

## EXPLANATORY STATEMENT

Issued by Authority of the Minister for Agriculture

*Farm Household Support (Consequential and Transitional Provisions) Act 2014*

*Farm Household Support (Consequential and Transitional Provisions) Minister's Rule 2014*

Item 2 of Schedule 3 of the *Farm Household Support (Consequential and Transitional Provisions) Act 2014* (Transition Act) provides that the Minister for Agriculture can make rules prescribing matters of a transitional nature relating to the Transition Act or the *Farm Household Support Act 2014* (the Act). This clause provides for rules which, among other things, deal with the transition of a person from a payment made under an executive power of the Commonwealth, such as the Interim Farm Household Allowance (Interim FHA), to the legislated Farm Household Allowance (FHA).

Interim FHA is an income support payment that helps farm families with their daily living expenses and is available to eligible farmers and their partners Australia-wide, without the need for a drought declaration.

Available from 1 March 2014 to 30 June 2014, the Interim FHA replaced previous income support payments such as the Transitional Farm Family Payment. The Interim FHA, as the name suggests, is a temporary support measure implemented to ensure income support was available for farmers who were in need until the commencement of the FHA which commenced on 1 July 2014. Applications for Interim FHA closed on 30 June 2014.

To allow time for applications for FHA to be processed and to avoid disadvantaging people while they are waiting, transitional arrangements were developed that allow those people who were entitled to receive Interim FHA prior to 30 June 2014 to continue to receive that payment until 30 September 2014, or until a decision has been made on their FHA claim, whichever is sooner. If FHA is granted, it takes effect from 1 July 2014 (although entitlements are reconciled against the Interim FHA already paid and no further amounts will be disbursed if the person's maximum amount for the period has already been paid).

In addition to providing income support, the design of the Interim FHA reflects the settings of the FHA, facilitating the transition for recipients from one payment to another where a person elects to do so. Measures were put in place to avoid a break in support for a person receiving Interim FHA transitioning to the FHA.

The Act provides the mechanism to implement the FHA, an income support payment for farmers and their partners who are experiencing financial hardship. The Act 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, comprised 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 social security 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 appropriate.

The *Farm Household Support (Consequential and Transitional Provisions) 2014 Minister's Rule 2014* (the rule) addresses two discrete policy issues. It prescribes that:

- An Interim FHA applicant, recipient or their partner has additional time to lodge their FHA claim and have their FHA payment backdated to 1 July 2014. Under the Minister's Rule, this period cannot extend beyond 30 September 2014. The Minister's Rule gives better effect to the intention of a transitional period between the two payments. It also ensures no-one receives more than their 1095 day entitlement of FHA post 1 July 2014.
- Applicants who hold liquid assets above certain thresholds are required to serve a liquid assets waiting period before their FHA payments commences. The Minister's Rule will ensure that applicants who have already served the waiting period within 12 months prior to their application of FHA under Interim FHA (or its predecessor, Transitional Farm Family Payment) will not be required to also serve the waiting period for FHA (consistent with mainstream social security).

Details of the rule are set out in Attachment A.

The Department of Agriculture consulted industry stakeholders and Australian Government agencies in developing the policy supporting FHA.

The Office of Best Practice Regulation (OBPR) was consulted on this rule. The changes do not trigger a Regulation Impact Statement (OBPR Reference Number: 16411).

The Department of Human Services and the Australian Government Solicitor were consulted in the development of the rule.

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 Attachment B.

**Details of the *Farm Household Support (Consequential and Transitional Provisions) 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 (Consequential and Transitional Provisions) Minister's Rule 2014*.

Section 2 – Commencement

This section provides that the rule commences on the day after it is registered.

Section 3 – Authority

This section provides that the rule is made under item 2 of schedule 3 to *Farm Household Support (Consequential and Transitional Provisions) 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*.

*farm household allowance* means the allowance payable under Part 2 of the Act.

*interim farm household allowance* means a payment under the program known as the Interim Farm Household Allowance program.

