

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Agriculture, Fisheries and Forestry

Farm Household Support Act 2014

Farm Household Support Minister's Rules 2024

Legislative authority

1. This instrument is made under subsection 106(1) of the *Farm Household Support Act 2014* (the **Act**), which authorises the Minister for Agriculture, Fisheries and Forestry to make, by legislative instrument, Minister's rules prescribing matters that are required or permitted by the Act to be prescribed by Minister's rules.

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 this instrument include:
 - a) up to four cumulative years of FHA payable in a 10-year period for 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 claimant 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 claimant; 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. They are also automatically issued a Health Care Card that gives access to cheaper Pharmaceutical Benefits Scheme (PBS) prescriptions and access to the lower thresholds of the Extended Medicare Safety Net and the PBS Safety Net.

Purpose

3. The *Farm Household Support Minister's Rule 2014* (the **2014 Minister's Rule**) is due to sunset on 1 October 2024. In accordance with regular sunset practice, the Rule has been reviewed by the Department of Agriculture, Fisheries and Forestry (**Department**).

4. The *Farm Household Support Minister's Rules 2024* (the **Rules**):
 - a) repeal the 2014 Minister's Rule; and
 - b) remake two measures in the 2014 Minister's Rule to:
 - i. prescribe the maximum amount of activity supplement (paragraph 82(1)(a) of the Act); and
 - ii. prescribe the maximum amount of farm financial assessment supplement (paragraph 89(a) of the Act); and
 - c) remake, in a modified way, the provisions in the 2014 Minister's Rule that support the operation of the Act in respect of the income test and working out the rate of FHA for a person. The Rules clarify the way in which, in specified circumstances, the person's ordinary income for a tax year (calculated under Part 3.10 of the *Social Security Act 1991* (the **Social Security Act**)) is to be reduced by reference to overall operating loss of the farm enterprise and related businesses (section 67 of the Act).
5. By its nature, the agricultural industry is subject to many volatilities and events that have a particularly challenging impact on the industry. These unique complexities require that FHA be regulated in a way that is appropriately targeted to commercial farmers and their partners and their financial assistance needs. The use of delegated legislation in this context enables the government to address changing and uncertain circumstances in the sector in a timely way, as well as ensuring that the administration of payments and the assessment of claims can be processed to meet the needs of FHA recipients.
6. The Rules provide detail around core concepts contained in the primary legislation. This is necessary to ensure greater clarity and ease of interpretation of concepts dealt with in the primary legislation and facilitate appropriate administrative flexibility to support the FHA scheme and accommodate the different commercial and legal structures and business models used by FHA recipients.

Details of the Instrument

7. Details of the provisions of the Rules are at Attachment A.

Impact and effect

8. The impact and effect of the key measures contained in the instrument are addressed in turn below.

Activity supplement and farm financial assessment supplement

9. The Rules will maintain the settings of the 2014 Minister's Rule in respect of maximum amounts of activity supplement and farm financial assessment supplement. Accordingly, the impact and effect of these measures are unchanged.

Reduction of ordinary income by reference to the overall operating loss of a farm enterprise and related business

10. Part 2 of Division 8 of the Act sets out the process for calculating the rate of FHA. That process uses, with modifications, the processes prescribed by the Social Security Act, including an income test. The income test is based on working out the ordinary income, for a tax year, of the claimant for, or recipient of, FHA under Part 3.10 of the Social Security Act. There is also an assets test.

