

## **EXPLANATORY STATEMENT**

Issued by the Secretary of the Department of Agriculture, Fisheries and Forestry

*Farm Household Support Act 2014*

*Farm Household Support Secretary's Rules 2024*

### **Legislative authority**

1. This instrument is made under subsection 106(2) of the *Farm Household Support Act 2014* (the **Act**), which authorises the Secretary of the Department of Agriculture, Fisheries and Forestry (**Secretary**) to make, by legislative instrument, Secretary's rules that are required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

### **Background**

2. The object of the Act is to improve the financial situation of farmers and their partners, who need financial assistance, including through the provision of Farm Household Allowance (**FHA**) and other payments. The main features of the FHA program relevant to these *Farm Household Support Secretary's Rules 2024* (**Rules**) include:
  - (a) up to 4 cumulative years of FHA payable in a 10-year period, to certain farmers and their partners. These payments generally align with social security payments, to ensure equitable treatment of farmers and their partners when compared with mainstream social security payments; and
  - (b) claimants must meet a means test (an assets and an income test), residency requirements and other eligibility criteria to qualify for payment; and
  - (c) claimants must, if required, enter into, and comply with, a financial improvement agreement (**FIA**). An FIA requires the person to undertake specified activities, such as education, training and off-farm employment, designed to improve capacity for self-reliance. The specification of activities takes into account the individual circumstances of the farmer or partner concerned; and
  - (d) a farm financial assessment must be conducted, to evaluate options to improve the claimant's financial situation and to inform the development of the FIA; and
  - (e) a farm financial assessment supplement and an activity supplement are available to fund, wholly or partly, the farm financial assessment and the activities required by an FIA; and
  - (f) the claimant has access to ancillary benefits such as a health care card, telephone allowance, remote area allowance, energy supplement, pharmaceutical allowance and rent assistance, subject to meeting certain requirements.

## Purpose

3. The *Farm Household Support Secretary's Rule 2014* (the **2014 Secretary's Rule**) is due to sunset on 1 October 2024. In accordance with regular sunset practice, the 2014 Secretary's Rule has been reviewed by the Department of Agriculture, Fisheries and Forestry (**Department**) and it is fit for purpose.
4. The purpose of these Rules is to remake, with certain changes, the measures to be contained in the Rules as remade support the operation of the Act by prescribing:
  - (a) particular matters for the Secretary to take into account in making decisions about a person's qualification for FHA; and
  - (b) activities that are not to be included in an FIA; and
  - (c) what constitutes reasonable excuses for qualification failures and conduct failures; and
  - (d) the activities that may be listed in an FIA and that attract activity supplement.
5. The modifications to the 2014 Secretary's Rule in this instrument also implement a 2023-24 Mid-Year Economic and Fiscal Outlook (**MYEFO**) measure with effect from 1 July 2024. The purpose is to better align the FHA program with its original intent of limiting support to commercial-scale farms with reasonable prospects of financial viability. It does this by clarifying matters relating to the significant commercial purpose or character requirement, including specifying a benchmark of \$60,000 revenue per financial year as a matter for the Secretary to take into account in deciding whether a farmer or partner is qualified for FHA.

## Details of the instrument

6. Details of the provisions of these Rules are at Attachment A.

## Impact and effect

7. These Rules will result in more effective targeting of FHA to meet its policy objectives, by including specific matters that the Secretary must take into account in deciding whether the qualification criterion that the farm enterprise has a significant commercial purpose or character is met.
8. Measures to clarify the matters the Secretary must take into account in determining whether a farming enterprise has a "significant commercial purpose or character" are designed to ensure that the FHA program is targeted to commercial-scale farmers and their partners in hardship. The policy changes contained in these Rules will ensure farmers and their partners benefit from the program through periods of need while properly targeting farms with reasonable prospects of long-term financial stability to support the sustainability of the industry as a whole.
9. This targeting is an important protection for the outlays of the FHA program. The intention of the FHA program is to support farmers and their partners who do not have an alternative source of income upon which to draw for self-support. It is not intended

to support people who choose to engage in activities that are not aimed at generating adequate income.

