

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 (Waiver of Debts) Minister's Rule 2016

Legislative authority

The *Farm Household Support Act 2014* (the FHS Act) provides the mechanism to implement the Farm Household Allowance (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 the Minister's rule.

Part 5 of the FHS Act modifies how the *Social Security Act 1991* (the Social Security Act) and the *Social Security (Administration) Act 1999* (the Social Security Administration Act) operate so that those Acts can apply in relation to payments made under the FHS Act, including 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 the Minister's rules may provide that any modifications to the Social Security Act, the Social Security Administration 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 purpose of the *Farm Household Support (Waiver of Debts) Minister's Rule 2016* (the rule) is to prescribe that the debt waiver provisions in Part 5.4 of the Social Security Act, as those provisions apply to the FHS Act, are modified to allow the Secretary to waive the right to recover (all or part of) a debt:

- in relation to FHA payments received during the 2014-15 financial year
- arising from a person not complying with a notice from the Department of Human Services (DHS) requiring the person to provide information about their actual business income for a financial year – so that the FHA reconciliation process can take place for persons who incur such a debt and comply with a subsequent notice.

Background

Section 68 of the FHS Act allows for an estimate of an individual's business income to be used to determine their rate of payment to the extent that the rate is affected by this amount. To determine a rate of payment based on an estimate of business income, the Secretary must

consider the estimate to be ‘reasonable’. FHA rate determinations are made under Subdivision A of Division 7 of Part 3 of the Social Security Administration Act as it applies because of Part 5 of the FHS Act by a delegate of the Secretary.

Section 69 of the FHS Act, in effect, provides for the reconciliation of an individual’s FHA payments. The reconciliation process, which takes place following the end of each financial year, compares an individual’s estimate of business income (provided as part of the FHA application process and a recipient’s ongoing reporting obligations) against their actual business income (provided as part of business tax reporting).

The purpose of annual reconciliation is to ensure that FHA recipients have received their correct entitlement for the previous financial year. This reflects the general social security law principle of payment integrity; that the right person receives the right payment at the right time. The annual reconciliation process has not yet taken place for FHA recipients because payments of FHA commenced on 1 July 2014.

Under section 70 of the FHS Act, where a FHA recipient fails to comply with a notice from DHS to provide details of their actual business income for a financial year, a debt equal to the amount of FHA paid in that financial year, even if the person complies after the deadline set by the notice, will be due to the Commonwealth.

Impact and effect

The annual reconciliation process will apply to FHA recipients who provide an estimate of their business income. It is expected that many of these recipients will incur a debt as a result of having been overpaid during the 2014-15 financial year.

It is uncertain how many FHA recipients will incur a debt equal to the amount of FHA paid in the 2014-15 financial year as a result of these persons not complying with a notice requiring them to provide information about their actual business income for that financial year.

The operation of the rule is expected to largely mitigate this impact by providing the Secretary with a discretion to waive debt while helping to ensure that FHA recipients are better prepared for future reconciliation processes.

Consultation

The following stakeholders were consulted in the development of the rule: the Australian Government Solicitor; Department of Finance; Department of Social Services; Minister for Finance; and Minister for Social Services.

No consultation with industry was undertaken because the rule is of a minor or machinery nature as it will not place any additional requirements on FHA recipients. In the event that the Secretary waived the right to recover (all or part of) either of the two types of debts described above, the rule would operate beneficially for FHA recipients on the basis that:

- FHA recipients would not be required to repay a debt (that would otherwise be payable) arising from FHA payments during the 2014-15 reconciliation year; or

- the FHA reconciliation process would take place (that would otherwise have not taken place) for a person who incurred a debt arising from that person not complying with a notice from DHS requiring the person to provide information about their actual business income for a financial year.

The Office of Best Practice Regulation (OBPR) was consulted (OBPR Reference Number: 20125).

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.