11. Section 67 of the Act provides that, for the purpose of working out the rate of farm household allowance for a person, the person's ordinary income for a tax year, worked out under Part 3.10 of the Social Security Act, is to be reduced in accordance with Minister's rules made for the purposes of this section.
12. Under the Social Security Act, amounts defined as income from a range of sources count towards the ordinary income of the claimant. However, a loss from the relevant farm enterprise does not go toward reducing the ordinary income, nor does a loss from businesses related to the farm enterprise.
13. Consistent with existing government policy and reflecting the recommendations of a 2018 independent review, a loss in the farm enterprise, and in other "related" businesses, can be offset against the claimant's ordinary income for a tax year, while maintaining the specified limits of the maximum amount of the reduction prescribed by the 2014 Minister's Rule. To further support this policy objective, the Rules clarify the definition of a "related business" by setting out three cumulative tests for whether a business is 'related' to a farm enterprise. This will ensure that the relationship between farm enterprises and related businesses is clear for the purposes of applying the offset.
14. Part 2 provides a detailed method for working out the amount of the reduction of a person's ordinary income by reference to losses in related businesses, while maintaining the maximum amount of the overall operating loss to reduce ordinary income prescribed by the 2014 Minister's Rule. The Rules clarify the application of the income test to give greater assurance that it will achieve the policy objectives of the FHA arrangements.
15. The Rules do not distinguish between the various ways in which commercial enterprises can be structured. The policy intention, which is reflected in the Rules, is that access to the overall operating loss, for income test purposes, should not depend on the legal or commercial structure of the farm enterprise or the related business. The business' loss (although not directly incurred by the farmer or their partner), should be taken into account (within limits) to reduce their ordinary income for FHA income test purposes, irrespective of the legal or commercial structure of the farm enterprise or related business.
16. The Office of Best Practice Regulation was consulted in relation to the 2014 Minister's Rule. It considered that the Rule had minor impacts and that, therefore, a Regulation Impact Statement was not required (OBPR Reference Number: 16411). The Office of Impact Analysis (OIA) was consulted on the Rules. It confirmed that an Impact Analysis is not required (Reference OIA24-07668).

Consultation

17. Following the 2008-09 national review of drought policy, in 2010, the Australian Government, in partnership with the Western Australian Government, conducted a two-year pilot of drought reform measures in regions of Western Australia. The pilot was reviewed in 2011 by an independent panel, which reported strong support for an income support payment for farm families in hardship, based on demonstrated individual need. FHA was developed in response to this national review and the Western Australian pilot review. The Department consulted industry stakeholders and Australian Government agencies in developing the policy supporting FHA.

18. The initial policy settings for the FHA legislation were informed by the reviews referenced above and 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.
19. Broader industry consultation was not undertaken on the 2014 Minister's Rule as it reflects the major policy settings that were subject to detailed consultation with industry stakeholders.
20. In 2018, the FHA program was comprehensively and independently reviewed by a farmer-led panel, and included significant public consultation. The review identified issues with how agistment and contracting income is treated for FHA purposes, potentially creating a disincentive for generating cash flow. The review's recommendations were implemented in 2019 through amendments to the Act and to the 2014 Minister's Rule. These amendments included the concept of a directly-related business (such as agistment or contracting), simplified and broadened the scope of the income offset provisions, and increased its upper limit.
21. The Rules further clarify the operation of the income offset provisions, while maintaining the current limit on using the overall operating loss to reduce ordinary income. The revisions to the Rules do not depart from the policy settings which have been in place since 16 December 2019.
22. The Rules reflect policy settings which were implemented as part of the response to the extensive 2018 review of the FHA program and will enable the scheme to continue to operate in line with existing arrangements and expectations. As such, the consultation for the remaking of the instrument has been limited to Services Australia and the Department of Social Services.
23. The Rules are 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](#).
24. The Rules are a legislative instrument for the purposes of the *Legislation Act 2003*.

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

Part 1 — Preliminary

Section 1—Name

25. The name of the instrument is the *Farm Household Support Minister's Rules 2024*.

Section 2—Commencement

26. The instrument commences on the day after it is registered.

Section 3—Authority

27. The instrument is made under the *Farm Household Support Act 2014*.

Section 4—Schedules

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

Section 5—Definitions

29. Subsection 5(1) defines terms used in the instrument as follows:

Act means the *Farm Household Support Act 2014*.

overall operating loss is explained by reference to subsection 7(1).

related business – has the meaning given by subsection 5(2)

30. Subsection 5(2) defines *related business* of a farm enterprise. It sets out three cumulative tests for whether a business is *related* to a farm enterprise.

31. A business is a related business of a farm enterprise if:

- a) the business is carried on principally for the purpose of providing goods or services within any of the agricultural, horticultural, pastoral, apicultural or aquacultural industries; and
- b) the business is carried on, or is effectively controlled, by a person who is either:
 - i. a farmer in relation to the farm enterprise; or
 - ii. their partner; and
- c) any of the following applies:
 - i. the business provides goods or services to the farm enterprise, or vice versa;
 - ii. the business uses farm assets of the farm enterprise in the conduct of the business;
 - iii. the business acquires products of the farm enterprise for sale, use in manufacture, distribution or processing or vice versa.