10. These Rules will clarify the matters that must be taken into account when considering if a person is contributing his or her labour and capital to a farm enterprise – a qualification requirement under section 8(b) and 9(d) of the Act.
11. These Rules will also better support FHA recipients achieve their FIA goals through expansion of the activities for which the Activity Supplement is payable (section 10). The activity supplement changes will support a wider range of activities (while keeping the current \$10,000 limit on payment).
12. The Office of Impact Analysis (**OIA**) was consulted on the additional measures to be included in these Rules. An Impact Analysis (OIA23-04838) considered the regulatory implications of minor program adjustments to the FHA program. It was published on 14 December 2023 and, in doing so, concluded that the program has a direct positive financial impact on farming families and, by extension, on rural and regional communities. The Impact Analysis supported refinements to matters to be considered relating to the “significant commercial purpose or character” and “significant labour and capital” qualification requirements, which are reflected in proposed sections 6 and 7 respectively. OIA was consulted about the expansion of the activities eligible for activity supplement funding, reflected in proposed section 10, and concluded that no Impact Analysis was required in relation to that proposal (OIA24-07168).

## **Consultation**

13. The initial policy settings for the FHA legislation were developed with significant input from the Departments of: the Prime Minister and Cabinet; the Treasury; Finance; the Attorney-General; Foreign Affairs and Trade; Social Security, as well as other social policy agencies of the Australian Government. Industry peak bodies, including the National Farmers’ Federation, and State and Territory government agriculture departments were also consulted.
14. In 2018, the FHA program was independently reviewed by a farmer-led panel, which included significant public consultation. The review recommendations, including simplifying and tailoring the application process and eligibility settings were implemented, including through amendments to the primary legislation.
15. The update of the 2014 Secretary’s Rule has been discussed with the Rural Financial Counselling Service providers and the Impact Analysis has been publicly available on the Department of the Prime Minister and Cabinet’s website since 14 December 2023. The proposed changes have also been referenced in stakeholders’ meetings, including with the National Farmers Federation.
16. The instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full statement of compatibility is set out in [Attachment B](#).
17. The instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.

**Details of the *Farm Household Support Secretary's Rules 2024***

**Part 1 — Preliminary**

Section 1 — Name

18. The name of the instrument is the *Farm Household Support Secretary's Rules 2024*.

Section 2 — Commencement

19. These Rules commence on 1 July 2024.

Section 3 — Authority

20. These Rules are made under the *Farm Household Support Act 2014*.

Section 4 — Schedules

21. Section 4, together with Schedule 1, repeal the *Farm Household Support Secretary's Rule 2014* (the **2014 Secretary's Rule**) with effect from the commencement of these Rules.

Section 5 — Definitions

22. This section defines *Act* as the *Farm Household Support Act 2014*.

23. A number of other expressions relevant to these Rules are defined in the Act. These include:

- (a) ***conduct failure*** — which has the meaning given by section 73 of the Act;
- (b) ***farm asset***—which has the meaning given by subsections 35(1) and (2) of the Act;
- (c) ***farm enterprise***—which means an enterprise carried on within any of the agricultural, horticultural, pastoral, apicultural or aquacultural industries.
- (d) ***qualification failure*** — which has the meaning given by section 71 of the Act.

