

## **Farm Household Support (Non-farm Assets) Amendment Rule 2016 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) Amendment 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 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.

### **Background**

Under the FHS Act, a two tier assets test is applied to determine a person's eligibility for FHA. Where either a person's non-farm assets or farm assets exceed certain thresholds, the person will be not eligible to receive FHA.

Water assets (including but not limited to water rights, entitlements and allocations) held by a person or the person's partner for the purpose of carrying out of a farm enterprise fall within the definition of non-farm assets for the purposes of determining FHA payability. This interpretation does not align with the original policy intent whereby assets related to an applicant's farm enterprise that cannot be liquidated to self-support (or could, but in a way that would defeat the objectives of FHS Act) should be a farm asset.

### **Purpose**

The *Farm Household Support (Non-farm Assets) Amendment Rule 2016* (the amendment rule) is a legislative instrument for the purpose of the *Legislation Act 2003*.

The amendment rule intends to address situations where people who would otherwise be eligible for FHA are assessed as not eligible due to water assets, held wholly or mainly for the purpose of a farm enterprise, being included in the non-farm assets test.

The purpose of the amendment rule is to insert additional criteria that relate to water assets, which are: non-farm assets and are held wholly or mainly for the purpose of carrying out of a farm enterprise. This is in addition to the existing criteria, provided for in the *Farm Household Support (Non-farm Assets) Minister's Rule 2016* (Non-farm Assets Rule) that relates to certain assets such as shares in a company or co-operative held for the purpose of the carrying out of a farm enterprise.

Specifically, the amendment rule provides that the first \$1.1 million of water assets is excluded from the non-farm assets test, where the asset is:

- not a farm asset as defined by the FHS Act (i.e. a non-farm asset); and
- a water asset as defined by the amendment rule; and
- held wholly or mainly for the purpose of carrying out of a farm enterprise (within the meaning of the FHS Act) by the person or the person's partner.

For the avoidance of doubt, the following matters should be considered in conjunction with the amendment rule:

- If an asset meets the requirements of the amendment rule, it is disregarded from the non-farm assets test, given that it was determined to be a non-farm asset.
- The definition of '**water entitlement assets**' as provided for in the amendment rule is intended to cover all types of water assets that are held wholly or mainly for the purpose of carrying out a farm enterprise, by farmers and their partners.
- While generally, the value of water assets is not combined with farm land value, where the value of water and the farm land are inseparable, the value of the water asset will be disregarded (where the criteria of the amendment rule are met) and the value of the farm land will continue to be valued under the farm assets test.
- The purpose test – '*the asset being held wholly or mainly for the purpose of carrying out a farm enterprise*' is applied through the lens of the person who holds the asset.
- If the asset is sold or traded, it is no longer held wholly or mainly for the purpose of carrying out a farm enterprise, and the appropriate consideration is that the value of the asset is not disregarded under the appropriate payability tests under the FHS Act.
- If an asset's main purpose is farming, but the farmer has the potential to sell the asset, the trading potential is unlikely to affect the fact that the farming purpose is the main purpose and as a result the asset is captured by the rule.
- This amendment 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.
- This is a provisional rule and may be superseded in the fullness of time.

## **Impact and effect**

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

## **Consultation**

The Department of Social Services (DSS) and Department of Human Services (DHS) were consulted to ensure that the rule could be implemented and did not unnecessarily contradict social security policy.

The Australian Government Solicitor (AGS) was consulted to draft the rule in accordance with the Legislation Act 2003.

The Department of Finance (DoF) was consulted as far as it related to costings.

Internal consultations with the Water Division and Finance and Business Support Division were undertaken to ensure accurate advice and processes were applied.

The Office of Best Practice Regulation (OBPR) was consulted (Reference Number: 21567). 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/machinery nature and does not substantially alter existing arrangements. This is supported by OBPR's assessment (Reference Number 21567).

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) Amendment 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* (FHS).

### Section 4 – Modifications of Part 3.12 of the *Social Security Act 1991*

This section prescribes that the rule, modifies Part 3.12 of the *Social Security Act 1991*, by inserting section 1118FHS, as far as it relates to payments made under the FHS Act.