32. For the purposes of paragraph 5(2)(b), a person is effectively in control of a business if they (whether alone or together with one or more other persons) are in a position to determine the outcome of decisions about the financial and operating policies of the business.
33. The definition of *related business* operates, by way of illustration, as follows:
- a) A farmer uses a truck on the farm enterprise and also uses it to make deliveries for a newsagency business the farmer carries on. The newsagency business *is not* a related business of the farm enterprise.
 - b) A beef producer also carries on a butcher's shop in town, which sells (among other things) beef produced on the farm. The butchery business *is* a related business of the farm enterprise.
34. A note to section 5 provides that a number of other expressions relevant to the instrument are defined in the Act, including:
- a) ***farm asset***—which has the meaning given by subsections 35(1) and (2) of the Act;
 - b) ***farm enterprise***—means an enterprise carried on within any of the agricultural, horticultural, pastoral, apicultural or aquacultural industries;
 - c) ***Social Security Act***—means the *Social Security Act 1991*.

Part 2—Rate of farm household allowance—allowable deductions from ordinary income

Section 6—Purpose of this Part

35. Section 6 specifies that Part 2 of the instrument sets out, for the purposes of section 67 of the Act, the way a person's ordinary income for a tax year is to be reduced for the purposes of working out the rate of the farm household allowance for the person for the tax year.

Section 7— Overall operating loss to be used to reduce ordinary income

36. Section 7 sets out how to calculate the operating loss (of the farm enterprise and related businesses) for a tax year. Subsection 7(1) provides that, subject to section 8, a person's ordinary income for a tax year is to be reduced by the amount of the overall operating loss from a farm enterprise or related business of the farm enterprise for the tax year.
37. Subsection 7(2) sets out a method statement outlining the steps to be taken to work out whether there is an amount of the overall operating loss that can reduce a person's ordinary income for a tax year for FHA income test purposes.
38. The steps are:
- a) *Step 1*: Identify for the person the farm enterprise, in respect of which they have claimed FHA, and each related business of the farm enterprise.
 - b) *Step 2*: Work out for the tax year the revenue of the farm enterprise and each related business of the farm enterprise.

Paragraph (a) of this step clarifies that if the farm enterprise or related business is carried on by more than one entity, assume that only one entity is carrying on the farm enterprise or related business.

Paragraph (b) of this step provides that if the farm enterprise or related business is carried on by a company or trust, the revenue of the farm enterprise or related business is the company's or trust's gross ordinary income from the farm enterprise or related business worked out under section 1208 of the Social Security Act without any reductions.

Paragraph (c) of this step provides that if the farm enterprise or related business is carried on by an entity other than a trust or a company, the revenue of the farm enterprise or related business is the entity's gross ordinary income from the farm enterprise or related business worked out under Part 3.10 of the Social Security Act without any reductions.

Paragraph (d) of this step clarifies that if the farm enterprise or related business is carried on by a partnership, the partnership is to be treated as a person for the purposes of applying paragraph (c).

These provisions ensure that all the revenue of the farm enterprise and any related business must be considered, and the calculations occur before any overall operating loss is apportioned or otherwise attributed to the FHA recipient.

- c) *Step 3*: Sum the amounts worked out under Step 2.
- d) *Step 4*: Work out for the tax year the outgoings of the farm enterprise and each related business of the farm enterprise.

This step explains how to work out the outgoings of the farm enterprise or related business if they are carried on by a company or a trust, or any other entity (including a partnership).

Paragraph (a) of step 4 provides that for the purposes of this step, if the farm enterprise or related business is carried on by more than one entity, assume that only one entity is carrying on the farm enterprise or related business.

Paragraph (b) of step 4 provides that for the purposes of this step, if the farm enterprise or related business is carried on by a company or trust, the outgoings of the farm enterprise or related business are the reductions that can be made under section 1208A or 1208B of the Social Security Act from the company's or trust's gross ordinary income from the farm enterprise or related business.

Paragraph (c) of step 4 provides that for the purposes of this step, if the farm enterprise or related business is carried on by an entity other than a trust or company, the outgoings of the farm enterprise or related business are the reductions that can be made under Division 1A of Part 3.10 of the Social Security Act from the entity's gross ordinary income from the farm enterprise or related business.