**Part 2 — Farm household allowance**

**Division 1 — Basic qualifications of farmers and their partners for farm household allowance**

Section 6—Whether a person contributes a significant part of the person's labour and capital to a farm enterprise

24. Section 8 of the Act specifies the qualifications that a person who is a farmer must have, for a period, for payment of FHA for the period. Paragraph 8(b) specifies as a

- qualification that the person contributes a significant part of his or her labour and capital to a farm enterprise throughout the period.
25. Section 9 of the Act specifies the qualifications that the partner of a farmer must have, for a period, for payment of FHA for the period. Paragraph 9(d) specifies as a qualification that the farmer contributes a significant part of his or her labour and capital to a farm enterprise throughout the period.
  26. Section 6 of these Rules applies in respect of both paragraph 8(b) (the farmer) and paragraph 9(d) (the farmer's partner) of the Act.
  27. Section 6 of these Rules prescribes a matter that the Secretary must take into account in deciding whether these requirements are met:
    - the extent to which the contributed labour and capital promote, or could reasonably be expected to promote, the efficient and profitable operation of the farm enterprise as a commercial enterprise.
  28. To meet qualification requirements for FHA, farmers are required to contribute significant labour and capital to the farm enterprise, and these contributions must be material to the farm enterprise. This approach is consistent with the requirements in paragraphs 8(b) and 9(d) of the Act. This includes that absent farmers, such as a farmer who is in a nursing home or a silent investor in a farm enterprise would not meet the qualification test relating to labour.
  29. In this context, "labour" includes, not just physical labour, but also managerial activities (such as financial and administrative management) related to the farm enterprise. The labour requirement recognises that farmers may undertake other work. However, the labour they devote to the farm enterprise must be a significant contributor to the farm enterprise's operation.
  30. A contribution of capital by a person to a farm enterprise can take a number of forms. It includes:
    - (a) a financial contribution of the person's capital to the farm enterprise; and
    - (b) a contribution by way of assigning capital assets of the person to the farm enterprise; and
    - (c) a contribution by way of making capital assets of the person available for use on the farm enterprise.
  31. This ensures that all relevant capital contributions are captured, whatever the commercial and legal structure of the farm enterprise.
  32. The note to subsection 6(2) refers to subsection 13(2) of the Act, which provides in this context that the Secretary's Rules do not limit the matters that the Secretary may take into account in deciding whether the significant labour and capital requirement is met.
  33. Section 11 of the Act provides that a person who is exempt from the activity test under section 31 of the Act (because of a temporary incapacity) for a period is taken to meet

the labour test if he or she contributed a significant part of his or her labour to the farm enterprise immediately before becoming incapacitated.

34. The matters in section 6 of these Rules were not prescribed in the 2014 Secretary's Rule. However, similar guidance has been included in the FHA Guidelines; a policy document published on the Department's website (at <https://www.agriculture.gov.au/agriculture-land/farm-food-drought/drought/farm-household-allowance/guidelines>).

### *Examples*

35. A wheat and sheep farmer is also a qualified car mechanic. The mechanic-related work is sporadic and allows them to manage the usual farming activities (e.g. harvest, sowing, shearing). To a limited extent, they rely on income earned from mechanic work to supplement income from the farm enterprise. They spend significantly more hours working on the farm than in the workshop. The farmer meets the "significant labour" requirement as the farm labour is a significant part of their overall labour, and farming remains their principal occupation.
36. A sheep farmer has developed a medical condition which requires ongoing medical supervision and care. To ensure adequate care, they have moved to a retirement village in town, 30 minutes away from the farm. This allows them to receive medical care in the morning and evening. During the day, they drive to the farm and tend to the flock's needs. They continue to perform most tasks but relies on paid labour for some of the more strenuous activities, due to their condition. Their treating doctor wrote a report, confirming that the farmer is able to continue running a sheep farm, noting some limitations due to the ongoing medical condition. The farmer meets the "significant labour" requirement as his labour is a significant part of the farm enterprise's overall labour requirements.
37. A dairy farmer has lived on the same farm for over 50 years. The farmer's adult child and family members also live on the same farm. The farmer's adult child is in charge of farm operations and is working on the farm 60 hours a week. The farmer's health has declined, and they no longer contribute any physical labour in managing the dairy herd. However, their extensive knowledge of animal care means they occasionally advise the adult child on animal nutrition requirements — for example, when ordering feed and supplements. This assistance is infrequent and, although helpful, is not essential to the success of the farm enterprise. The farmer does not meet the "significant labour" requirement, as the labour input does not contribute significantly to the efficient and profitable operation of the farm enterprise.

