

2016-2017

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

FARM HOUSEHOLD SUPPORT AMENDMENT BILL 2017

EXPLANATORY MEMORANDUM

(Circulated by authority of the Deputy Prime Minister and
Minister for Agriculture and Water Resources,
the Hon. Barnaby Joyce MP)

FARM HOUSEHOLD SUPPORT AMENDMENT BILL 2017

GENERAL OUTLINE

The Farm Household Support Amendment Bill 2017 (the Bill) will amend the *Farm Household Support Act 2014* (the FHS Act) to ensure that recipients of Farm Household Allowance (FHA) are not required to serve an ordinary waiting period (OWP) or liquid assets waiting period (LAWP) (if applicable) before they can commence receiving the FHA. It also clarifies the asset test treatment of certain assets necessary for the operation of the farm enterprise.

The FHA programme gives farmers and their partners a maximum of three years income support to meet basic household needs while they make decisions about the future of their farm businesses and take action to improve their circumstances. It is paid at the same rate as Newstart Allowance and is subject to an income test similar to Newstart as well as a two tier assets test. The tier 1 test relates to non-farm assets and is the same as for Newstart recipients. For applicants who satisfy the tier 1 test, there is a separate test that restricts FHA to those with net farm assets not exceeding \$2.55 million.

REMOVAL OF THE OWP AND LAWP

The general requirement in social security law for social welfare applicants to serve an OWP and LAWP (if applicable) before they can commence receiving payment is mirrored in the FHS Act.

The OWP is a period of one week that all recipients are required to serve unless exempted due to hardship. A LAWP of one week applies if a couple, or a single with dependants, has liquid assets of \$11,000 to \$11,999. An additional week, up to a maximum of 13 weeks, applies in respect of each \$1,000 in liquid assets held. For singles, the asset thresholds are half those for couples or people with dependants.

The OWP and LAWP (if applicable) are served consecutively. Both are generally applied to ensure that social welfare applicants use their own readily available resources before drawing on public monies, and have incentives to continue to seek work.

The current requirement for FHA recipients to serve an OWP and LAWP (if applicable) is unnecessary. Farmers are already attached to the workforce and requiring them to use liquid assets for self-support risks diverting those assets from supporting the operation of the farm enterprise. The FHA

programme is also time limited so the OWP and LAWPs generate no savings. Requiring an FHA recipient to wait additional time to receive payment could lead to additional hardship which risks a reduction in their capacity to operate the farm enterprise.

TREATMENT OF ASSETS

The Bill clarifies the treatment of certain assets necessary for operation of a farm enterprise. Under the FHS Act certain assets, which are used or held for the operation of a farm enterprise, are excluded from the definition of farm assets. Therefore these assets must be assessed as non-farm assets. Examples include certain water rights and shares in marketing cooperatives. This is contrary to the policy intent of the FHA programme. This clarification will not change the maximum asset holding limits to be eligible for FHA and will also therefore have minimal impact on the Budget.

As an interim solution, in May 2016 the *Farm Household Support (Non-farm Assets) Minister's Rule 2016* (the Rule) came into effect. In brief, it had the effect of modifying the *Social Security Act 1991* so as to disregard the value of certain assets held for the purposes of carrying out a farm enterprise when valuing non-farm assets. Further, in December 2016 the *Farm Household Support (Non-farm Assets) Amendment Rule 2016* (the Amendment Rule) amended the Rule, which had the effect that up to \$1.1 million of the value of water entitlement assets held wholly or mainly for the purpose of the farm enterprise should also be disregarded when valuing non-farm assets for the asset test. The Explanatory Statement to the Amendment Rule noted that the Rule was intended as a “provisional rule and may be superseded in the fullness of time”. However, the Rule was necessary in the short term to prevent the denial of FHA to some farmers who were experiencing genuine hardship, due to the farm assets test not capturing all categories of assets used in the operation of the farm enterprise.

The Department of Agriculture and Water Resources consulted industry stakeholders and Australian Government agencies in developing the policy underpinning the operation of waiting periods and the definition of farm assets. Relevant agencies and stakeholders support the reforms contained in the Bill.

The main provisions of the Bill will commence on the later of 1 April 2017 or the day after the Act receives Royal Assent.

Provisions relating to the removal of waiting periods will apply in respect of all claims for FHA made on or after commencement of those provisions and applications made prior to that date which had not yet been determined.

Provisions relating to the definition of farm assets will apply in respect of claims made on or after commencement of those provisions. Existing FHA recipients who have had their assets assessed under the provisions which applied prior to commencement (including by the application of the Rule), and applicants who have made an application before commencement of the provisions but have not yet had a decision made on that application, will continue to be assessed in accordance with the existing definition of 'farm asset' and the Rule will continue to apply to them.

