

EXPLANATORY STATEMENT

Issued by the authority of the Secretary of the Department of Agriculture, Water and the Environment

Social Security Act 1991

Social Security (Exempt Lump Sum – General) (Agriculture) Determination 2020

Legislative Authority

Paragraph 8(11)(d) of the *Social Security Act 1991* (the SS Act) empowers the relevant Secretary to determine that an amount or class of amounts received by a person is an exempt lump sum for the purposes of the SS Act.

Part 5 of the *Farm Household Support Act 2014* (FHS Act) modifies the social security law, including the SS Act, so it applies to payments of farm household allowance (FHA). Specifically, it modifies the SS Act so that references to the Secretary in a provision of the SS Act are to be read as a reference to the Secretary of the Department of Agriculture, Water and the Environment (Agriculture Secretary) to the extent that the application of the provision is solely in relation to a payment of FHA (see item 8 of the table in subsection 93(1) of the FHS Act).

As a result, the Agriculture Secretary is empowered to exercise the power in paragraph 8(11)(d) insofar as it relates to a payment of FHA.

Purpose

The *Social Security (Exempt Lump Sum – General) (Agriculture) Determination 2020* (the Determination) provides that an amount received by a person, which are of a class prescribed in the Determination, are an ‘exempt lump sum’ and thus not income for the purposes of determining a person’s rate of FHA, including whether FHA is payable to the person at all.

Background

In social security legislation, and thus for the purposes of FHA, an income test is used to determine a person’s rate of FHA that they will receive. If a person’s rate is nil, FHA is not payable to them at all. The person’s ordinary income (income that is not maintenance income or an exempt lump sum) is the starting point for the income test. An income amount that is earned, derived or received for a person’s own use or benefit is generally assessable income, and taken into account to determine a person’s rate of payment. In general terms, the greater a person’s income, the more likely FHA will not be payable to them.

Paragraph 8(11)(d) of the SS Act, as modified by Part 5 of the FHS Act, allows the Agriculture Secretary to determine that an amount, or class of amounts, is an “exempt lump sum”. An amount paid to a person which is an “exempt lump sum” is not “ordinary income” as defined under subsection 8(1) of the SS Act. This may have a beneficial effect on their rate of FHA, including on whether FHA is payable to the person at all.

Under the SS Act there are three types of income that are already excluded from assessment. There are exempt lump sums (usually lottery winnings and one-off gifts), legislated sums, and specifically approved sums. These apply to all social security payments. However, from time to time, government entities and charitable organisations administer a range of financial initiatives that farmers and farming communities may access. While the purposes and terms of the initiatives are diverse, many share common, publicly beneficial characteristics. The Determination exempts lump sums made under such initiatives that share prescribed characteristics. These amounts will only be excluded for FHA purposes, and not for other landholders who may receive a different social security benefit.

The Determination operates beneficially for those accessing, or seeking to access, the FHA program. By exempting some payments that are made to farmers and farming communities to undertake a specific farming purpose from the definition of income in the SS Act, the Determination increases the likelihood a person may access FHA support, while simultaneously encouraging farmers and their partners to improve their farm businesses and manage their land responsibly for future generations.

Exempting a lump sum from being considered ordinary income does not mean that any ongoing income generated by the lump sum will be exempt from the income test, nor does it mean that any asset produced from the lump sum is exempt from the assets test. However, section 34 of the FHS Act allows for people accessing FHA to hold significant farm assets.

Impact and Effect

The Determination ensures that payments made under the prescribed class of initiatives are not taken into account for the FHA income test. If an income test exemption was not provided, it may effect whether FHA continues to be payable to FHA recipients who receive a lump sum payment.

Consultation

The Department of Social Services, Services Australia and the Attorney-General's Department were consulted during the preparation of the Determination.

The Office of Best Practice Regulation (OBPR) has advised that a regulation impact statement is not required (ID: 24699).

Details/ Operation

The Determination defines a class of payments that, for the purposes of FHA, should not be assessed as income. A discussion of each provision is provided in [Attachment A](#).

Other

The Determination is compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full human rights compatibility statement is set out at [Attachment B](#).

The Determination is a legislative instrument for the purposes of the *Legislation Act 2003*.

Details of the Social Security (Exempt Lump Sum – General) (Agriculture) Determination 2020

Section 1 – Name

This section provides that the name of the Determination is the Social Security (Exempt Lump Sum – General) (Agriculture) Determination 2020.

Section 2 – Commencement

This section provides for the Determination to commence on the day after it is registered.

Section 3 – Interpretation

Section 3 provides several definitions for the Determination.