### Section 7—Whether a farm enterprise has a significant commercial purpose or character

38. Section 8 of the Act specifies qualifications that a person who is a farmer must have for a period for payment of FHA for that period. Paragraph 8(c) specifies as a qualification that the farm enterprise to which the farmer contributes labour and capital "has a significant commercial purpose or character" throughout the period.
39. Section 9 of the Act specifies qualifications that the partner of a farmer must have for a period for payment of FHA for that period. Paragraph 9(e) specifies as a qualification

that the farm enterprise to which the farmer contributes labour and capital “has a significant commercial purpose or character” throughout that period.

40. Section 7 of these Rules applies in respect of both paragraph 8(c) (the farmer) and paragraph 9(e) (the farmer’s partner) of the Act.
41. The policy underpinning FHA is to support farmers (and their partners) where the farm is, or can reasonably be expected to be a commercial enterprise with long-term financial stability. It is not intended to support people who choose to engage in agricultural, horticultural, pastoral, apicultural or aquacultural activities that are not, by themselves, aimed at generating an adequate income in an average year.
42. Paragraphs 8(c) and 9(e) of the Act focus attention on the significant commercial purpose or character of the farm enterprise.
43. The scale of the farm enterprise is an important indicator whether it is a commercial enterprise with long-term financial stability. Assessment of previous recipients indicates that a farm enterprise with an average annual turnover (gross revenue from sales) over a 3-year period of less than \$60,000 is unlikely to be financially sustainable in the long term. Such an enterprise would find it difficult to achieve the economies of scale needed to achieve long-term financial stability and to deliver a sufficient and consistent return.
44. Section 7 prescribes a range of matters that the Secretary must take into account in deciding whether the requirement that the farm enterprise have a significant commercial purpose or character is met. They include matters that go to the current operation of the farm enterprise, but also matters that go to the prospects for commercial operation of the farm enterprise over a reasonable period into the future.
45. These matters are as follows:
  - (a) the way the farm enterprise is conducted—namely, whether the enterprise is being conducted efficiently and profitably or, if not, the steps that are being or are to be taken to ensure that the farm enterprise is conducted efficiently and profitably.
  - (b) size and scale—the size and scale of the farm enterprise, including the level of production being achieved, and reasonably expected to be achieved, over a reasonable period, by the farm enterprise;
  - (c) revenue considerations, including:
    - (i) whether the revenue of the farm enterprise, on average over the previous 3 financial years, has been more than \$60,000 a financial year;
    - (ii) whether the revenue that can reasonably be expected to be generated by the farm enterprise over a reasonable future period can reasonably be expected to be more than \$60,000 a financial year;
  - (d) available and potential markets for products—the commercial markets, and the potential commercial markets, for the agricultural, horticultural, pastoral, apicultural or aquacultural products of the farm enterprise and the extent to which they can be accessed by the farm enterprise;

- (e) the suitability of the land for the operation of the farm enterprise, having regard (among other things) to the agricultural, horticultural, pastoral, apicultural or aquacultural products of the farm enterprise;
  - (f) financial arrangements—capital requirements and how they are being and are to be met, and operational and other costs (including debt servicing);
  - (g) profitability, including matters that are reasonably likely to have an adverse effect on profitability and the steps that are being or are to be taken to manage them.
46. ***Farm enterprise*** is defined in the Act to mean an enterprise carried on within any of the agricultural, horticultural, pastoral, apicultural or aquacultural industries. Therefore, the revenue from businesses that are not farm enterprise, even if conducted on the farm, are not included in determining whether the farm enterprise has a significant commercial purpose or character.
47. If a farmer undertakes other agriculture, horticulture, pasture, apiculture or aquaculture-related activities in addition to running a farm enterprise, revenue from these related activities is also not included in determining whether the farm enterprise has a significant commercial purpose or character.
48. Examples include:
- (a) a broadacre farmer undertaking contract spraying or harvesting work; or
  - (b) a beef farmer operating an agritourism business on the farm; or
  - (c) an olive grower processing olives into olive oil on the farm.
49. Subsection 7(2) of the Rules generally supports the continued transparency and accountability in administrative decision-making associated with FHA applications without limiting the Secretary’s discretion to consider any other matters that may be relevant to the assessment of an FHA application or undertaking a review of a person’s eligibility for FHA, thereby ensuring that due regard is had to all the facts and circumstances of the applicant’s case.
50. A note to subsection 7(2) of the Rules refers to subsection 13(2) of the Act, which provides in this context that the matters specified in section 7 do not limit the matters that the Secretary may take into account in deciding whether the significant commercial purpose or character requirement is met.