*Social Security Administration Act* means the *Social Security (Administration) Act 1999*.

*Transition Act* means the *Farm Household Support (Consequential and Transitional Provisions) Act 2014*.

Section 5 – Application

This section provides that the rule applies to applications for FHA made on or after 1 July 2014. The first day a person could apply for the FHA was 1 July 2014.

**Part 2 – Transitional Arrangements with respect to Interim Farm Household Allowance**

Schedule 3 of the Transition Act provides for the Minister to prescribe a rule for the purpose of transition from Interim FHA to FHA. FHA replaced Interim FHA on 1 July 2014.

Part 2 of this rule aims to ensure that where possible, recipients of or applicants for Interim FHA can transfer to FHA without experiencing a break in support. This is consistent with mainstream social security provisions which can allow a person to transfer from one payment to another without experiencing a break in support.

The operation of this provision means that a claim for FHA can be backdated to 1 July 2014 where the applicant or their partner had made a claim for Interim FHA on or before 30 June 2014 and meets the conditions in Section 6 of the rule.

#### Section 6(a)

This section provides for a claim for FHA to be backdated to 1 July 2014, where an Interim FHA applicant, recipient or their partner has made a claim for FHA on or before 14 August 2014 and a determination that the person was eligible for Interim FHA was made on or before 31 July 2014. Backdating of the payment is only possible where the person is found to have been eligible for FHA from 1 July 2014.

#### Section 6(b)

This section provides for a claim for FHA to be backdated to 1 July 2014, where an Interim FHA applicant or partner's claim for Interim FHA was determined to be eligible after 31 July 2014 and a claim for FHA is lodged within 14 days of that determination and on or before 30 September 2014. Backdating of the payment is only possible where the person is found to have been eligible for FHA from 1 July 2014.

#### Section 6(c)

This section provides for a claim for FHA to be backdated to 1 July 2014 where an Interim FHA recipient or their partner made a claim for FHA on or before 30 September 2014 and special circumstances exist. For a circumstance to be determined as special, the Secretary must be satisfied that it was not reasonably practicable for that person to have lodged a claim for FHA earlier.

Special circumstances may include (but are not limited to):

- the person or their partner was not advised of their requirement to lodge a claim for FHA by 14 August 2014
- severe financial hardship which would have prevented a claim for FHA being lodged
- illness or incapacity.

Backdating of the payment is only possible where the person is found to have been eligible for FHA from 1 July 2014.

### **Part 3 – Transitional arrangements for Liquid Assets Waiting Period**

Section 44 of the Act provides that FHA applicants must serve a Liquid Assets Waiting Period (LAWP) where the value of their liquid assets (that is, cash and any asset that could readily be converted into cash) exceeds the relevant threshold. The maximum reserve is as defined by the *Social Security Act 1991*.

Consistent with mainstream social security, this provision exempts a person from serving a second LAWP where a person, or their partner, has served a LAWP under another income support payment in the preceding 12 months.

As Interim FHA was paid under executive scheme guidelines, section 44 of the FHS Act does not recognise a LAWP served for Interim FHA. This would result in FHA applicants being required to serve an additional LAWP where their liquid assets still exceed the maximum reserve.

Part 3 of this rule recognises a LAWP which has been either fully or partially served for Interim FHA for the purpose of making a determination for a claim for FHA.

#### Section 7 – Recipients of Interim Farm Household Allowance who have fully served liquid assets test waiting period

This section provides for a person to be exempt from serving a LAWP in respect to a claim for FHA where the person, or the person's partner, has already served a LAWP in the preceding 12 months. The LAWP could have been in respect of a mainstream social security payment, FHA or Interim FHA.

#### Section 8 – Recipients of Interim Farm Household Allowance who have partially served liquid assets waiting period

This section provides for a LAWP which has been partially served in respect of a claim for Interim FHA to be recognised for the purpose of calculating the LAWP for a claim for FHA. This means that an FHA applicant will only be required to serve the remainder of the LAWP which was calculated for their claim for Interim FHA.