Paragraph 3(a) provides that the term *dependant* includes a dependent child or parent. A “dependant” is a person who is wholly or substantially dependent on the recipient. It can include a dependent child or parent.

Paragraph 3(b) provides that the term *government entity* means a Commonwealth, State, Territory or local government entity. The term “government entity” has not been exhaustively defined within the Determination. The intention of the definition provided is to ensure that, within certain restrictions, the substance of the term can be interpreted with reference to its ordinary meaning. However, any interpretation of the term must include entities at the Commonwealth, State and Territory and local government levels.

It is intended that entities which hold or exercise statutory functions or powers that have been prescribed by an Australian law are to be considered government entities under the Determination. The definition should also include an entity that is exercising a statutory function or power on behalf of an entity that has been provided that function or power.

Paragraph 3(c) operates to ensure that, for the purpose of identifying exempt lump sums relevant to the Determination, a registered charity has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*. Subsection 995-1(1) defines a registered charity to mean an entity that is registered under the *Australian Charities and Not-for-profits Commission Act 2012* (ACNC Act) and be a *charity* within the meaning of the *Charities Act 2013* (Charities Act).

Together with government entities, charitable bodies that are subject to regulation are appropriately placed to deliver payments under publicly beneficial initiatives. Payments made under such initiatives should be exempt from consideration under the FHA income test.

Under section 5 of Division 1 of Part 2 of the Charities Act, a charity must be a not-for-profit entity, hold certain charitable purposes, have no disqualifying purposes and not be an individual or a political party or a government entity.

In addition to the required charitable characteristics prescribed in the Charities Act, a charity must be registered under the ACNC Act’s charities register. Charities registered under the

ACNC Act's register are subject to an additional regulatory framework that promotes integrity, responsible conduct and governance standards. The purpose of requiring registration under the ACNC Act is to ensure that FHA recipients are incentivised to access publicly beneficial initiatives from appropriate and responsible not-for-profit bodies.

Other terms used within the Determination that are defined terms within the social security law will take their meaning from the social security law. The 'social security law' is, in itself, a term defined in section 23 of the SS Act and includes the FHS Act itself (see item 11 of the table in subsection 93(1) of the FHS Act). For example, the term 'partner' is defined in section 4 of the SS Act, which forms a part of the social security law. That definition should be used for the Determination.

Section 4 – Exempt lump sums

This section provides the class of amounts that are exempt lump sums for the purposes of FHA under paragraph 8(11)(d) of the SS Act, as modified by Part 5 of the FHS Act.

Where an FHA recipient receives an amount from a government entity or registered charity and all or part of that sum has a principal purpose of being spent on one of the prescribed categories (paragraphs 4(2)(a) to 4(2)(h) of the Determination) for the benefit of one of the prescribed types of persons (the recipient or their partner), that amount is an exempt lump sum. Some amounts may have more than one principal purpose or benefit multiple parties.

If all, or a majority of, the principal purposes or beneficiaries of a payment align with those prescribed in subsection 4(2), that amount will be an exempt lump sum. Conversely, if all, or a majority of, the principal purposes or beneficiaries of the payment are not prescribed in subsection 4(2), that amount will not be an exempt lump sum under the Determination.

Where an initiative provides spending discretion to the recipient, the amount will only be exempt if the terms of the initiative are sufficiently restrictive so that the principal purpose of the payment is within a prescribed category or categories under subsection 4(2) of the Determination.

Paragraph 4(2)(a) – goods or services for environmental purposes

Amounts that are principally for the purchase of goods and services for environmental purposes are exempt lump sums under paragraph 4(2)(a) of the Determination. Environmental purposes include environmental management of water, land or other natural resources.

Amounts that are principally intended for the purchase of water, to be used in the commercial operation of a farm enterprise, would not be covered by this category. However, if the principal purpose of the amount was to purchase water to regrow vegetation, plant non-commercial forestry to benefit the environment, or maintain or improve the health of natural waterways, the amount would be an exempt lump sum under the Determination.

For example, amounts received under the *Great Artesian Basin Sustainability Initiative* (GABSI) for the purpose of conducting environmental sustainability works to minimise uncontrolled water flows would be an exempt lump sum under paragraph 4(2)(a) of the Determination.

Additionally, amounts provided that are principally for the purpose of obtaining environmental advice or services would be an exempt lump sum under paragraph 4(2)(a) of the Determination.

The central purpose of this category is to incentivise environmental stewardship by FHA recipients.

Paragraph 4(2)(b) – Goods or services for the purposes of sustainable farming

Goods or services that promote sustainable farming are exempt lump sums under paragraph 4(2)(b) of the Determination.