## **Division 2—Financial improvement agreements**

### **Section 8—Kinds of requirements not to be included in financial improvement agreements**

51. Section 14 of the Act permits the Secretary to require a recipient of FHA to enter into an FIA. It is negotiated between the recipient of FHA and the Secretary. An FIA specifies activities that the recipient must undertake for the purposes of the activity test.
52. Subsection 15(2) of the Act states that an FIA *must not* contain a requirement of a kind prescribed by the Secretary’s rules for the purposes of that subsection.



53. Section 8 of these Rules provides, for this purpose, activities of the following kinds:
- (a) unlawful or discriminatory activities, or activities that do not comply with work health and safety requirements as specified;
  - (b) activities as specified outside Australia;
  - (c) activities as specified that include circumstances that would not be appropriate because of the person’s disability, illness, mental health condition or physical condition (established by medical evidence).
54. This section reflects section 6 of the 2014 Secretary’s Rule (repealed by these Rules).
55. A note to section 8 of these Rules draws attention to subsection 15(3) of the Act, which states that the Secretary’s rules do not limit the Secretary’s discretion to exclude other kinds of requirements from a particular financial improvement agreement.

### **Division 3—Compliance with obligations in relation to farm household allowance**

#### **Section 9—Reasonable excuses for committing qualification failures or conduct failures**

56. Under sections 72 and 74 of the Act, FHA is not payable to a person while a determination by the Secretary that the person has committed a “qualification failure” or a “conduct failure” is in force.
57. Subsection 76(1) of the Act provides that the Secretary must not make such a determination for a person if the person satisfies the Secretary that the person has a reasonable excuse for the failure.
58. Subsection 76(3) of the Act provides that Secretary’s rules may specify matters that the Secretary must take into account in deciding whether a person has a reasonable excuse for committing a qualification failure or a conduct failure. Section 9 of these Rules specifies matters for the purposes of this subsection of the Act.
59. Subsection 9(2) of the Rules provides that the Secretary may take into account a matter specified in this section only if satisfied that the matter had a significant effect on the conduct of the person resulting in the failure.
60. Subsection 9(3) of these Rules specifies particular matters that the Secretary must take into account for subsection 76(3) of the Act. They are that, at the time of the failure:
- (a) *unforeseen farm work or care responsibilities*:
    - (i) the person had to undertake farm work that was unforeseen, critical and not the kind of farm work the person would normally undertake at that time; or
    - (ii) the person had to take on unforeseen family or caring responsibilities; or
  - (b) *housing* — the person did not have access to safe, secure and adequate housing or was using emergency accommodation or a refuge; or