### **Part 4 – Transitional arrangements with respect to payability of Farm Household Allowance**

Section 38 of the Act sets out the circumstances where a person cannot receive FHA because they are receiving another pension, benefit, supplement or allowance. Where a person is eligible for more than one payment they must elect to receive the payment most appropriate for their circumstances.

In mainstream social security, this means that where they wish to transfer to another, more appropriate payment, an adjustment of entitlement can be done prior to their new payment being granted to ensure that they do not receive more than they are entitled to.

Section 38 of the Act uses the same provisions as those in mainstream social security to allow a person to transfer between income support payments and ensure they receive the correct entitlement. Interim FHA is not captured in these provisions as it is paid under executive scheme guidelines.

#### Section 9 – Modification of multiple entitlement exclusion with respect to recipients of Interim Farm Household Allowance

This section provides for Interim FHA to be included in the list of payments which cannot be paid concurrently. This ensures that the correct entitlement can be assessed when a recipient is transferred from Interim FHA to FHA.

## **Statement of Compatibility with Human Rights**

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

### **Farm Household Support (Consequential and Transitional Provisions) Act 2014 Minister's Rule**

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**

Item 2 of Schedule 3 of the *Farm Household Support (Consequential and Transitional Provisions) Act 2014* (Transition Act) provides that the Minister for Agriculture can make rules prescribing matters of a transitional nature relating to the Transition Act or the *Farm Household Support Act 2014* (the Act). This clause provides for rules which, amongst other things, deal with the transition of a person from a payment made under an executive power of the Commonwealth to the legislated Farm Household Allowance (FHA).

The FHA, which commenced on 1 July 2014, provides 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/or training, while they undertake actions to improve their situation. The 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 *Farm Household Support (Consequential and Transitional Provisions) Minister's Rule 2014* (the rule) prescribes transitional arrangements to facilitate the transfer of claimants for and recipients of a payment made under the executive power of the Commonwealth to the FHA. This rule will assist in the transition of a person from Interim FHA to FHA. The rule also aligns the treatment of the liquid assets waiting period applicable to payments made under the executive power with the FHA and social security payments.

Interim FHA is an income support payment that helps farm families with their daily living expenses and is available to eligible farmers Australia-wide, without the need for a drought declaration.

#### **Human rights implications**

The Transition Act and the Act 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*. The full analysis of those provisions is set out in the Explanatory Memorandum to each Bill.

Schedule 3 of the Transition Act provides for transitional provisions to facilitate the transition for recipients of existing or former farmer income support payments to the FHA following passage.

Matters prescribed in the rule are being prescribed for the purpose of Schedule 3 of the FHSCT Act and engage Article 11(1) and Article 12(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

Article 11(1) of the ICESCR protects the right to an adequate standard of living, including food, water and housing. States have an obligation to ensure the availability and accessibility of the resources necessary for the progressive realisation of this right. Article 12(1) of the ICESCR recognises the right of all individuals to enjoy the highest attainable standard of physical and mental health. The Committee on Economic, Social and Cultural Rights (CESCR) has stated that this right is not confined to the right to health care<sup>1</sup>. The CESCR considers that article 12 more broadly acknowledges that the right to health embraces a wide range of socio economic factors that promote conditions in which people can lead a healthy life, and extends to the underlying determinants of health, such as food and nutrition, housing, access to safe and potable water and adequate sanitation, safe and healthy working conditions, and a healthy environment.

The rule promotes the right to an adequate standard of living, including food, water and housing; and the right to the highest attainable standard of health by supporting the implementation of the FHA. They do this by facilitating the transition of farmers from a terminating payment to a payment that will provide financial assistance at times of hardship and where they demonstrate limited capacity to support themselves.

### **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*.

**The Hon. Barnaby Joyce MP**  
**Minister for Agriculture**

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<sup>1</sup> CESCR, General Comment No 14 (2000), paragraph 4.