

EXPLANATORY STATEMENT

Issued by Authority of the Deputy Prime Minister and Minister for Agriculture and Water Resources

Farm Household Support Act 2014

Farm Household Support (Non-farm Assets) Minister's Rule 2016

Legislative authority

The *Farm Household Support Act 2014* (the FHS Act) provides the mechanism to implement the FHA, an income support payment for farmers and their partners who are experiencing financial hardship.

Subsection 106(1) of the FHS Act provides that the Minister may make Minister's rules by legislative instrument prescribing matters required or permitted by the FHS Act to be prescribed by Minister's rule.

Part 5 of the FHS Act modifies how the *Social Security Act 1991* (the SS Act) and the *Social Security (Administration) Act 1999* (the SSA Act) operate so that those Acts can apply in relation to payments made under the FHS Act, including the FHA. This approach ensures that FHA recipients are treated equitably and have access to the same benefits and services as newstart and youth allowance recipients.

Section 92 of the FHS Act provides that Minister's rules may provide that any modifications to the SS Act, the SSA Act or Part 5 of the FHS Act as prescribed have the same effect as section 91 of the FHS Act. That is, the Minister's rules can further modify those Acts as necessary to facilitate payments under the FHS Act.

Purpose

The rule is a legislative instrument for the purpose of the *Legislation Act 2003*.

For the avoidance of doubt, this rule does not provide precedent to disregard assets that are required for the operation of a farm enterprise or farm assets as defined in the FHS Act.

The purpose of the rule is to address situations where people who would otherwise be assessed as not eligible for the FHA, due to assets required for the purpose of carrying out a farm enterprise being included when determining the value of a person's non-farm assets. Situations include, but are not limited to, those where a person is required to hold shares in a company or co-operative for the purpose of carrying out a farm enterprise.

The rule provides that certain assets are excluded from the assets test in the FHS Act. Specifically, the rule modifies section 1118 of the SS Act to provide that assets which are:

- (a) not a farm asset as defined in the FHS Act;
- (b) held for the purpose of carrying out a farm enterprise;
- (c) not capable of being held for a purpose other than the carrying out of a farm enterprise; and
- (d) not cash or an amount deposited with or lent to a financial institution;

are to be disregarded for the purpose of the assets test in Part 2 Division 6 Subdivision A of the FHS Act. This is consistent with assets exempted under section 1118 of the SS Act as applied and modified by Part 5 of the FHS Act.

Background

Under the FHS Act, an assets test is used to determine a person's eligibility for FHA. Where a person's non-farm assets and farm assets exceed a certain threshold, a person will be not eligible to receive FHA. Previously, certain assets (such as shares in a company or co-operative) held by an individual for the purpose of the carrying out of a farm enterprise did not fall within the definition of farm asset, and were instead considered to be non-farm assets, for the purposes of determining FHA eligibility.

Impact and effect

The rule operates beneficially as it permits certain assets as described by this rule to be disregarded for the purpose of the assets test in Part 2 Division 6 Subdivision A of the FHS Act.

Consultation

The departments of Social Services (DSS) and Human Services (DHS) and the Australian Government Solicitor (AGS) were consulted for the drafting of this rule. The purpose of consulting DSS and DHS was to ensure that the rule could be implemented and did not contradict social security policy. The AGS was consulted to draft the rule in accordance with the *Legislation Act 2003*. During the consultation process, issues in relation to implementation were identified and resolved by ensuring that the rule operates only from the day after registration.

The Office of Best Practice Regulation (OBPR) was consulted (OBPR Reference Number: 20841). OBPR considers that the proposed changes are non-regulatory in nature and a Regulatory Impact Statement is not required.

The rule maker is satisfied that further consultation on this rule is unnecessary as the rule is of a minor or machinery nature and does not substantially alter existing arrangements. This is supported by OBPR's assessment (Reference Number 20841).

Consultation on this rule therefore complies with section 17 of the *Legislation Act 2003*.

The 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 A.

Explanation of Provisions

Section 1 – Name of rule

This section provides that the title of the rule is the *Farm Household Support (Non-farm Assets) Minister's Rule 2016*.

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 section 1118 of the *Social Security Act 1991*

This section prescribes that the rule, modifies section 1118 of the Social Security Act, by inserting a paragraph, (va), as far as it relates to payments made under the FHS Act:

Paragraph 1118(1)(va) provides that, the value of certain assets be disregarded for the purpose of the FHA assets test, whereby these assets are described as those that are:

- not described as a farm asset in the FHS Act; and
- held for the purpose of carrying out a farm enterprise, and are not capable of being held for any other purpose; and
- are neither cash or an amount deposited with or lent to a financial institution.

Statement of Compatibility with Human Rights

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

Farm Household Support (Non-farm Assets) Minister's Rule 2016

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 (Non-farm Assets) Minister's Rule 2016* (the rule) provides for certain assets (such as shares in a company or cooperative) that are required for the operation of a farm enterprise to be disregarded in calculating the value of a person's assets. The rule operates beneficially as it permits certain assets as described by this rule to be disregarded for the purpose of the assets test in Part 2 Division 6 Subdivision A of the FHS Act. For the avoidance of doubt, this rule does not provide precedent to disregard assets required for the operation of a farm enterprise or farm assets as defined in the *Farm Household Support Act 2014*.

Human rights implications

The amended rule does not engage any human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

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* as it does not raise any human rights issues.

The Hon. Barnaby Joyce MP
Deputy Prime Minister and Minister for Agriculture and Water Resources