FINANCIAL IMPACT STATEMENT

The changes provided for by the Bill will have minimal impact on the Budget.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

Farm Household Support Amendment Bill 2017

This Bill 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 Bill

The Farm Household Support Amendment Bill 2017 (the Bill) will amend the *Farm Household Support Act 2014* (FHS Act) to ensure that recipients of Farm Household Allowance (FHA) are not required to serve an ordinary waiting period (OWP) or liquid assets waiting period (LAWP) (if a LAWP is applicable) before they can commence receiving the FHA. It also clarifies the asset test treatment of certain assets used or held for the operation of the farm enterprise.

The general requirement in social security law for social welfare applicants to serve an OWP and LAWP (if applicable) and a Newly Arrived Resident's Waiting Period (NARWP) before they can commence receiving payment is mirrored in the FHS Act.

The OWP is a period of one week that all recipients are required to serve unless exempted due to hardship. A LAWP of one week applies if a couple, or a single with dependants, has liquid assets of \$11,000 to \$11,999. An additional week, up to a maximum of 13 weeks, applies in respect of each subsequent \$1,000 in liquid assets held. For singles, the asset thresholds are half those for couples or people with dependants.

The OWP and LAWP (if applicable) are served consecutively. Both are generally applied to ensure that social welfare applicants use their own readily available resources before drawing on public monies, and have incentives to continue to seek work.

The current requirement for FHA recipients to serve an OWP and LAWP (if applicable) is unnecessary. Farmers are already attached to the workforce and requiring them to use liquid assets for self-support risks diverting those assets from supporting the operation of the farm enterprise. The FHA programme is

also time limited so the OWP and LAWP generate no savings. Requiring an FHA recipient to wait additional time to receive payment could lead to additional hardship which risks a reduction in their capacity to operate the farm enterprise.

Arguments for differentiating treatment of FHA recipients from other social security recipients in respect of the OWP and LAWP do not apply in respect of the NARWP, to which no change is proposed. The Parliamentary Joint Committee on Human Rights, in its Fourth Report of the 44th Parliament, stated in respect of the FHS Act “The committee considers that the statements of compatibility contain a detailed and thorough examination of the rights implications of the bills, including sufficient justification for any limitations on rights, with one exception set out below.” The exception did not relate to NAWRP. The issue is therefore not further addressed in this statement.

The Bill will also clarify the asset test treatment of certain assets used or held for the operation of the farm enterprise. Under the FHS Act certain assets, which are necessary for the operation of the farm enterprise, are currently excluded from the definition of farm assets, and must be assessed as non-farm assets. Examples include water rights and shares in marketing cooperatives. This is contrary to the policy intent of the FHA programme. This clarification will not change the maximum asset holding limits to be eligible for FHA.

Human rights implications

In refining aspects of the implementation of FHA, the Bill promotes a number of rights provided under the International Covenant on Economic, Social and Cultural Rights (ICESCR). These rights include the right to social security, and also the right to an adequate standard of living, including food, water and housing.

The following rights are engaged by the Bill:

- Article 9 of the ICESCR – right to social security
- Article 2(2) of the ICESCR and Article 26 of the International Covenant on Civil and Political Rights (ICCPR) – rights of equality and non-discrimination.

Right to social security

Article 9 of the ICESCR recognises the right to social security. The United Nations Committee on Economic, Social and Cultural Rights (CESCR) has stated that the term ‘social security’ in article 9 encompasses the 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

The CESCR has also stated that all persons should be covered by the social security system without discrimination;² in particular, “State parties should also remove de facto discrimination on prohibited grounds, where individuals are unable to access adequate social security”.³

The prohibited grounds of discrimination are outlined in ICESCR Article 2(2), which imposes a duty on governments to guarantee the exercise of the rights recognised in that treaty “without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.

The value of farm assets often precludes farmers from being eligible for mainstream social security payments. This is despite the sometimes limited capacity of farmers to generate income from farm assets. The illiquidity of farm assets makes it difficult for farmers to sell these assets in the short term to provide for their self-support. This is addressed under the FHS Act by providing a two tier assets test in determining eligibility for FHA; non-farm assets are assessed in accordance with mainstream social security payments, while a separate test applies in relation to net farm assets.

The Bill resolves an anomaly in the existing definition of farm assets under the FHS Act whereby certain assets currently fall within the definition of non-farm assets despite being used or held wholly or mainly for the operation of the farm enterprise. Examples include water rights and shares in marketing cooperatives. The Bill therefore promotes the right to social security. To address the risks involved in farmers losing their means of subsistence for reasons beyond their control, the Bill advances the protection of farmers’ lack of work-related income by ensuring access to income support to farmers in the form of the FHA when their capacity for self-support is equivalent to other members of the community who would be entitled to social security. It does so particularly by refining the definition of farm assets for which concessional treatment applies when a claim for the FHA is assessed.

