

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 2017

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 farmers' 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 a minister's rule.

Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

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 *Farm Household Support (Non-farm Assets) Amendment Rule 2017* (the Rule) is a legislative instrument for the purpose of the *Legislation Act 2003*.

The purpose of the Rule is to modify the operation of section 1118FHS of the SS Act to preserve the legislative framework within the *Farm Household Support (Non-farm Assets) Minister's Rule 2016* (the Minister's Rule) as it applies to existing, and ongoing, FHA recipients immediately prior to the Farm Household Support Amendment Bill 2017 (Amendment Bill) receiving Royal Assent. Specifically, the purpose is to preserve the legislative framework in relation to the assessment of non-farm assets.

The FHS Act will be amended by commencement of the Amendment Act. As a result of those amendments, certain assets which were assessed as non-farm assets, including water assets and shares in marketing cooperatives, are now counted as farm assets.

As a recipient is continuously reviewed in relation to their eligibility to receive FHA against their income and assets, it is important that the legislative framework is preserved for these recipients, as failure to do so could result in a recipient, who was found eligible for FHA under the Minister's Rule, being cancelled off FHA.

The Rule is limited in its application to those recipients (including those recipients who are currently serving a period of suspension) who were assessed as being eligible for FHA under the Minister's Rule and who have not been cancelled off FHA.

Where a recipient is cancelled off FHA prior to the expiration of their 1,095 days of cumulative entitlement to FHA and subsequently reappplies, the Rule does not apply. Their new application for FHA will be assessed under the FHS Act, and they will have their farm assets, including water assets and shares in marketing cooperatives, assessed as farm assets.

Background

Under the FHS Act, a two-tier assets test, comprised of farm assets and non-farm assets, is used to determine a farmer's or farmer's partner's eligibility for FHA. Where a farmer's or farmer's partner's non-farm assets and/or farm assets exceed a certain threshold, a person will not be eligible to receive FHA.

Previously, certain assets (including shares in marketing cooperatives and water assets) 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 assessing FHA eligibility.

Given that the value of those assets could lead to an applicant exceeding the non-farm assets limit, and not being eligible to receive FHA despite being in hardship, the Minister's Rule was amended in 2016 to exempt the value of certain non-farm assets, such as water assets, up to a value of \$1.1 million. The amendments were undertaken as an interim measure pending legislative amendments to the FHS Act.

The FHS Act will be amended by the commencement of the Amendment Act.

On commencement, certain assets, including shares in marketing cooperatives and water assets, will be subject to the farm assets test, rather than the non-farm assets test.

Impact and effect

The Rule operates beneficially for recipients who had their water assets and/or shares in marketing cooperatives assessed under the Minister's Rule as part of their application for FHA, and who have not been cancelled off FHA. This is because the Rule permits certain assets as described by the FHS Act to continue to be disregarded for the purpose of the assets test in Part 2 Division 6 Subdivision A of the FHS Act.

The Rule does not operate retrospectively. All new applications for FHA (including those following a cancellation) will be assessed against the farm assets test in the FHS Act.

Consultation

The Departments of Social Services (DSS) and Human Services (DHS) were consulted on 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 Office of Best Practice Regulation (OBPR) was consulted (OBPR 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 or 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 2017*.

Section 2 – Commencement

This section provides that the rule commences on the day that Schedule 2 to the *Farm Household Support Amendment Act 2017* commences.

Section 3 – Authority

This section provides that the rule is made under the *Farm Household Support Act 2014*.

Section 4 – Schedules

This section provides that each instrument specified in a schedule to the rule is amended or repealed as set out in the applicable items in the schedule concerned. Any other item in a schedule to the rule has effect according to its terms.

Schedule 1 – Modifications of section 1118FHS(1) of the *Social Security Act 1991*

This section prescribes that the rule modifies section 1118FHS of the *Social Security Act 1991* by inserting two paragraphs (1AA and 1AB) and three headings, as far as it relates to payments made under the FHS Act:

Paragraph 1118FHS (1AA) provides that the section applies in relation to a claim for FHA that was made before the commencement of Item 5 of Schedule 2 to the Amendment Act.

Paragraph 1118FHS(1AB) provides that for subparagraphs 1(a)(i) and paragraph 2(a) of section 1118FHS, a reference to the FHS Act is a reference to that Act, however those paragraphs disregard the amendments made by Schedule 2 to the Amendment Act.

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 2017

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 2017* (the Rule) modifies the operation of section 1118FHS of the *Social Security Act 1991* to preserve the legislative framework within the *Farm Household Support (Non-farm Assets) Minister's Rule 2016* (Minister's Rule) as it applies to existing, and ongoing, FHA recipients immediately prior to the Amendment Act receiving Royal Assent. Specifically, the purpose is to preserve the legislative framework in relation to the assessment of non-farm assets.

The Rule operates beneficially for recipients who had their water assets and/or shares in marketing cooperatives assessed under the Minister's Rule as part of their application for FHA, and have not been cancelled off FHA. This is because the Rule permits certain assets as described by the FHS Act to continue to be disregarded for the purpose of the assets test in Part 2 Division 6 Subdivision A of the FHS Act.

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