

EXPLANATORY STATEMENT

Issued by Authority of the Secretary of the Department of Agriculture

Farm Household Support Act 2014

Farm Household Support Secretary's Rule 2014

Subsection 106(2) of the *Farm Household Support Act 2014* (the FHSA) provides that the Secretary of the Department of Agriculture may make rules by legislative instrument which are required or permitted by the FHSA to be prescribed; or necessary or convenient to be prescribed for carrying out or giving effect to the FHSA.

The FHSA provides the mechanism to implement the Farm Household Allowance (FHA), an income support payment for farmers and their partners who are experiencing financial hardship. The FHSA provides for:

- up to three cumulative years of income support for farmers and their partners in hardship without the need for a climatic trigger
- a requirement for a person to meet a means test, composed of an assets and income test, to qualify for payment. The means test restricts payment to those individuals who lack sufficient means to support themselves and ensures FHA is paid at a rate that provides equitable treatment of people in like circumstances
- an assets test that is higher than mainstream asset limits in recognition that farm assets are relatively illiquid compared with other types of business assets and therefore cannot readily be drawn on for self-support
- a requirement for a person to enter into, and comply with, a financial improvement agreement to qualify for payment. The agreement requires the person to undertake approved activities such as education, training or off-farm employment, designed to improve their capacity for self-reliance and takes into account the special circumstances of farmers and their partners
- a requirement for a person to have a farm financial assessment conducted. The purpose of the farm financial assessment is to evaluate options to improve the person's financial situation and inform the development of the financial improvement agreement
- a farm financial assessment supplement and an activity supplement for the purpose of partially or wholly funding the farm financial assessment and compulsory activities, respectively
- ancillary benefits such as a health care card, telephone allowance, remote area allowance, clean energy supplement, pharmaceutical allowance and rent assistance, subject to a recipient meeting certain requirements
- an income support payment for farmers and their partners that aligns with social security law (that is, the *Social Security Act 1991* and the *Social Security (Administration) Act 1999*) where possible. This approach ensures recipients are

treated equitably and have access to the same benefits and services as mainstream income support recipients.

The *Farm Household Support Secretary's Rule 2014* (the rule) prescribes:

- matters the Secretary must take into account in deciding whether:
 - a farm enterprise has a significant commercial purpose of character
 - a person has a reasonable excuse for committing a qualification failure or conduct failure
- kinds of requirements that must not be included in a financial improvement agreement
- classes of activities that may be specified in a financial improvement agreement for which an activity supplement is payable.

Details of the rule are set out in the Attachment A.

The rule commences on the commencement of section 3 of the FHSA, being 1 July 2014.

The Department of Agriculture consulted industry stakeholders and Australian Government agencies in developing the policy supporting FHA. Following the 2008-09 national review of drought policy, in 2010 the Australian Government, in partnership with the Western Australian government, conducted a two year pilot of drought reform measures in regions of Western Australia. The pilot was reviewed in 2011 by an independent panel, which reported strong support for an income support payment for farm families in hardship that is based on demonstrated individual need rather than a climatic trigger. FHA was developed in response to the national review of drought policy and the Western Australian pilot review. The major policy settings for FHA have been developed with significant input from the central and social policy agencies of the Australian Government, and in consultation with industry peak bodies, including the National Farmers' Federation, and state/territory government agriculture departments.

The Office of Best Practice Regulation (OBPR) was consulted and considers that the rule has minor impacts and therefore a Regulation Impact Statement is not required (OBPR Reference Number: 16411).

The Office of Parliamentary Counsel (OPC) was consulted in the development of the rule. No other consultation was undertaken because the rule is of a minor or machinery nature and appropriate consultation was undertaken in relation to the major policy settings for FHA.

This rule is compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full statement of compatibility is set out in the Attachment B.

Details of the *Farm Household Support Secretary's Rule 2014*

Part 1 – Preliminary

Section 1 – Name of rule

This section provides that the title of the rule is the *Farm Household Support Secretary's Rule 2014*.

Section 2 – Commencement

This section provides that the rule commences on the commencement of section 3 of the FHSA, which is 1 July 2014.

