

EXPLANATORY STATEMENT

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

Social Security Act 1991
Social Security Legislation (Exempt Lump Sums for Farm Household Support) Repeal
Determination 2024

Legislative Authority

1. This instrument is made under paragraph 8(11)(d) of the *Social Security Act 1991* (**Social Security Act**), as modified by item 8 of the table in subsection 93(1) of the *Farm Household Support Act 2014* (**FHS Act**). This subsection modifies the Social Security Act, as it applies to payments of farm household allowance (**FHA**).
2. Paragraph 8(11)(d) of the Social Security Act allows the Secretary to determine that an amount or class of amounts received by a person is an exempt lump sum for the purposes of the Social Security Act.
3. The Secretary in this provision is to be read as a reference to the Secretary of the Department of Agriculture, Fisheries and Forestry (**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).
4. Under subsection 33(3) of the *Acts Interpretation Act 1901*, a power in an Act to make an instrument, such as a Rule, includes a power to repeal the instrument.

Background

5. Under the social security law (including the Social Security Act) all income earned, derived or received for a person's own use or benefit, is counted as income. The only exceptions to this are items specifically exempted under the social security law.
6. Paragraph 8(11)(d) of the Social Security Act allows the Secretary to determine that an amount, or class of amounts, received by a person is an exempt lump sum for the purposes of the Social Security Act. An exempt lump sum is not included in the definition of 'ordinary income' under subsection 8(1) of the Social Security Act, so any such amount will not be taken into account under the social security income test.
7. The social security law authorises an income test to determine a person's eligibility for a social security payment and, if eligible, the rate of the payment. This test extends to persons seeking or receiving FHA. As noted below, some amounts that would otherwise be considered income are specifically exempt from the income test.
8. A person's ordinary income (income that is not maintenance income, or an exempt lump sum as defined under subsection 8(1) of the Social Security Act) 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 FHA. In general terms, the greater a person's income, the more likely they will not qualify for FHA.

9. Exempt lump sums are excluded from the definition of 'ordinary income' under subsection 8(1) of the Social Security Act, meaning that the lump sum amount is not taken into account in applying the income test for FHA purposes. These exemptions 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.

Social Security (Exempt Lump Sum) (Emergency Water Infrastructure Rebate) (Agriculture) Determination 2014 (2014 Determination)

10. The 2014 Determination was made by the former Secretary of the Department of Agriculture and commenced on 26 August 2014. It is due to sunset on 1 October 2024. The purpose of the Determination was to exempt the Emergency Water Infrastructure Rebate from the assessment of a person's income for the purposes of the social security income test, consistent with the treatment of comparable lump sum payments exempted under paragraph 8(11)(d) of the Social Security Act.
11. The Emergency Water Infrastructure Rebate Program was offered to primary producers who were adversely affected by drought conditions with the establishment of water infrastructure to supply water for emergency animal welfare needs. The On-Farm Emergency Water Infrastructure Rebate scheme closed on 30 June 2024.
12. This Repeal Determination will repeal the 2014 Determination, as it became redundant as of 30 June 2024.

South Australian River Murray Sustainability Irrigation Industry Improvement Program) (Agriculture) Determination 2015 (2015 Determination)

13. The 2015 Determination was made by the former Agriculture Secretary and commenced on 22 May 2015. It is due to sunset on 1 October 2025. The purpose of the Determination was to exempt the payment made under the South Australian River Murray Sustainability Irrigation Industry Improvement Plan (3IP) from the assessment of a person's income for the purposes of the social security income test, consistent with the treatment of comparable lump sum payments exempted under paragraph 8(11)(d) of the Social Security Act.
14. This Repeal Determination will repeal the 2015 Determination as the sustainable irrigation grant scheme, which the 2015 Determination supports, is no longer in operation.

Purpose

15. The purpose of the *Social Security Legislation (Exempt Lump Sums for Farm Household Support) Repeal Determination 2024* (Repeal Determination) is to repeal the 2014 Determination and the 2015 Determination.
16. Both determinations are now spent.

Impact and effect

17. The Repeal Determination does not have any impact or effect on industry, as both instruments being repealed are now spent. In addition, the *Social Security (Exempt Lump Sum – General) (Agriculture) Determination 2020* (2020 Determination) is in place to exempt broader classes of payments from the income test for FHA, to ensure that FHA applicants or recipients are not disadvantaged if they receive any amounts similar to those covered by the 2014 and 2015 Determinations.
18. The Office of Impact Analysis was consulted and advised that an Impact Analysis would not be required (OIA 24-07978).

Consultation

19. The Department of Agriculture, Fisheries and Forestry consulted with the Department of Social Services and the Office of Impact Analysis on the Repeal Determination.
20. Stakeholder consultation is not appropriate for a repeal instrument of this nature, as it is purely mechanical and administrative.

Details/ Operation

21. Details of the Repeal Determination are set out in Attachment A.
22. The Repeal 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 statement of compatibility is set out in Attachment B.
23. The Repeal Determination is a legislative instrument for the purposes of the *Legislation Act 2003*.

Details of the Social Security Legislation (Exempt Lump Sums for Farm Household Support) Repeal Determination 2024

Section 1 – Name

The name of this instrument is the *Social Security Legislation (Exempt Lump Sums for Farm Household Support) Repeal Determination 2024* (**Repeal Determination**).

Section 2 – Commencement

This section provides for the Repeal Determination to commence on the day after registration.

Section 3 – Authority

The instrument is made under paragraph 8(11)(d) of the *Social Security Act 1991* as modified by item 8 of the table in subsection 93(1) of the *Farm Household Support Act 2014*.

Section 4 – Schedules

This section provides that each instrument specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1 – Repeals

Items 1 and 2 of the Schedule operate to repeal the whole of each of the following instruments:

- *Social Security (Exempt Lump Sum) (Emergency Water Infrastructure Rebate) (Agriculture) Determination 2014*
- *Social Security (Exempt Lump Sum) (South Australian River Murray Sustainability Irrigation Industry Improvement Program) (Agriculture) Determination 2015*

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

Social Security Legislation (Exempt Lump Sums for Farm Household Support) Repeal Determination 2024

This Repeal Determination 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 purpose of Repeal Determination is to repeal the *Social Security (Exempt Lump Sum) (Emergency Water Infrastructure Rebate) (Agriculture) Determination 2014* (2014 Determination) and the *Social Security (Exempt Lump Sum) (South Australian River Murray Sustainability Irrigation Industry Improvement Program) (Agriculture) Determination 2015* (2015 Determination), both of which are spent.

Human rights implications

This Repeal Determination does not engage any of the applicable rights or freedoms, nor does it limit or derogate from any existing human rights that may have been engaged by the repealed instruments. This is because those instruments are spent.

The lump sums formerly covered by the 2014 Determination will be covered by the *Social Security (Exempt Lump Sum – General) (Agriculture) Determination 2020* (2020 Determination) as exempt lump sums. This is because they are characterised as amounts paid by a government entity or registered charity and are principally for the recipient to procure, for the benefit of the recipient, a partner of the recipient or a dependant of the recipient, for the purposes of section 4 of the 2020 Determination. While the Far North Water Infrastructure Grant under the 2014 Determination is not covered by the 2020 Determination, as it is not paid by a government entity or a registered charity, there is no policy need to retain a determination which ostensibly existed to support the exemption of payments under a now inoperative grant scheme.

The sustainable irrigation grant scheme, which the 2015 Determination supports, is no longer in operation.

Conclusion

This Repeal Determination is compatible with human rights as it does not raise any human rights issues.

Adam Fennessy
Secretary, Department of Agriculture, Fisheries and Forestry