The purpose of step 4 of the method statement is to ensure that the total outgoings of the farm enterprise and any related business are calculated before any loss is apportioned or otherwise attributed to the FHA recipient.

- e) *Step 5*: Sum the amounts worked out under Step 4.

The remaining steps involve calculations which draw upon determinations made in the preceding steps.

- f) *Step 6*: Subtract the amount worked out under Step 5 from the amount worked out under step 3.
- g) *Step 7*: If the amount worked out at Step 6 is zero or more, there is no overall operating loss for the tax year.
- h) *Step 8*: If the amount worked out at step 6 is a negative amount, the amount (ignoring that the amount is a negative number) is the overall operating loss for the tax year.

The following examples are included to illustrate how the method statement in section 7 applies in different factual scenarios.

39. *Example 1*: A person carries on a farm enterprise and one related business in the tax year. The performance of the farm enterprise and the related business is:

	Revenue	Outgoings	Total
Farm enterprise	\$200,000	-\$250,000	-\$50,000
Related business	\$230,000	-\$270,000	-\$40,000
Total	\$430,000	-\$520,000	-\$90,000

40. In this example, the overall operating loss is \$90,000. The person’s ordinary income for a tax year may be reduced by this amount.

41. *Example 2*: A person carries on a farm enterprise and 2 related businesses in the tax year. The performance of the farm enterprise and the related businesses are:

	Revenue	Outgoings	Total
Farm enterprise	\$80,000	-\$90,000	-\$10,000
Related business 1	\$100,000	-\$60,000	\$40,000
Related business 2	\$30,000	-\$40,000	-\$10,000
Totals	\$210,000	-\$190,000	\$20,000

42. In this example, there is no overall operating loss for a tax year, as the amount worked out at Step 6 (\$20,000) is greater than zero. The person’s ordinary income for a tax year is **not** to be reduced as there is no overall operating loss against which to offset the person’s ordinary income.

43. A person’s ordinary income, and the revenue and loss of the farm enterprise and related business, may fluctuate during a financial year, and beyond. Under the *Social Security (Administration) Act 1999*, recipients of FHA must report changes in their financial and other circumstances, which may lead to a reassessment of their qualification for FHA, or of the amount of FHA payable. For example, a wheat farmer might provide an estimate of business income at the beginning of a tax year and update it after harvesting the crop. The method statement in section 7 is applied each time a person’s qualification for FHA is determined, or the amount payable is assessed.

Section 8— Limits on using the overall operating loss to reduce ordinary income

44. Section 8 fixes the limit on using the overall operating loss to reduce a person's ordinary income for a tax year. The section maintains the limit on the available loss which currently applies in section 7A of the 2014 Minister's Rule.
45. Subsection 8(1) provides that the amount of the overall operating loss that can be used to reduce the ordinary income of a person, and the person's partner (if they are partnered and their partner also claims FHA), for a tax year must not exceed the least of the following:
- a) the overall operating loss,
 - b) the person's share of the overall operating loss, if an adjustment under subsection (4) was made in relation to the operating loss,
 - c) \$100,000.
46. Subsection 8(2) provides that neither the person's nor their partner's ordinary income for a tax year may be reduced below zero.
47. Subsection 8(3) provides that an amount of the overall operating loss that is used by a person, and their partner (if any), for a tax year must not be used by another person to reduce that person's ordinary income for the tax year. This avoids double-counting and ensures that where more than one person (and their partner if they are partnered) could use the overall operating loss, the overall operating loss amount is only used once.
48. Subsection 8(4) prescribes how the overall operating loss amount is adjusted, if there is more than one person (other than the partner of the person), whose entitlement for FHA is assessed in respect of the same farm enterprise. In these circumstances, the overall operating loss amount will be adjusted based on the agreement between the persons, and as notified to the Secretary. The persons can agree to adjust their respective proportions of the overall operating loss – these do not have to be equally split.
49. Subsection 8(5) provides that where an amount of the overall operating loss has been adjusted in accordance with subsection 8(4), each person may only use their share of the overall operating loss. This avoids double-counting and ensures that the overall operating loss limits in subsection 8(1) are maintained.
50. Family-run farms often have more than one household that operates the farm enterprise. In such cases, if more than one household (person and their partner, if any) has accessed FHA, and if the overall operating loss of the farm enterprise exceeds \$200,000, each person and their partner (if they are partnered) are able to access their portion of the overall operating loss up to a maximum of \$100,000 per household to offset their ordinary income.