For the purposes of the Determination, there are two different types of sustainable farming. An amount may be for either, or both, of the sustainable farming purposes.

Firstly, an amount principally provided for the purchase of goods or services that encourage the economic sustainability of a farm is an exempt lump sum under this category. For example, an amount principally intended for the purchase of agribusiness advice that relates to increasing the long-term viability of a farm enterprise, where that advice would benefit the recipient, a partner of the recipient or a dependant of the recipient, would be exempt under this category, along with the category in paragraph 4(2)(e).

Secondly, an amount principally provided for the purchase of goods or services that reduce or eliminate risks to the natural environment caused by farming would be an exempt lump sum under the Determination. Generally, goods or services that reduce or prevent negative impacts to the environment caused by farming practices would be exempt under paragraph 4(2)(a) and paragraph 4(2)(b) of the Determination.

Some amounts may be principally for a combination of both types of sustainable farming. In such a case, the amount will be an exempt lump sum under paragraph 4(2)(b) of the Determination.

The central purpose of this category is to encourage FHA recipients to access government and registered charity initiatives that increase farm viability or decrease the impact of farming on environmental health.

Paragraph 4(2)(c) – Farm infrastructure, plant or equipment, or related goods or services

Amounts principally provided for farm infrastructure, plant or equipment are exempt lump sums under the Determination. Goods or services that are related to farm infrastructure, plant or equipment may include, but are not limited to:

- repair services
- replacement parts for farming equipment
- professional or para-professional advice relating to farm infrastructure, plant or equipment
- regular or irregular maintenance costs.

Infrastructure, plant or equipment will be farm infrastructure, plant or equipment where:

- it is related to the farm enterprise; and
- the farm enterprise would not operate, or would operate less efficiently, if the equipment was not related to the farm enterprise.

The central purpose of this category is to recognise that initiatives which assist farmers to maintain their means of production should not be treated as income under the FHA program.

Paragraph 4(2)(d) – Education or training in relation to the carrying on of a farm enterprise

An amount principally for the purchase of education or training in relation to carrying on of a farm enterprise, where that education or training is likely to enhance the income earning capacity of recipient or a partner of the recipient, is an exempt lump sum under paragraph 4(2)(d) of the Determination.

Training or education in relation to the carrying on of a farm enterprise that is unlikely to increase a recipient income earning capacity is not an exempt lump sum under the Determination. For example, education in an area that a recipient already holds similar educational qualification in, or training that provides no formal qualifications.

The type of education or training that is to be undertaken may, but need not be, farming or agricultural education or training. For example, a recipient may access an amount to undertake heavy vehicle training, or to improve financial literacy to better manage the farm.

The central purpose of this category is to incentivise FHA recipients and members of their households to access initiatives which may increase their overall capacity for self-support.

Paragraph 4(2)(e) – Professional or paraprofessional advice

Amounts principally for the purpose of obtaining professional or paraprofessional advice, relating to a farm enterprise of the recipient, are exempt lump sums under paragraph 4(2)(e) of the Determination. This category includes (but is not limited to) legal, scientific, agricultural, or agribusiness advice.

To be exempt under paragraph 4(2)(e), the advice must relate to a farm enterprise of the participant and must benefit one of the prescribed beneficiaries. A *farm enterprise* takes its definition from the FHS Act.

The central purpose of this category is to ensure FHA recipients are able to access initiatives that provide expert counsel in areas of relevance to an FHA recipient or a member of their household. Noting that farm businesses may encounter a range of challenges, paragraph 4(2)(e) is intentionally broad. For example, this category is not restricted to business advice, and may relate to personal financial advice or technical agricultural advice.

Paragraph 4(2)(f) – Drought

Amounts that are principally for the benefit of a prescribed beneficiary and are for the principal purpose of obtaining goods or services that assist a prescribed beneficiary to prepare for, or respond to, drought are exempt under paragraph 4(2)(f) of the Determination.

The payment itself must be sufficiently restrictive so as to say that the intended goods or services to be procured are directly connected to preparation for drought, or for responding to drought conditions.

For example, amounts principally for the building of farm infrastructure to conserve water would be exempt under paragraphs 4(2)(a) and 4(2)(b) of the Determination, but not necessarily under paragraph 4(2)(f) of the Determination. For the amount to be exempt under 4(2)(f), it would need to specifically be for the principal purpose of preparing for, or responding to, drought.

Amounts for the principal purpose of alleviating financial hardship through drought conditions would not be exempt under paragraph 4(2)(f) of the Determination.

The central purpose of this category is to ensure that FHA recipients and their households that are preparing for, or taking steps to respond to, drought conditions are incentivised to access initiatives that complement the assistance provided by the FHA program. FHA provides financial assistance to meet household expenses and, as such, this category is not intended to provide an exemption for similar financial assistance.