Section 3 – Authority

This section provides that the rule is made under the *Farm Household Support Act 2014*.

Section 4 – Definitions

This section inserts the following definition for the purposes of the rule:

Act means the *Farm Household Support Act 2014*.

Part 2 – Farm household allowance

Division 1 – Basic qualifications of farmers and their partners for farm household allowance

Section 5 – Whether a farm enterprise has a significant commercial purpose or character

Section 13 of the FHSA provides that the rule may prescribe matters that are to be taken into account in deciding whether a requirement in section 8 or 9 of FHSA is met. Section 8 and 9 of the FHSA outline the eligibility criteria a person must meet to qualify for FHA as a farmer or the partner of a farmer. To qualify for FHA as a farmer, a person must contribute significant labour and capital to a farm enterprise that has a significant commercial purpose or character.

Section 5 of the rule prescribes that in considering whether a farm enterprise has a significant commercial purpose or character, the Secretary must take into consideration various matters. These matters include whether a business plan has been drawn up for the farm enterprise, whether the farm enterprise complies with any legal requirements which are necessary to operate on a commercial basis, and whether there is an intention, and a reasonable belief, that the farm enterprise is likely to make a profit. It is intended that, under this section, applicants for FHA whose farm enterprise could best be described as a 'hobby farm' will not be eligible for payment. This section is informed by tax rulings on the meaning of 'business of primary production' under the *Income Tax Assessment Act 1997*.

Division 2 – Financial improvement agreements

Section 6 – Kinds of requirements not to be included in financial improvement agreements

Many social security payments are contingent on an activity test – that is, the recipient’s fulfilment of activities aimed at improving their circumstances and reducing their ongoing need for welfare support. Recipients who fail their activity test without a reasonable excuse may lose part or all of their entitlement.

The activity test for FHA includes an action plan called a financial improvement agreement (FIA). Section 14 of the FHSA requires an individual to enter into a FIA if they have claimed, or are receiving FHA. A FIA is a planning tool for farmers and their partners to work towards improving their capacity for self-reliance. The FIA is based on the individual’s goals, resources and any relevant personal factors that may serve as a barrier to them taking action to improve their circumstances. The agreement contains approved activities that are designed to assist them to achieve their objectives and make progress towards their goals. Such activities may include training and/or studying, obtaining advice and other relevant activities.

Subsection 15(2) of the FHSA provides that the FIA must not contain requirements prescribed in the rule. Section 6 of the rule prescribes the kind of requirements not to be included in a FIA. These include a requirement that a person undertake an activity: outside Australia; that is unlawful; or would impact on a pre-existing medical condition.

Division 3 – Compliance with obligations in relation to farm household allowance

Section 7 – Reasonable excuses for committing qualification failure or conduct failure

Section 76 of the FHSA provides that a determination that a qualification failure (conduct which results in a person ceasing to qualify for FHA) or a conduct failure (conduct which results in FHA not being payable for a period) can be taken to have never occurred if the Secretary is satisfied that the person had a reasonable excuse for the failure. Reasonable excuse is not defined by section 76. Instead, the FHSA establishes criteria that the excuse must meet to be considered reasonable. These criteria include where a person notifies a relevant person, in advance, that they are unable to undertake the activity. Section 76 also provides that the Secretary’s rules may specify the matters that should be taken into account when determining whether an excuse is reasonable.

Section 7 of the rule prescribes matters to be taken into account such as unforeseen family caring responsibilities, and access to safe, secure and adequate housing. This section of the rule is consistent with existing social security policy, but has been adapted to allow for the specific circumstances of farmers. For example, undertaking unforeseen and critical farm work is a reasonable excuse for a failure under the rule. Subsection 76(4) provides that the Secretary may take into account other matters in deciding whether a person has a reasonable excuse.

Part 3 – Activity supplement

Section 8 – Determination of eligible activities—classes of activities that may be specified in financial improvement agreements

Section 80 of the FHSA provides that a person may qualify for the activity supplement if they undertake an activity specified in their FIA. The activity supplement is for the purpose of

funding, wholly, or partially, the cost of an activity specified in the FIA. This ensures that the activity supplement is used to assist individuals to take steps towards improving their capacity for self-reliance while fulfilling their requirements for FHA.