The following examples are included to illustrate how the overall operating loss can be used to reduce ordinary income in different factual scenarios.

51. *Example 1:* A person carries on a farm enterprise and one related business in a tax year and that person and the person's partner, are both qualified for FHA. The performance of the farm enterprise and the related business is:

	Revenue	Outgoings	Total
Farm enterprise	\$500,000	-\$550,000	-\$50,000
Related business 1	\$130,000	-\$255,000	-\$125,000
Totals	\$630,000	-\$805,000	-\$175,000

52. In this example, the overall operating loss is \$175,000. As this is more than the maximum limit of the overall operating loss (\$100,000), the person and their partner jointly can only use up to a total of \$100,000 to reduce their ordinary incomes for a tax year. They must agree on how the \$100,000 will be shared between them.

53. *Example 2:* A person carries on a farm enterprise and one related business with their partner and another person. The person, their partner and the other person are all in receipt of FHA. The performance of the farm enterprise and the business is:

	Revenue	Outgoings	Total
Farm enterprise	\$800,000	-\$1,090,000	-\$290,000
Related business 1	\$250,000	-\$210,000	\$40,000
Totals	\$1,050,000	-\$1,300,000	-\$250,000

54. In this example, the operating loss is \$250,000. The person and their partner are jointly entitled to use up to a total of \$100,000 and the other person is also entitled to use up to \$100,000 in the overall operating loss to reduce their ordinary incomes for a tax year.

55. *Example 3:* A person carries on a farm enterprise with their partner and another person. The person, their partner and the other person are all in receipt of FHA. The performance of the farm enterprise is:

	Revenue	Outgoings	Total
Farm enterprise	\$750,000	-\$890,000	-\$140,000

56. In this example, the operating loss is \$140,000. There is insufficient loss for the person, their partner, (jointly up to the \$100,000 cap) and the other person to use to the full \$100,000 in overall operating loss to reduce their ordinary incomes for a tax year. They must agree upon how to use the loss, such as, for example, in equal shares, or another proportions. One scenario may be that only one person has off-farm income, and by agreement, that person is able to access the \$100,000 allowable limit available to them.

Part 3—Activity supplement

Section 9—Maximum amount of activity supplement

57. This section replicates section 8 of the 2014 Minister’s Rules. It fixes \$10,000 for the purposes of paragraph 82(1)(a) of the Act as the maximum amount of activity supplement available to an FHA recipient to support the recipient completing activities agreed in the FIA.

Part 4—Farm financial assessment supplement

Section 10—Maximum amount of farm financial assessment supplement

58. This section replicates section 9 of the 2014 Minister's Rules. It fixes \$1,500 for the purposes of paragraph 89(a) of the Act as the maximum amount of farm financial assessment supplement available to an FHA recipient to support professional assessment of the farm enterprise.

Part 5— Application, saving and transitional provision

Section 11— Application provision relating to the commencement of this instrument

59. This section provides that Part 2 of these Rules (which relate to determining allowable deductions from ordinary income for the purposes of determining a person's qualification for FHA or working out their rate of payment) applies for the purpose of working out the rate of FHA for a person on or after the commencement of this section. However, as the policy is unchanged, FHA entitlements will not be assessed differently before and after commencement. This means no one will be disadvantaged.

Schedule 1 – Repeals

Farm Household Support Minister's Rule 2014

60. Item 1 – The whole of the instrument. This item repeals the instrument in full.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

Farm Household Support Minister's Rules 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

The *Farm Household Support Act 2014* (the **Act**) provides for farm household allowance (**FHA**), an income support payment for certain farmers and their partners who need financial assistance. The Act commenced on 1 July 2014.

FHA is aligned, where possible, with social security payments under social security law (the *Social Security Act 1991* (**Social Security Act**) and the *Social Security (Administration) Act 1999*), and the *Social Security (International Agreements) Act 1999*, to achieve parity between recipients of the two kinds of social security payments.