Paragraph 4(2)(g) – Emergencies or natural disasters

Amounts principally for the purchase of goods or services that prepare a recipient for, or assist them to respond to, emergencies or natural disasters are exempt lump sums under paragraph 4(2)(g) of the Determination. The amount must benefit a prescribed beneficiary.

An emergency (including personal and government-declared) must be an event that was unforeseen, sudden, urgent, and temporary. If an emergency continues indefinitely, it may become a natural disaster. Assistance for preparing for, or recovering from, drought conditions are not exempt lump sums under this category, but may be exempt under paragraph 4(2)(f) of the Determination.

The central purpose of this category is to ensure that FHA recipients in hardship that is caused by temporary or unforeseen circumstances are able to access assistance that may not be provided by the FHA program. Along with the category of exemption in paragraph 4(2)(f), financial assistance that provides income support is not an exempt lump sum under this category.

Paragraph 4(2)(h) – Health or health-related goods or services

Amounts principally for goods or services relating to health are exempt lump sums under paragraph 4(2)(h) of the Determination. Health-related goods or services may include amounts principally for the purchase of medical advice or treatment, medicine, exercise assistance, or goods or services related to a medical condition or disability of a prescribed beneficiary.

For example, payments made to a disabled recipient that are principally intended to increase accessibility to a house or property, or payments made to a person to purchase pharmaceuticals or a wheelchair, are exempt lump sums under paragraph 4(2)(h) of the Determination.

Amounts that are principally for obtaining medical advice from a doctor, assistance from an occupational therapist or advice from a social counsellor or psychologist, would also be exempt lump sums under paragraph 4(2)(h) of the Determination.

The central purpose of this category is to ensure that FHA recipients that engage with, and access, health support services continue to be entitled to receive assistance under the FHA program. Although FHA provides an automatic entitlement to a Health Care Card, accessing medical assistance initiatives should not influence an entitlement to FHA.

Section 5 – Application

Section 5 provides that the Determination will apply differently depending on whether or not a person's rate of FHA is being determined as part of the Business Income Reconciliation (BIR) process.

Under the BIR process, the rate of FHA may be determined on the basis of an estimate by a person and their partner of their farm's income (section 68 of the FHS Act). This estimate is reconciled against actual income at the end of the next financial year. A new determination of the person's rate of FHA for the relevant period may then be made based on the farm's actual income under sections 78 (rate increase) and 79 (rate decrease) of the *Social Security (Administration) Act 1999* (SS Admin Act), as it applies to payments of FHA by virtue of Part 5 of the FHS Act. Also see section 69 of the FHS Act.

The *Farm Household Support Amendment (Relief Measures) (No. 1) Act 2020* will repeal Subdivision D of Division 8 of Part 2 of the FHS Act, which contains the provisions providing for the BIR process, with effect from 1 July 2020, except as it applies to working out the rate of FHA for days occurring before 1 July 2020.

Subsections 5(1) and (2) of the Determination provide for the application of the Determination as it relates to rate increase or rate decrease decisions made for the purposes of BIR after the commencement of the Determination. Specifically, the Determination will apply to such rate determinations whether the amounts were paid *before, on* or *after* the commencement of the Determination.

Subsection 5(3) of the Determination provides that for all other purposes the Determination will apply to amounts paid *after* the commencement of the Determination. This may include, for example, for the purposes of making a rate determination as part of deciding whether FHA is payable to a person who has applied for FHA.

Statement of Compatibility with Human Rights

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

Social Security (Exempt Lump Sum – General) (Agriculture) Determination 2020

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

Paragraph 8(11)(d) of the *Social Security Act 1991* (the SS Act) empowers the relevant Secretary to determine that an amount or class of amounts received by a person is an exempt lump sum for the purposes of the SS Act.

Part 5 of the *Farm Household Support Act 2014* (FHS Act) modifies the social security law, including the SS Act, so it applies to payments of farm household allowance (FHA). Specifically, it modifies the SS Act so that references to the Secretary in a provision of the SS Act are to be read as a reference to the Secretary of the Department of Agriculture, Water and the Environment (Agriculture Secretary) to the extent that the application of the provision is solely in relation to a payment of FHA (see item 8 of the table in subsection 93(1) of the FHS Act).

As a result, the Agriculture Secretary is empowered to exercise the power in paragraph 8(11)(d) insofar as it relates to a payment of FHA.

The *Social Security (Exempt Lump Sum – General) (Agriculture) Determination 2020* (the Determination) exempts a class of payments with common characteristics from being considered as income for the purposes of the FHA program.