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

Details of the *Farm Household Support (Waiver of Debts) Minister's Rule 2016*

Section 1 – Name of rule

This section provides that the title of the rule is the *Farm Household Support (Waiver of Debts) 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 Part 5.4 of the *Social Security Act 1991*

This section prescribes the modification of the debt waiver provisions in part 5.4 of the Social Security Act so that those provisions, with respect to payments under the FHS Act, have the effect as if the following two sections (sections 1238 and 1238A) were inserted:

1238 Debts for the 2014-15 financial year

This section notionally modifies the Social Security Act to allow the Secretary to waive the right to recover all or part of a debt which arose for a FHA recipient in relation to payments received during the 2014-15 financial year. This section will only apply to debts raised in relation to payments received during the 2014-15 financial year and will be repealed after the reconciliation process has been completed for that year.

The Secretary's discretion to waive the right to recover such a debt can only be exercised if:

- the payments that gave rise to the debt were made in the 2014-15 financial year; and
- the rates of the payments that gave rise to the debt were determined (at least partly) based of an estimate of a person's business income; and
- the debt arose as a result of a determination under Subdivision A of Division 7 of the Social Security Administration Act; and
- at least one of the reasons for making the determination was that the Secretary considered that the person's business income differed from the estimate.

There are two key reasons for the modification of the Social Security Act to allow the Secretary to waive a debt in relation to payments received during the 2014-15 financial year. The first is that FHA recipients have not yet experienced any form of reconciliation of their income support. Given the complexity of social security law and some of the FHA payment settings, it is possible that these are not well understood by FHA recipients.

The second reason relates to issues experienced in implementing FHA and the impact this has had on farmers and their partners experiencing real hardship. The inaugural reconciliation

process, together with the potential of FHA recipients having such a debt waived, provides an opportunity to ensure recipients are aware of the FHA payment settings and are receiving the appropriate payment for their circumstances.

1238A Compliance with a notice under 68 or 69 of the Administration Act

This section notionally modifies the Social Security Act to allow the Secretary to waive the right to recover all or part of a debt raised by a FHA recipient in circumstances where a recipient has not initially complied with a DHS notice to provide actual business income information, but has complied with a subsequent notice to provide this information.

The Secretary's discretion to waive the right to recover such a debt can only be exercised if:

- the debt arose (at least partly) as a result of a person not having complied with a notice under section 68 or 69 of the Social Security Administration Act that requires a person to provide DHS with information or a statement about their business income in a particular period; and
- the Secretary has given the person 1 or more subsequent section 68 or 69 notices; and
- the person has complied with 1 of those subsequent notices.

Rather than waiving such a debt, which could be seen as endorsing non-compliance by FHA recipients with a legal obligation under the FHS Act to provide details of their actual business income, section 1238A operates to give FHA recipients another chance for the reconciliation process to take place by waiving the right to recover such a debt (rather than waiving the debt itself).

Debts incurred by fraud

It is not intended that sections 1238 and 1238A be used to waive debts incurred by fraud and the modification of the Social Security Act by inserting these provisions does not alter the operation of the fraud offence provisions in Parts 5 and 6 of the Social Security Administration Act. Given the difficulty of demonstrating that an estimate, which is inherently predictive, is fraudulent:

- Subsection 1238(2) provides that if the Secretary forms the opinion that an estimate was not reasonable, the Secretary must have regard to that fact in exercising the discretion to waive. This concept of 'reasonableness' is consistent with section 68 of the FHS Act.
- Subsection 1238A(2) permits the Secretary to take the circumstances of a recipient's non-compliance with a DHS notice to provide actual business income information into account in deciding to waive a debt. For example, if the Secretary has evidence of deliberate and evasive non-compliance with a notice, the Secretary might decide not to waive. On the other hand, if non-compliance was a mere oversight, the Secretary might decide to waive.

In neither case does the formation of an adverse opinion by the Secretary mean that the debt must not be waived. Rather, in each case, it is a matter to be taken into account.

Statement of Compatibility with Human Rights

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

Farm Household Support (Waiver of Debts) 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 (Waiver of Debts) Minister's Rule 2016* (the rule) prescribes that the debt waiver provisions in Part 5.4 of the Social Security Act, as those provisions apply to the FHS Act, are modified to allow the Secretary to waive the right to recover (all or part of) a debt:

- in relation to FHA payments received during the 2014-15 financial year
- arising from a person not complying with a notice from the Department of Human Services (DHS) requiring the person to provide information about their actual business income for a financial year – so that the FHA reconciliation process can take place for persons who incur such a debt and comply with a subsequent notice.

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