¹ CESCR, General Comment No 19 (2008), paragraph 2.

² CESCR, General Comment No 19 (2008), paragraph 23; paragraphs 29-31 (non-discrimination).

³ CESCR, General Comment No 19 (2008), paragraph 30.

Rights of equality and non-discrimination

Article 2(2) of the ICESCR requires States to ensure that the rights recognised in that Covenant are exercised “without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.

The CESCR has clarified that discrimination constitutes “any distinction, exclusion, restriction or preference or other differential treatment that is directly or indirectly based on the prohibited grounds of discrimination and which has the intention or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of Covenant rights”.⁴

Article 26 of the ICCPR is a stand-alone right and also prohibits discrimination in law or in fact in any field regulated and protected by public authorities. Its effect is to provide that all persons are equal before the law and are entitled to equal protection of the law without discrimination.⁵

The Bill engages with the right of non-discrimination in that receipt of income support under the FHA is available only to farmers and their partners, and will not be subject to OWP or LAWP whereas those waiting periods will continue to apply for recipients of mainstream income support payments.

The OWP and LAWP are generally applied to ensure that social welfare applicants use their own readily available resources before drawing on public monies, and have incentives to continue to seek work.

The current requirement for FHA recipients to serve an LAWP (if applicable) and OWP is unnecessary. Farmers are already attached to the workforce and requiring them to use liquid assets for self-support risks diverting those assets from supporting the operation of the farm enterprise. The FHA programme is also time limited so the OWP and LAWP generate no savings. Requiring a FHA recipient to wait additional time, notwithstanding they have been found eligible, could lead to additional hardship which risks a reduction in their capacity to operate the farm enterprise. Thus removing the requirement does not impermissibly advantage farmers and their partners by comparison with other occupational groups.

⁴ CESCR, General Comment No 20 (2009), paragraph 7.

⁵ United Nations Human Rights Committee, CCPR General Comment No 18 (1989), paragraph 13.

Conclusion

The Bill is compatible with the human rights outlined above. It promotes the right to social security and to the extent that it engages with the right of non-discrimination, it does so in a way that is reasonable, necessary and proportionate to achieve legitimate aims.

**The Hon. Barnaby Joyce MP, Deputy Prime Minister and Minister
for Agriculture and Water Resources**

FARM HOUSEHOLD SUPPORT AMENDMENT BILL 2017

NOTES ON CLAUSES

Clause 1: Short title

This section provides for the Act to be called the *Farm Household Support Amendment Act 2017*.

Clause 2: Commencement

This section provides that sections 1 to 3 and anything in the Bill not elsewhere specified in the Table will commence upon Royal Assent.

Schedules 1 and 2 will commence on the later of the day after the Act receives Royal Assent and 1 April 2017.

Clause 3: Schedules

This section provides that legislation specified in a Schedule to the Bill will be amended or repealed as set out in the Schedule.

Schedule 1—Removal of waiting periods

Farm Household Support Act 2014

The Schedule will amend the FHS Act as follows.

Item 1: Subsection 5(1)

Item 1 will repeal definitions of OWP, LAWP, and waiting period from the FHS Act. The first two terms will no longer appear in the FHS Act.

Item 2: Subdivision C of Division 6 of Part 2 (heading)

Item 2 will repeal the heading and substitute “Subdivision C – Situations where allowance not payable (waiting period)”.

Item 3: Section 39

Item 3 will repeal the existing section and replace it with a new section 39 which refers only to the newly arrived resident’s waiting period, which already applies under the FHS Act.

Item 4: Sections 40 and 41

Item 4 will repeal the sections which provide for the OWP.

Item 5: Subsection 42(1) (note)

Item 5 will repeal the note which refers to the interaction between the newly arrived resident's waiting period and the LAWP which is to be repealed.

Item 6: Sections 44 to 47

Item 6 will repeal sections 44, 45 and 47 which provide for the LAWP and the effect of being subject to more than one waiting period. As FHA recipients will only be subject to a newly arrived person's waiting period (if relevant), section 47 will be redundant. Section 46 which provides for the Secretary's discretion to waive all or part of a person's OWP or LAWP will also be repealed as its application will be redundant due to the repeal of the OWP and LAWP.

Item 7: Subsection 93(1) (table items 14, 23, 24 and 25)

Item 7 will delete certain items from a table that modify the operation of the Social Security Act with respect to OWP and LAWP as they affect FHA recipients. The currently modified provisions will no longer be relevant as FHA recipients will not be required to serve OWP or LAWP.

