

EXPLANATORY STATEMENT

Issued by Authority of the Minister for Agriculture

Farm Household Support Act 2014

Farm Household Support Minister's Rule 2014

Subsection 106(1) of the *Farm Household Support Act 2014* (the FHSA) provides that the Minister for Agriculture may make rules by legislative instrument which are required or permitted by the FHSA to be prescribed.

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 Minister's Rule 2014* (the rule) prescribes:

- the meaning of 'prescribed adviser' in the FHSA
- allowable deductions from ordinary income and off-farm income
- the maximum amount of two supplements payable along with FHA: activity supplement and farm financial assessment supplement.

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 Minister'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 Minister's Rule 2014*.

Section 2 – Commencement

This section provides that the rule commences on the commencement of section 3 of the FHSA. This section commences on 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*.

professional body means a body that has the following characteristics:

- (a) its members practise the same profession
- (b) it has enough membership to be considered representative (but not necessarily solely representative) of the profession practised by its members
- (c) it sets its own admission requirements, including acceptable qualifications
- (d) it sets standards of practice and ethical conduct
- (e) it aims to maintain the standard of the profession practised by its members
- (f) it has written rules, articles of association, by laws or codes of conduct for its members
- (g) it has the ability to impose sanctions on members who contravene the body's written rules, articles of association, by laws or codes of conduct
- (h) it is not conducted for profit.

Section 5 – Meaning of ‘prescribed adviser’

Section 5 provides that a person is a *prescribed adviser* for the purpose of the definition of that term in subsection 5(1) of the FHSA if the person:

- (a) has relevant financial qualifications; and
- (b) is a member of a professional body whose members normally provide financial advice.

An example of a relevant financial qualification is a qualification from a tertiary institution in a field that is relevant to giving financial advice; and that is recognised by a professional body whose members normally give financial advice.

Part 2 – Farm Household Allowance

Section 67 of the FHSA provides the framework for possible deductions from the calculation of ordinary income for the purpose of the income test that applies to the FHA. In the same way that section 1075 of the *Social Security Act 1991* specifies permissible reductions for business income for items such as losses and outgoings that relate to the business, subsection 67(2) allows the Minister to prescribe a kind of amount to be an allowable deduction.

In prescribing a kind of amount, any criteria that a deduction must satisfy to be considered as a deduction may also be prescribed. The Minister’s rules may also prescribe a maximum amount that will apply to a kind of deduction.

Section 6 – Rate of farm household allowance—allowable deductions from ordinary income generally

This section prescribes that for section 67 of the Act, an allowable deduction from a person’s ordinary income under section 1075 of the Social Security Act, is also an allowable deduction under this Act.

Reinstating section 1075 through the Minister’s rule means that deductions that are permissible in relation to business income under social security law apply in relation to the income test for FHA.

The application of section 1075 through the rule, rather than legislation, provides a mechanism to ensure there are no unintended consequences arising from the interaction between the Social Security Act and a rule made under subsection 67(2) of the Act; including that at Section 7 of the rule.

Section 7 – Rate of farm household allowance—allowable deductions from off-farm income

This section allows for deductions to be made from off-farm income in some circumstances where that income has been used to pay interest on a loan related to the farm enterprise. The effect of this is to ensure that a person’s rate of payment accurately reflects the money available to that person for their self-support. This setting recognises that farmers experiencing financial hardship often rely on off-farm income to support the farm enterprise rather than for self-support. Without the rule provided for by this section, a person’s off-farm income may cause them to be ineligible for FHA.

The circumstances where the deduction will apply are:

- the person's ordinary income when worked out in accordance with section 67 is less than zero; and
- the amount of the deduction is equivalent to the amount payable as interest on a loan made by a commercial lender, to a maximum amount of \$80,000 (combined for a person and their partner for a tax year); and
- the amount of interest payable must be payable under a written contract that came into effect at least one year prior to the claim; and
- the Secretary is satisfied the contract cannot be renegotiated to reduce the amount of interest payable during a tax year; and
- The loan is secured by a farm asset of the farm enterprise; and
- The lender does not have a right or interest in the farm or any asset owned by the person (or their partner).

