AMENDMENTS

## Clause 2, subclause (4A)

5. This subclause makes the amendment contained in the Schedule retrospective to the date of the commencement of the Law and Justice Legislation Amendment Act 1994 should the Law and Justice Legislation Amendment Act 1994 receive the Royal Assent before the Primary Industries and Energy Legislation Amendment Act 1994.

## Clause 2, subclause (6)

6. This subclause makes the amendment retrospective to the coming into force of the Offshore Minerals Act 1994 on 25 February 1994.

## Clause 9

7. This amendment of proposed subsection 16AD(1) provides that a notice given to an importer by a quarantine officer requesting additional information should also be able to be given to the agent of the importer. This new section is concerned primarily with electronic processing of imports for quarantine purposes. Whilst the importer would possess the knowledge to provide the additional information, for the electronic cargo processing system to operate effectively the notice needs to be able to be given to the agent who is connected to the electronic system.
8. This amendment of proposed subsection 16AD(3) provides that the notice to the importer under subsection 16AD(1) which is to be taken as given by the principal quarantine officer in the State in which it was given, is now to be taken to have been given by the principal quarantine officer in the State or Territory in which it was given.

## Clause 12 (a) and (b)

9. This clause ensures that the amendments made by the Schedule to the Law and Justice Legislation Amendment Act 1994 do not apply to any distributions made by a trustee before this Act receives the Royal Assent. It also ensures that trustees are not liable for any act or omission, relating to this amendment, before this Act receives the Royal Assent.

## Law and Justice Legislation Amendment Act 1994

## Subsection 91(1) and (2)

10. Subsection 91(1) makes the operation of the amendments subject to the application provision in subsection 91(2).

11. The amendment proposed by the Government will substitute a new subsection 91(2) of the Law and Justice Legislation Amendment Act 1994 dealing with the application of the amendments by that Act to the Bankruptcy Act 1966.
12. This proposed amendment will substitute a new section 91(2) for the present subsection. The effect of the new subsection 91(2) will be that the RAS payments made to a person after 28 April 1994 will not be able to be taken by creditors, regardless of when the bankruptcy occurred. Accordingly, a farmer who has become bankrupt will be able to apply for and retain the benefit of a RAS grant, just as a farmer who receives a RAS grant, and subsequently becomes a bankrupt is able to retain the benefit of the grant, notwithstanding his or her bankruptcy.
13. Previous amendments were expressed to apply in relation to grants received by a person after 28 April 1994, and where bankruptcy action was initiated against the person after that date.
14. Since those amendments were made, it has emerged that there are some former primary producers who, although otherwise eligible for a RAS grant, have become bankrupt before making an application for a grant, and if a grant were given to such a person, it would be capable of being taken by the bankruptcy trustee, because of the way in which present subsection 91(2) of the Law and Justice Legislation Amendment Act 1994 operates, that is, only to protect payments where the payment is made, and the bankruptcy occurs on or after 28 April 1994.

#### Offshore Minerals Act 1994

#### Schedule 1, paragraphs 7(3)(c) and (d)

15. This addition at the end of the Schedule deletes "75%" and inserts "25%" in paragraphs 7(3)(c) and (d) of Schedule 1 to the Offshore Minerals Act 1994 in order to preserve the position contained in the Minerals (Submerged Lands) Act 1981. It was intended that subsection 7(3) of the 1994 Act should preserve subsection 29(1) of the 1981 Act which provides that renewal of a permit should be for 75% of the area of the permit. The amendment corrects an error in paragraphs 7(3)(c) and (d) of the Offshore Minerals Act 1994 to provide that the figure for surrender of part of the permit upon renewal should be "25%" not "75%".







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