- (c) *personal circumstances*:
- (i) the person had literacy and language skills that affected the person's conduct resulting in the failure (including if the person was unable to understand a requirement, even if the requirement was delivered in a form that the person was most likely to understand); or
  - (ii) the person had a disability, illness, mental health condition or physical condition that required the person to undertake treatment (including an illness or condition that is episodic or unpredictable in nature); or
  - (iii) the person experienced a drug or alcohol dependency, was subjected to violence (including domestic violence or sexual assault) or was adversely affected by the death of an immediate family member or close relative.
61. Subsection 9(5) of the Rules provides, without limiting paragraph (3)(c), that a person is taken not to have access to safe, secure and adequate housing if the circumstances relating to the housing, or the housing itself, to which the person had access:
- (a) did not provide the person a reasonable level of personal amenities or the economic and social support that housing normally affords; or
  - (b) was damaging to, or likely to damage, the person's health; or
  - (c) was threatening to, or likely to threaten, the person's safety; or
  - (d) was not adequate, safe, secure or affordable.
62. That subsection also provides that the person is taken not to have access to safe, secure and adequate housing if the person did not have a right to remain in, or a reasonable expectation of being able to remain in, the housing.
63. A note to subsection 9(3) of the Rules refers to subsection 76(4) of the Act, which provides that the Secretary may take other matters into account in deciding whether a person has a reasonable excuse for the purposes of section 76.
64. Subsection 9(4) of the Rules requires that, if the person had been imprisoned for a continuous period of more than 14 days, and was released not more than 28 days before the time of the failure, the Secretary must take into account the circumstances of the imprisonment, and release, at the time of the failure.
65. Section 9 of these Rules reflects section 7 of the 2014 Secretary's Rule (repealed by these Rules) with the movement of previous subsection 7(5) to higher in the provision in subsection 9(2) of these Rules.

### **Part 3—Activity supplement**

#### **Section 10—Determination of eligible activities—classes of activities that may be specified in financial improvement agreements**

66. In addition to FHA, a supplement (*activity supplement*) is payable to recipients of FHA to support the recipient in undertaking specific activities listed in the recipient's FIA and in a class of activities prescribed by Secretary's rules under section 83 of the Act.
67. Section 83 of the Act permits the Rules to prescribe classes of activities for this purpose, as well as conditions that must be met for activity supplement to be payable for activities or classes of activities.
68. Section 8 of the 2014 Secretary's Rule prescribes a range of activities, classes of activities and conditions for the purposes of section 83 of the Act.
69. Section 10 of these Rules reproduces section 8 of the 2014 Secretary's Rule with a number of minor amendments, to clarify and, to some extent expand, the classes of activities.
70. The classes of activities that may be specified in a financial improvement agreement for which an activity supplement is payable are the following:
  - (a) obtaining legal, financial or other specialist advice directly related to ensuring the long term efficient and profitable operation of the farm enterprise concerned as a commercial enterprise, including advice about the following:
    - (i) commercial structures, arrangements and relationships, including financial arrangements and the vertical integration of relevant commercial entities (but not farm financial assessments);
    - (ii) business and business resilience planning;
    - (iii) monitoring and managing the business performance;
    - (iv) managing risk;
    - (v) succession planning;
    - (vi) natural resource management, sustainability and climate-resilient practices;
    - (vii) preparing for and recovering from drought, natural disasters and biosecurity outbreaks;
    - (viii) diversifying the farm enterprise;
    - (ix) adding value to products produced by the farm enterprise;
    - (x) alternative options for using farm assets (and a note to this section draws attention to the definition of *farm assets* in section 5 of the Act);
    - (xi) marketing and promotion;

- (xii) the use of technology, equipment, tools and machinery;
- (xiii) industrial relations;
- (xiv) workplace health and safety;
- (b) undertaking training in, participating in workshops or conferences on or studying about a matter mentioned in paragraph (a) above, including in relation to skills within the skill set known as the Farm Business Management Skill Set;
- (c) receiving advice about, undertaking training in, participating in, workshops or conferences on, and studying about the following matters: diversification of income streams; transitioning from farming, including to an alternative career, or retirement;
- (d) for a person who has exhausted funding available through the Commonwealth government mental health programs—receiving mental health counselling services.