Section 83 of the FHSA provides that the Secretary's rules may prescribe the classes of activities that would be eligible for the activity supplement and conditions that must be met for the supplement to be payable. Section 8 prescribes that such activities can include receiving legal or other advice directly related to ensuring the long term viability of the farm enterprise, including succession planning, managing risk and natural resource management, undertaking training to transition into an alternative career and participating in training in skills within the Farm Business Management Skill Set. By incorporating the Farm Business Management Skill Set, this section furthers the development of a national approach to farm business training.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Farm Household Support Secretary's Rule 2014

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The *Farm Household Support Act 2014* (the FHSA) provides for the Farm Household Allowance (FHA). This allowance makes available financial assistance to farmers and their partners who are in financial hardship, in the form of time-limited income support and funding to obtain relevant advice and training, so they undertake actions to improve their situation.

FHA is aligned where possible with social security payments under social security law (that is the *Social Security Act 1991* and the *Social Security (Administration) Act 1999*) and seeks to achieve the legitimate purpose of providing financial assistance to farmers who are in financial difficulty if they undertake actions to improve their situation.

The FHSA commences on 1 July 2014.

The *Farm Household Support Secretary's Rule 2014* (the rule) prescribes various matters, including: matters the Secretary must take into account in deciding on particular aspects of a person's application for FHA or their circumstances while receiving FHA; kinds of requirements that must not be included in a financial improvement agreement (FIA); and classes of activities that may be specified in a FIA for which an activity supplement is payable.

Human rights implications

Several aspects of the FHSA were assessed to engage human rights and freedoms recognised or declared in the international instruments listed in the definition of human rights at section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

For example, Part 2, Division 3 (which provides that, to qualify for payment as a farmer or a partner of a farmer, an individual must, among other things, be willing to enter into a FIA and complete the activities negotiated in that agreement within a specified time period) was identified as engaging the following rights set out in the *International Covenant on Economic, Social and Cultural Rights* (ICESCR):

- Article 9 of the ICESCR – right to social security

- Article 11(1) of the ICESCR – right to an adequate standard of living, including food, water and housing
- Article 12(1) of the ICESCR – right to health
- Article 10(1) of the ICESCR – right to respect for the family
- Article 6(1) of the ICESCR – right to work and rights in work.

The provisions in Part 2, Division 3 are designed to achieve progressively the full realisation of the abovementioned rights over time.

The full analysis of those provisions of the FHSA that engage human rights and freedoms are set out in the Explanatory Memorandum to the FHSA.

The matters that are prescribed by sections 5, 8 and 9 of the rule are not being prescribed for the purposes of any sections of the FHSA that engage human rights and freedoms. These matters are being prescribed for the purposes of subsections 13(1), 76(3) and paragraph 83(a) of the FHSA. None of these provisions deal with matters that were assessed as engaging human rights and freedoms recognised or declared in the international instruments listed in the definition of human rights at section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Section 6 of the rule is being prescribed for the purpose of subsection 15(2) of the FHSA. Since Part 2, Division 3 of the FHSA (which includes section 15) was assessed as engaging the rights set out in the ICESCR outlined above, section 6 of the rule also engages with the same rights, albeit indirectly.

Section 15 of the FHSA provides that a FIA must contain one or more suitable activities that a person is required to undertake to satisfy the activity test. Suitable activities may include training and/or study, obtaining advice, seeking or undertaking paid work in Australia or other activities relevant to improving the individual's self-sufficiency. Under subsection 15(2), a FIA must not contain a requirement of a kind prescribed by the Secretary's rules.

Section 6 prescribes the kinds of requirements which must not be contained in a financial improvement agreement, for the purpose of subsection 15(2) of the FHSA. These requirements support the legitimate purpose of the FHSA. As reflected in the Explanatory Memorandum to the FHSA, the rights and freedoms engaged in Part 2, Division 3 of the FHSA are compatible with these rights and freedoms recognised in the international instruments listed above.

Conclusion

This rule is compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Paul Grimes
Secretary of the Department of Agriculture