Part 3 – Activity supplement

Section 8 – Maximum amount of activity supplement

Section 82 of the FHSA provides for the amount of activity supplement payable to a qualified person. The amount of the supplement is the lesser of: the maximum amount prescribed in the Minister's Rules; the cost of the activity; or the person's remaining activity supplement.

Section 8 prescribes that, for paragraph 82(1)(a) of the FHSA, \$3 000 is the maximum amount of activity supplement.

Part 4 – Farm financial assessments

Section 9 – Maximum amount of farm financial assessment supplement

Section 89 of the FHSA provides that the value of the farm financial assessment supplement is the lesser of the maximum value prescribed by the Minister's rules or the cost of the farm financial assessment.

Section 9 prescribes that, for paragraph 89(a) of the FHSA, \$1 500 is the maximum amount of farm financial assessment supplement.

Statement of Compatibility with Human Rights

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

Farm Household Support Minister'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 Minister's Rule 2014* (the rule) prescribes various matters, including the meaning of ***prescribed adviser***, allowable deductions from the calculation of ordinary income for the purpose of the income test that applies to the FHA, and the maximum rate of activity supplement and farm financial assessment supplement available to FHA recipients.

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 8 (which provides for the rate of payment of FHA) was identified as engaging the following rights set out in the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) by advancing immediately these rights:

- 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.

Part 2, Division 8 of the FHSA was also assessed as engaging the rights of equality and non-discrimination set out in Article 2(2) ICESCR and Article 26 of the *International Covenant on Civil and Political Rights* (ICCPR). However, the instances in which human rights and freedoms were engaged were assessed as either being compatible with these rights and freedoms because they either protected human rights or, to the extent that they limited human rights, the limitations were reasonable and proportionate.

The full analysis of those provisions of the FHSA that engage human rights and freedoms are set out in the Explanatory Memorandum to the Bill for 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 subsection 5(1), paragraph 82(1)(a) and paragraph 89(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*.

Sections 6 and 7 of the rule are being prescribed for the purpose of subsection 67(2) of the FHSA. Since Part 2, Division 8 of the FHSA (which includes section 67) was assessed as engaging the rights set out in the ICESCR and ICCPR outlined above, sections 6 and 7 of the rule also engage with the same rights, albeit indirectly.

Section 67 of the FHSA provides the framework for possible deductions from the calculation of ordinary income for the purpose of the income test that applies to the FHA. Allowable deductions are one of the many factors taken into account in calculating the rate of payment of FHA, which is provided for generally by Part 2, Division 8 of the FHSA. In the same way that section 1075 of the *Social Security Act 1991* specifies permissible reductions for business income for items such as losses and outgoings that relate to the business, subsection 67(2) allows the Minister to prescribe a kind of amount to be an allowable deduction.

While FHA aims to align where possible with mainstream social security payments, some departure exists. The kinds of amounts to be an allowable deduction that are prescribed by sections 6 and 7 of the rule recognise the unique circumstances of farmers and differ from social security by allowing for off-farm income to be reduced by up to \$80,000 in some circumstances where that income is used to pay interest on a commercial loan related to the farm enterprise. However, sections 6 and 7 of the rule support the legitimate purpose of the FHSA. They are consistent with the assessment that the instances in which rights and freedoms engaged by the provisions in Part 2, Division 8 of the FHSA are compatible with these rights and freedoms because they either protect human rights or, to the extent that they limit human rights, the limitations are reasonable and proportionate.

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*.

In some instances it promotes human rights. To the extent that the rule may limit these rights, these limitations are reasonable, necessary and proportionate to achieve legitimate aims.

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Minister for Agriculture