#### Part 4—Application, saving and transitional provisions

##### Section 11—Application provisions relating to the commencement of this instrument

71. Section 11 provides for the application of Division 1 of Part 2 of these Rules (which relates to matters relating to qualifications for FHA). The provisions of that Division apply prospectively to working out whether a person is qualified for FHA in respect of a day occurring on or after 1 July 2024.
72. Farmers who are recipients of FHA immediately prior to 1 July 2024, and who continue to be paid after that date, will not be affected by the changes to Division 1 of Part 2 until such time as their qualification is again assessed.

**STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS**

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

*Farm Household Support Secretary's Rule 2024*

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* and advances certain of those rights.

**Background**

73. The *Farm Household Support Act 2014* (the **Act**) provides for farm household allowance (**FHA**) and other payments to provide income support for certain farmers and their partners who need financial assistance. The Act commenced on 1 July 2014.
74. FHA is aligned, where possible, with social security payments under social security law (the *Social Security Act 1991* and the *Social Security (Administration) Act 1999*), to achieve parity between recipients of the two kinds of social security payments.
75. The *Farm Household Support Secretary's Rule 2014* (the **2014 Secretary's Rule**) sunsets on 1 October 2024. This instrument (the **Rules**) remakes the 2014 Secretary's Rule with certain changes to clarify its operation. The Rules support the operation of the Act by prescribing:
- (a) particular matters for the Secretary to take into account in making decisions about a person's qualification for FHA; and
  - (b) requirements that are not to be included in financial improvement agreements (**FIAs**) between the Secretary and FHA recipients; and
  - (c) particular matters the Secretary must take into account in deciding whether a person has a reasonable excuse for committing a qualification failure or conduct failure; and
  - (d) the classes of activities that may be specified in an FIA for which an activity supplement is payable.
76. The Act was assessed as engaging human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*, as set out in the Explanatory Memorandum to the Bill for that Act.
77. That assessment concluded that the Act, and the FHA arrangements overall, were consistent with, and promoted, the human rights engaged, and that any purported limitations on those rights were reasonable, necessary, proportionate, and objectively based.

## Human rights implications

78. To the extent that the Rules remake provisions contained in the 2014 Secretary’s Rule in their current formulation, those provisions are assessed as compatible with human rights, noting also that the Parliamentary Joint Committee on Human Rights did not to raise any human rights concerns (see *Eighth Report of the 44th Parliament* [June 2014] at page 64).
79. The Rules engage, and potentially promote, the following human rights:
- (a) the right to an adequate standard of living, including food, water, and housing — Article 11(1) of the *International Covenant on Economic, Social and Cultural Rights (ICESCR)*;
  - (b) the right to work, and rights at work — Articles 6(1), 6(2) and 7(1) of the ICESCR;
  - (c) the right to respect for the family — Article 23 of the *International Covenant on Civil and Political Rights (ICCPR)*;
  - (d) the right to health — Article 12(1) of the ICESCR;
  - (e) the right to social security — Article 9 of the ICESCR;

### The right to an adequate standard of living

80. Article 11(1) of the ICESCR recognises the right to an adequate standard of living, including food, water, and housing.
81. By directly supporting Part 2, Division 2 of the Act (Basic qualifications of farmers and their partners for FHA), sections 6 and 7 of the Rules engage and advance the right to an adequate standard of living as they set out matters that the Secretary must take into account in deciding whether a person qualifies for FHA.
82. Any purported limitations on these rights associated with the refinement of the qualification considerations are reasonable and proportionate as they support and underpin the legitimate purpose of the Act, which is to support farm families in hardship and direct FHA equitably to help farmers prepare for, manage and recover from, business risks, including natural disasters such as bushfires, flooding and drought.

### The right to work and rights at work

83. Article 6(1) of the ICESCR recognises “the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts...”.
84. Article 6(2) sets out the steps to be taken by States Parties to achieve full realisation of that right, including providing technical and vocational guidance and training programs,

policies, and techniques to achieve steady economic, social, and cultural development and full and productive employment.

