

EXPLANATORY STATEMENT

Farm Household Support (South Australian River Murray Sustainability Irrigation Industry Improvement Program) Minister's Rule 2015

Summary

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

The *Farm Household Support (South Australian River Murray Sustainability Irrigation Industry Improvement Program) Minister's Rule 2015* (the rule) provides for the *Social Security (Exempt Lump Sum) (South Australian River Murray Sustainability Irrigation Industry Program) (Agriculture) Determination 2015* (the determination) to be applied retrospectively to people who were assessed (as either not eligible or eligible with a reduced payment rate) for the Farm Household Allowance (the FHA), because income from the South Australian River Murray Sustainability Irrigation Industry Improvement Program (3IP) was taken into account for the purpose of the FHA income test. The rule operates beneficially as people who may previously have been assessed for the FHA based on their income from 3IP are re-assessed, taking into account the effect of the determination to exempt a lump sum, that is, the 3IP grant. This ensures that individuals who have received a 3IP grant since the FHA was implemented are not adversely affected.

Background

Under social security law, an income test is used to determine a person's eligibility for a social security payment and, if they are eligible, the rate of the social security payment that is payable. An income amount earned, derived or received for a person's own use or benefit is generally assessable as income. However, some amounts that would otherwise be income are specifically exempted.

Paragraph 8(11)(d) of the *Social Security Act 1991* (the SS Act) as applied or modified by Part 5 of the FHS Act, allows the Secretary of the Australian Government Department of Agriculture, to determine that an amount, or class of amounts, is an "exempt lump sum" for the purposes of the FHA. An exempt lump sum is excluded from the definition of "ordinary income" under subsection 8(1) of the SS Act, meaning the lump sum amount is not to be taken into account under the social security income test.

The determination exempts grants under the 3IP from the assessment of a person's income for the purposes of the FHA, thus beneficially impacting that person's eligibility for a payment or, if they are already eligible, the rate of the payment they are entitled to receive. The exemption of 3IP grants from the income test does not mean that any ongoing income generated by the lump sum is exempt from the income test. It also does not mean that any asset produced from the lump sum is exempt from the social security assets test.

This is consistent with the treatment of other lump sum payments exempted under paragraph 8(11)(d) of the SS Act, as applied of modified by Part 5 of the FHS Act.

In relation to people assessed as not eligible for the FHA because income from 3IP is taken into account, the determination's retrospectivity is limited by section 109 of the *Social Security (Administration) Act 1999* (SSA Act), which applies a 13 week limitation period for a favourable determination. The rule avoids this outcome by removing the application of the 13 week limitation period for a favourable determination under section 109 of the SSA Act as far as it relates to the determination, thus reducing the period that a recipient may experience a break in payment.

In relation to people who have been assessed as eligible for the FHA but whose payment rate is affected due to the assessable income generated by the 3IP, the rule ensures that a decision to increase a person's rate of payment, where a rate had been reduced due to the effect of a 3IP grant can apply retrospectively if required.

The South Australian River Murray Sustainability Irrigation Industry Improvement Program

The 3IP is jointly funded by the Commonwealth departments of Agriculture and Environment, and is administered by Primary Industries and Regions South Australia (PIRSA) on behalf of the South Australian Government. The 3IP is intended to achieve water savings for the Murray Darling Basin. There are three streams under the program:

- Stream 1 – This stream offers investment in water infrastructure developments in return for the transfer of tradable water rights, funded at up to 2.5 times the average market price of Eligible Water Access Entitlement.
- Stream 2 – Under this stream, participating irrigators can sell or transfer water rights for market value.
- Stream 3 – This stream is a grant to undertake activities including the purchase of capital items. Activities are aimed at increasing the viability of farm businesses and create opportunities for economic diversification and regional development.

Effect of Minister's Rule

Explanation of Provisions

Section 1 – Name of rule

This section provides that the title of the rule is the *Farm Household Support (South Australian River Murray Sustainability Irrigation Industry Improvement Program) Minister's Rule 2015*.

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 the *Farm Household Support Act 2014*.

Section 4 – Modifications of Division 9 of Part 3 of the *Social Security (Administration) Act 1999 (SSA Act)*

This section provides that the rule modifies section 109 of the SSA Act, including by the insertion of two subsections, (5A) and (5B), as far as it relates to payments made under the FHS Act.

Subsection (5A) provides that the Agriculture Secretary can retrospectively apply a decision to exempt income generated by the 3IP from the day which the original decision was made to assess an applicant for the FHA based on their income from the 3IP. The Secretary can apply this decision or any other decision as it relates to an assessment of an applicant for the purposes of the FHA without an applicant seeking a review of the decision.

Subsection (5B) provides that the Agriculture Secretary can retrospectively apply a decision to increase a person's rate of payment where a rate had been reduced due to the effect of a 3IP grant, where the decision would take effect on the day specified in the determination.

Consultation

The Department of Social Services, the Department of Human Services, the Australian Taxation Office, Office of Best Practice Regulation (OBPR), Office of General Counsel and PIRSA was consulted regarding this rule.

Regulatory Impact Analysis

OBPR has advised that a Regulatory Impact Statement is not required as the rule is not regulatory in nature, will not impact on business activity and will have no, or minimal, compliance costs or competition impact.

Statement of Compatibility with Human Rights

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

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The 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 effect of the Farm Household Support (South Australian River Murray Sustainability Irrigation Industry Improvement Program) Minister's Rule 2015 (the rule) is that the *Social Security (Exempt Lump Sum) (South Australian River Murray Sustainability Irrigation Industry Program) (Agriculture) Determination 2015* (the determination) can be retrospectively applied to individuals who were assessed (as either not eligible or eligible with a reduced payment rate) for the Farm Household Allowance (the FHA) based on their income from the South Australian River Murray Sustainability Irrigation Industry Improvement Program (the 3IP).

Human rights implications

The rule engages the right to social security under Article 9 of the International Covenant on Economic, Social and Cultural Rights. The right to social security requires that a system be established under domestic law and that public authorities must take responsibility for the effective administration of the system. The social security scheme must provide a minimum essential level of benefits to all individuals and families that will enable them to acquire at least essential health care, basic shelter and housing, water and sanitation, foodstuffs and the most basic forms of education.

The changes made by the rule will operate beneficially as it ensures that receipt of a 3IP grant will not be taken into account when assessing a person's eligibility or rate of the FHA under the *Farm Household Support Act 2014* and it therefore promotes the right to social security.

The exemption of a 3IP grant from the income test does not mean that any ongoing income generated by the lump sum is exempt from the income test. It also does not mean that any asset produced from the lump sum is exempt from the social security assets test. This is consistent with the treatment of other lump sum payments exempted under paragraph 8(11)(d) of the *Social Security Act 1991*.

Conclusion

This rule supports a person's human right to social security.

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