Item 8: Application provision

The effect of Item 8 is that the repeal of the OWP and LAWP will apply to FHA applicants who make their claim on or after the commencement of the item; that is, on or after the later of 1 April 2017 or the day after the Act receives Royal Assent. The repeal will also apply to those who made a claim for FHA before the date of commencement of the item, but whose claim had not been determined as at that date.

Schedule 2—Farm assets

Farm Household Support Act 2014

The Schedule will amend the FHS Act as follows.

Item 1: Subsection 5(1) (definition of *farm asset*)

Item 1 will amend the definition of *farm asset* to refer to both subsections 35(1) and 35(2) of the FHS Act.

Item 2: Subsection 5(1)

Item 2 will introduce definitions of new terms relating to water assets.

Item 3: Subsections 35(1) and (2)

Item 3 will repeal existing subsections 35(1) and (2) of the FHS Act and substitute new subsections 35(1), (2) and (2A).

The existing definition of farm assets in section 35 of the FHS Act is framed in restrictive terms; that is, an asset is a farm asset only if it falls within one of the categories specified in subsection 35(1). An asset which does not fall within those categories must be assessed under the more stringent tier one non-farm assets test, even if it is used wholly or mainly for the purposes of a farm enterprise.

The effect of new subsection 35(1) will be to broaden the meaning of a farm asset to include any asset which is used or held wholly or mainly for the purpose of a farm enterprise, subject to the exclusion of cash, money on deposit with an authorised deposit-taking institution or a farm management deposit.

The effect of the new definition will most commonly be the same as the existing definition. However, at the margin, any asset which can be shown to be used or held wholly or mainly for the purpose of a farm enterprise will be assessed as a farm asset, unless it falls within one of the classes of asset specifically excluded from the definition.

New subsection 35(2) will specify that, without limiting subsection 35(1), certain assets are farm assets. The specified assets are generally the same as those currently listed in existing subsection 35(1) except for the express addition of water entitlement rights as a newly included class of farm asset.

New paragraph 35(1)(d) provides for the Minister to make a Rule pursuant to section 106 of the FHS Act to prescribe other kinds of asset which will be excluded from the meaning of farm asset.

By the operation of new subsection 35(2), there would not be scope for the Minister to make a Rule which removed any asset currently captured by the definition of a farm asset from the new meaning of a farm asset.

The intent of the provision is to enable the Minister to exclude from the definition of a farm asset certain kinds of asset which, while arguably used or held for the purposes of a farm enterprise, do not conform with the policy intent of the definition. For example, if an asset with characteristics similar to cash were developed, it would be open to the Minister to make a Rule to exclude it from the definition of a farm asset.

The new subsection 35(2A) uses the same text as the existing subsection 35(2). The effect of the changes will be that certain assets which are used or held wholly or mainly for the purpose of a farm enterprise but which may not fall within the terms of the existing subsection 35(1) of the FHS Act, will be assessed as farm assets. Water entitlement rights that are used or held wholly or mainly for the purposes of the farm enterprise will be explicitly included as farm assets.

Item 4: After section 35

Item 4 will insert a new section 35A to define the meaning of “water entitlement right”.

The definition of “water entitlement right” includes any right conferred by a law of a State or Territory, to hold or take water from a water resource, as well as any irrigation right or water delivery right. It also includes contractual rights that a person holds to all or part of one of these rights.

The definition is intended to encompass any water asset which can be used or held by a farmer or their partner wholly or mainly for the purpose of them operating a farm enterprise.

New paragraph 35A(1)(d) provides for additional kinds of rights to be included in the definition of a water entitlement right by way of Minister’s rules. This is intended to permit inclusion within the definition of any type of water asset which can be used or held by a farmer or their partner wholly or mainly for the purpose of a farm enterprise but which may otherwise not be covered by the existing definition in subsection 35A(1).

While generally the value of water assets is not combined with the value of farm land, where the water asset cannot be traded separately from the land the value of the water asset and the farm land are considered to be inseparable for the purpose of asset test assessments. In those circumstances the value of the farm land will be assessed as capturing any additional value provided by the water asset, and no separate value will be ascribed to the water asset. This will ensure that there will be no double counting under the farm assets test.

Item 5: Application provision

The effect of Item 5 is that the new definition of farm assets will apply in relation to new claims for FHA made on or after the commencement of Item 5, being the later of 1 April 2017 or the day after the Act receives Royal Assent. Those receiving FHA before the commencement of the provision, or who have applied but in respect of whom no decision has been made at the date of commencement of the provision, will continue to be assessed under the existing definition of farm assets, and the Rule will continue to apply in respect of them.