85. The Rules promote these rights as follows.
- (a) *Part 2 Division 1* (qualification for FHA) provides for matters in considering qualification for FHA which supports farm enterprises that are, or can be, financially self-sustaining, thus providing a secure basis for farmers to continue to work; and
  - (b) *Part 3* (activity supplement) clarifies the classes of activities for which activity supplement will be payable. This again supports the commercial viability of the farm enterprise, and the skills and expertise that the farmer recipient can draw on to continue to work the farm enterprise.

### **Right to respect for family**

86. Article 23 of the ICCPR recognises that “the family is the natural and fundamental group unit of society and is entitled to protection by society and the State”. States Parties must provide the widest possible protection and assistance to the family, particularly while it is responsible for the care and education of dependent children.

87. The Rules engage and promote this right as follows:

- (a) Section 9 includes, as a matter the Secretary must consider in deciding whether a person has a reasonable excuse for a qualification failure or a conduct failure that the person was required to take on unforeseen family or caring responsibilities or was adversely affected by the death of an immediate family member or close relative;
- (b) This provision also recognises circumstances impacting on individuals and their families, including domestic violence and responsibilities of parents and foster carers for the care and education of children with disability.
- (c) Section 10 includes, as activities for which activity supplement may be payable, succession planning and the commercial arrangements and structures for the farm enterprise. These activities may be significant for family-held farming enterprises.

### **Right to health**

88. Article 12(1) of the ICESCR recognises “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health”. This article is a broad acknowledgment that the ‘right to health’ embraces a wide range of socio-economic factors that promote conditions in which people can lead a healthy life, and extends to the underlying determinants of health, such as healthy working conditions.

89. The following measures described below promote the right to health:

- (a) Section 8 prescribes kinds of requirements that must not be included in an FIA. It specifically includes activities that do not comply with work health and safety requirements and activities that include circumstances that would not be

appropriate because of the person’s disability, illness, mental health condition or physical condition (established by medical evidence);

- (b) Subsection 9(3) includes, as a matter the Secretary must take into account in deciding whether a person has a reasonable excuse for committing a qualification failure or a conduct failure, that the person:
  - (i) had a disability, illness, mental health condition or physical condition that required the person to undertake treatment (including an illness or condition that is episodic or unpredictable in nature);
  - (ii) experienced a drug or alcohol dependency;
  - (iii) was subjected to violence (including domestic violence or sexual assault).
- (c) Section 10 provides the classes of activities that can be specified in a FIA for which activity supplement is payable include:
  - (i) workplace health and safety-related activities; and
  - (ii) in specific circumstances — receiving mental health counselling services.

### **Right to social security**

- 90. Article 9 of the ICESCR recognises “the right of everyone to social security”. The right to social security encompasses the right to access and maintain benefits to secure protection from, among other things, lack of work-related income. The United Nations Committee on Economic, social and Cultural Rights has stated that social security schemes should be sustainable, to ensure that the right can be realised for present and future generations.
- 91. The availability of FHA through the Act and the matters specified in these Rules engages and promotes that right.
- 92. The potential removal of FHA where a person has committed a qualification failure or a conduct failure (and, by extension, reactivation of that support where a reasonable excuse for commission of that failure, including by reference to the matters to be considered in such a decision in section 9 engages, but does not limit, the right to social security.
- 93. These Rules prescribe matters the Secretary must take into account in deciding whether certain qualification requirements of farmers and their partners are met for FHA to be payable (Part 2). This supports, but does not limit, the right to social security by clearly setting out these matters to ensure that the assessment of qualification requirements are targeted and to enable consistent decision-making for FHA.
- 94. To the extent that any measures in this rule could be regarded as limiting the right to social security, any limitation is reasonable, necessary and proportionate to achieving the objective of the FHA program as the measures generally support the integrity and efficacy of the FHA program and its continued sustainability.



## Conclusion

95. The Rules are 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* as it promotes the protection of, and does not limit, the human rights that it engages. To the extent that the Rules may limit human rights, those limitations are reasonable, necessary, and proportionate.

Adam Fennessy  
Secretary of the Department of Agriculture, Fisheries and Forestry