By exempting certain payments made to farmers and farming communities, the Determination increases and preserves access to FHA support, while simultaneously encouraging farmers and their partners to improve their farm businesses and manage their farmland responsibly.

Human rights implications

The Determination engages, or has the potential to engage, the following recognised human rights:

- Article 6 of the International Covenant on Economic, Social and Cultural Rights (the ICESCR) – right to work and rights in work
- Article 9 of the ICESCR – right to social security
- Article 11(1) of the ICESCR – right to an adequate standard of living, including food, water and housing
- Article 12(1) of the ICESCR – right to health

Right to work and rights in work

Article 6 of the ICESCR protects the right to work. Article 6(2) provides that, to achieve the full realisation of this right, States should take steps to include “technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual”.

The Determination operates to ensure that people who receive payments with the prescribed characteristics are still able to access support under the FHA program.

While receiving FHA, recipients are able to access an Activity Supplement (up to \$10,000) to undertake training activities and gain advice that is specified in their Financial Improvement Agreement (a planning tool for farmers and their partners to work towards improving their capacity for self-reliance).

By ensuring the FHA program remains accessible to people who have received prescribed sums of money, the Determination indirectly encourages both new and ongoing FHA recipients to access technical and vocational training through their Activity Supplement.

Consequently, the Determination engages and promotes the right to work, provided for in Article 6 of the ICESCR.

Right to social security

Article 9 of the ICESCR provides for the right to social security. Article 9 has been interpreted to encompass a right to access and maintain benefits, whether in cash or in kind, to secure protection from (a) lack of work related income; (b) unaffordable healthcare; or (c) insufficient family support.¹ Article 9 requires States to establish a system under domestic law, with public authorities required to 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 assist them to acquire at least essential health care, basic shelter and housing, water and sanitation, food stuffs and a basic form of education.

The Determination is intended to ensure that, despite receiving certain amounts of money from government and charitable initiatives, farmers accessing FHA can continue to receive support under the FHA program. For FHA applicants or recipients who have received prescribed amounts, the Determination will operate to preserve or increase access to social security.

Consequently, the Determination engages and promotes the right to social security, arising from Article 9 of the ICESCR.

Right to an adequate standard of living, including food, water and housing

Article 11(1) of the ICESCR enshrines the right to an adequate standard of living, including food, water and housing. States hold an obligation to provide availability of resources necessary for the progressive realisation of this right. The Committee on Economic, Social

¹ Committee on Economic, Social and Cultural Rights, General Comment No 19 (2008), paragraph 2.

and Cultural Rights has stated that the core content of the right to adequate food implies both the availability and (economic and physical) accessibility of food.²

By ensuring that certain sums paid to FHA recipients are not treated as income, the Determination enables increased access to the FHA program, including regular income support and additional supplementary payments. Depending on a FHA recipient's circumstances, participation in the FHA program may also enable access to rent assistance payments. Enabling access to these assistance programs assists FHA recipients to secure an adequate standard of living.

The Determination engages and promotes the right to an adequate standard of living, arising from Article 11(1) of the ICESCR as it enables access to economic assistance.

Right to health

Article 12(1) of the ICESCR provides for the right to health. The Committee on Economic, Social and Cultural Rights has stated that health is a fundamental human right, indispensable for the exercise of other human rights.³ The right to health includes the right to access a system of health protection which provides equality of opportunity for people to enjoy the highest attainable level of health.

The Determination exempts prescribed classes of lump sum payments from being treated as income under the FHA program. One of the prescribed, exempted classes of payments relates to amounts for the principal purpose of obtaining health or health related goods or services, ensuring that FHA recipients are incentivised to access health initiatives while receiving payment. Additionally, FHA recipients are automatically entitled to receive a Health Care Card, which provides greater access to medical treatment and medication.

Ensuring that certain amounts do not prevent a person from accessing FHA, including amounts principally for obtaining health or health related goods or services, the Determination promotes the right to access a system of health protection and encourages FHA recipients to engage with health support services while receiving payment.

By exempting certain payments relating to health or health related goods or services from being treated as income, the Determination engages and promotes the right to health arising from Article 12 of the ICESCR.

Conclusion

The Determination is compatible with the human rights outlined above, as it operates to promote these recognised human rights and freedoms.

Andrew Metcalfe
Secretary of the Department of Agriculture, Water and the Environment

² Committee on Economic, Social and Cultural Rights, General Comment No 12 (1999), paragraphs 8 and 13.

³ Committee on Economic, Social and Cultural Rights, General Comment No 14 (2000), paragraphs 1 and 3.