The *Farm Household Support Minister's Rule 2014* (the **2014 Minister's Rule**) sunsets on 1 October 2024. The Farm Household Minister's Rules 2024 (the **Rules**):

- a) repeal the 2014 Minister's Rule; and
- b) remake two measures in the 2014 Minister's Rule to:
 - i. prescribe the maximum amount of activity supplement (paragraph 82(1)(a) of the Act); and
 - ii. prescribe the maximum amount of farm financial assessment supplement (paragraph 89(a) of the Act); and
- c) remake, in a modified way, the provisions in the 2014 Minister's Rule that support the operation of the Act in respect of the income test and working out the rate of FHA for a person by clarifying the way in which, in specified circumstances, the person's ordinary income for a tax year (calculated under Part 3.10 of the Social Security Act) is to be reduced by reference to the overall operating loss from a farm enterprise and any related business (section 67 of the Act).

Human rights implications

The relevant aspects of the Act were 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 the Act. 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.

To the extent that the Rules remake provisions of the 2014 Minister's Rule in its 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 *Ninth Report of the 44th Parliament* [July 2014] at page 176).

The changes to the 2014 Minister's Rules in respect of the way, in specified circumstances, a person's ordinary income for a tax year is to be reduced by reference to a loss in the farm enterprise and related business 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 social security—Article 9 of the ICESCR.

The right to an adequate standard of living

Article 11(1) of the ICESCR recognises the right to an adequate standard of living, including food, water, and housing.

Part 2 of the Rules (Rate of farm household allowance—allowable deductions from ordinary income) engages and advances the right to an adequate standard of living. It recognises that a business loss (including those from farm-related businesses) affects FHA recipients' standard of living, and expressly provides for the overall operating loss to be taken into account in determining access to, and the amount of, FHA for farmers and their partners. The effect of this provision is to ensure that a person's rate of payment accurately reflects the money available to that person for their self-support. This setting recognises that farming enterprises experience many volatilities and farmers experiencing financial hardship often rely on off-farm income to support the farm enterprise. The right to an adequate standard of living is also arguably promoted, by enabling people to engage in paid employment as well as running the farm enterprise, which, in turn, supports activities which improve wellbeing outcomes.

The Rules insert the same limits for the available loss that applied under the 2014 Minister's Rule. This is a reasonable and proportionate approach having regard to the broader policy objective as it supports and underpins the legitimate purpose of the Act and assists in ensuring that the FHA arrangements continue to be sustainable and can respond to the collective financial needs of farmers and their partners who access the scheme.

The right to work and rights at work

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...”.

Article 6(2) of the ICESCR 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.

The Act provides for the payment of activity supplement to support farmers undertaking activities to improve the skills and expertise that the farmer recipient can draw on to continue to work the farm enterprise and their capacity for self-reliance.

Section 9 of the Rules sets the maximum amount of the activity supplement. This constitutes an additional amount of support, not available in other mainstream social security programs. The activity supplement promotes the right to work as it supports the commercial self-reliance of the farm enterprise, by building and consolidating the skills and expertise that the farmer or their partner can draw upon to continue to work the farm enterprise, or transition to an alternative career. The activity supplement funding encompassing a range of technical and vocational professional advice and training, or study indirectly engages and promotes FHA recipients' right and access to work by supporting their skills development. This has the potential to increase access to work. This is consistent with, and advances the requirements of, article 7(2) of the ICESCR, which requires States Parties to take steps to ensure "...technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment".

Right to respect for family

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.

Part 2 of the Rules engages and promotes this right by providing a structured process for taking a farm loss, and a loss from related businesses, into account in determining access to, and the amount of, FHA for farmers and their partners in a way that is most beneficial for their family situation.

Right to social security

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.

The availability of FHA through the Act and the matters specified in the Rules engage and promote that right.

The Rules refine and clarify the way in which a farm loss and a loss in related businesses are taken into account in determining access to, and the amount of, FHA for farmers and their partners. These provisions ensure that targeted fiscal support is provided on an equitable basis to farmers and their partners and will bolster the integrity and efficacy of the program and its continued sustainability.

To the extent that any measures in the Rules 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

The 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 as they promote the protection of the human rights that they engage. To the extent that it may limit human rights, those limitations are reasonable, necessary, and proportionate.

The Hon. Julie Collins MP
Minister for Agriculture, Fisheries and Forestry