Subsection (1) provides for a minor modification of the provisions made in the Non-farm Assets Rule. The Non-farm Assets Rule provides that assets such as shares in a company or co-operative held for the purpose of the carrying out of a farm enterprise are to be disregarded (subject to the requirements of the rule). In particular, subsection (1) makes an addition to the existing criteria, to provide that subsections (3) to (6) are applied when calculating the value of a person's non-farm assets.

Subsection (2) provides a definition for a 'water entitlement asset', this definition is relevant to subsections (3) to (6). Specifically, that a 'water entitlement asset' is an asset that is:

- not a farm asset as defined by the FHS Act (i.e. a non-farm asset); and
- a right or entitlement to water or to its holding, access, take or other use (i.e. a water asset); and
- is held wholly or mainly for the purpose of carrying out of a farm enterprise (within the meaning of the FHS Act) by the person or the person's partner.

This definition intends to capture all water assets.

This definition applies a purpose test, which recognises individual circumstances of the person holding the asset. In particular, it recognises that a water asset can be traded and used for non-farm purposes such as environmental and domestic purposes. However, it is expected that these activities take place as part (less than 50 per cent of the enterprises activities) of a wider farming enterprise (farm enterprise as defined by the FHS Act). If the asset is sold or traded, it is no longer held wholly or mainly for the purpose of carrying out a farm enterprise, and the appropriate consideration is that the value of the asset is not disregarded under appropriate payability tests under the FHS Act.

Subsection (3) provides that where the asset is held by a single person and the total value of the assets does not exceed \$1.1 million, the total value of the assets is disregarded.

Subsection (4) provides that where the asset is held by a single person and the total value of the assets exceeds \$1.1 million, the amount that exceeds the limit of \$1.1 million is not disregarded and captured by the non-farm assets test.

Subsection (5) provides that where the asset is held by a person or their partner, and the total value of the assets does not exceed \$1.1 million, the total value of the assets is disregarded.

Subsection (6) provides that where the asset is held by a person or their partner, and the total value of the assets exceeds \$1.1 million, the amount that exceeds the limit of \$1.1 million is not disregarded and captured by the non-farm assets test. It also provides that the person or the person's partner are considered to jointly hold one asset.

Subsections (7), (8) and (9) set out how charges and encumbrances are to be dealt with for assets to which section 1118FHS apply.

Section 1121 of the *Social Security Act 1991*, as it applies to FHA under Part 5 of the FHS Act, sets out general rules that apply when working out the effect of charges or encumbrances on the value of 'non-farm assets'. Subsections 1118FHS(7), (8) and (9) clarify and, in some respects, modify the application of the general rules in section 1121 when working out the value of assets to which this new section apply.

Under subsection (7), for the purposes of section 1121, assets referred to in paragraph (1)(a) are to be dealt with as if they were assets to be disregarded under section 1118. This means that their value cannot be reduced by the value of any charge or encumbrance (as their value is already effectively nil under paragraph 1118FHS(1)(a)) – see subsection 1121(3). It also means that if a charge or encumbrance is held over both a paragraph (1)(a) asset and another non-farm asset, subsection 1121(4) will operate to apportion the reduction for the charge or encumbrance over that other asset.

Subsections (8) and (9) set out how the rules in section 1121 will apply when calculating the value of water entitlement assets. To take an example, a single person holds water entitlement assets valued at \$2 million, which are subject to \$800,000 in charges. Under subsection 1118FHS(8), the rule in section 1121 will apply to deem the assets to be valued at \$1.2 million. Subsection 1118FHS(4) then applies to treat the person as holding an asset worth \$100,000. Subsection 1118FHS(9) ensures that there is no further application of section 1121 to the deemed \$100,000 asset as this would involve double-counting of the charges.

## **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) Amendment 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) Amendment Rule 2016* (the amendment rule) provides for the full amount of a person's water assets held wholly or mainly for the purpose of a farm enterprise to be disregarded when calculating the value of a person's assets.

The amendment rule operates beneficially as it permits water assets as described by this amendment rule to be discounted for the purpose of the assets test in Part 2 Division 6 Subdivision A of the *Farm Household Support Act 2014* (FHS Act).

For the avoidance of doubt, this amendment rule does not provide precedent to discount or disregard assets required for the operation of a farm enterprise or farm assets as defined in the FHS Act. Furthermore, this is a provisional rule and will be superseded in the fullness of time.

#### **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**