Farm Household Support Amendment Bill 2007

No. , 2007

(Agriculture, Fisheries and Forestry)

A Bill for an Act to amend legislation in relation to exceptional circumstances relief payment, and for other purposes
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A Bill for an Act to amend legislation in relation to exceptional circumstances relief payment, and for other purposes

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Farm Household Support Amendment Act 2007*.

2 Commencement

This Act commences on the day on which it receives the Royal Assent.
3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.
Schedule 1—Amendments relating to exceptional circumstances relief payment

Part 1—Amendment of the Farm Household Support Act 1992

Farm Household Support Act 1992

1 At the end of paragraph (c) of the title
Add “and to certain small business operators”.

2 Subsection 3(2)
Insert:

ABN (short for Australian Business Number) has the meaning given by section 41 of the A New Tax System (Australian Business Number) Act 1999.

3 Subsection 3(2) (definition of exempt assets)
Repeal the definition, substitute:

exempt assets means:
(a) if a person is a farmer:
   (i) any right or interest of the person in the land used for
       the purposes of the farm enterprise in relation to which
       the person is a farmer; and
   (ii) any farm plant and machinery, farm livestock or other
       asset essential for the effective running of the farm
       enterprise; and
   (iii) any rights of the person under an insurance policy in
       relation to the person’s life or under a superannuation
       scheme; and
(b) if a person carries on a small business:
   (i) any right or interest of the person in land used for the
       purposes of the business; and
   (ii) any plant and machinery, stock or other asset essential
       for the effective running of the business; and
(iii) any rights of the person under an insurance policy in relation to the person’s life or under a superannuation scheme.

4 Subsection 3(2)

Insert:

*small business* means a business with less than 100 employees.

Note: Subsection (3) sets out how this is to be worked out where there are part-time employees.

5 At the end of section 3

Add:

(3) In counting employees for the purposes of the definition of *small business* in subsection (2), take part-time employees into account as an appropriate fraction of a full-time equivalent.

6 Subsection 6(1)

Repeal the subsection, substitute:

*Object of exceptional circumstances relief payment*

(1) The object of exceptional circumstances relief payment is:

(a) to provide financial assistance to persons who:

(i) are farmers; and

(ii) are in exceptional circumstances; and

(iii) are experiencing difficulty in meeting living expenses; and

(b) to provide financial assistance to persons who:

(i) carry on a small business, gross income from which has been significantly reduced because of the effect of exceptional circumstances on farm enterprises in the area from which the income of the business is normally derived; and

(ii) are experiencing difficulty in meeting living expenses.

7 Part 1A (heading)

Repeal the heading, substitute:
Part 1A—Ending farm household support, farm help income support and exceptional circumstances relief payments for small businesses

8 At the end of Part 1A

Add:

6C Ending exceptional circumstances relief payments for small businesses

Exceptional circumstances relief payment is not payable to a person who qualifies for the payment under subsection 8A(5) in respect of any period that is after 30 June 2008, or such later day as is prescribed.

9 Sub-subparagraph 8A(1)(b)(i)(D)

Repeal the sub-subparagraph.

10 At the end of section 8A

Add:

Qualification—small business operators

(5) A person is qualified for exceptional circumstances relief payment in respect of a period beginning on or after 7 November 2006 (the relevant period) if:

(a) the person is an individual; and

(b) throughout the relevant period:

(i) the person carries on a small business in respect of which there is an ABN; and

(ii) the person has a right or interest in the small business; and

(iii) the person contributes a significant part of his or her labour and capital to the business; and

(iv) the person derives a significant part of his or her income from the business; and

(v) the person is an Australian resident; and
Schedule 1 Amendments relating to exceptional circumstances relief payment

Part 1 Amendment of the Farm Household Support Act 1992

(vi) the person is in Australia; and

c) during an earlier period of normal turnover, 70% or more of
the gross income of the business was derived from the supply
of goods or services to farmers for use in relation to farm
enterprises; and

d) the farm enterprises were situated wholly or partly within an
area that, throughout the relevant period, is covered by a
declaration of exceptional circumstances (as referred to in
paragraph 8(c) of the Rural Adjustment Act 1992); and

e) the gross income of the business has been significantly
reduced because of the effect of the exceptional
circumstances in relation to which the declaration was made
on farm enterprises in that area.

Earlier period of normal turnover

(6) An earlier period of normal turnover is:

(a) a continuous period of 2 years within the 7 years immediately
preceding the relevant period; or

(b) if the business has not been carried on for a continuous
period of 2 years within the 7 years immediately preceding
the relevant period—the period during which the business
has been carried on.

Note: The heading to subsection 8A(1) is altered by adding at the end “—farmers”.

11 Paragraph 10(3)(a)

Repeal the paragraph, substitute:

(a) working out the person’s assets at that time that are not
exempt assets for the purposes of this Act:

(i) in a case where a person qualifies for exceptional
circumstances relief payment under subsection 8A(1)
and makes a claim for payment on the basis that the
person qualifies under that subsection—because the
person is a farmer; and

(ii) in a case where a person qualifies for exceptional
circumstances relief payment only under subsection
8A(5) and makes a claim for payment on the basis that
the person qualifies under that subsection—because the
person carries on a small business; and
Amendments relating to exceptional circumstances relief payment  
Schedule 1  
Amendment of the Farm Household Support Act 1992  
Part 1

12 At the end of section 12

Add:

(7) Exceptional circumstances relief payment is not payable to a person on the basis that the person qualifies for the payment under subsection 8A(1) if the person is receiving, or has received, the payment on the basis that the person qualifies or qualified for the payment under subsection 8A(5).

(8) Exceptional circumstances relief payment is not payable to a person on the basis that the person qualifies for the payment under subsection 8A(5) if the person is receiving, or has received, the payment on the basis that the person qualifies or qualified for the payment under subsection 8A(1).

13 Subsection 24A(1)

After “payable to a person”, insert “who qualifies for the payment under subsection 8A(1)”. 

Note: The heading to section 24A is altered by adding at the end “for farmers”.

14 Subsection 24A(2)

After “for the purposes of this Act”, insert “because the person is a farmer”.

15 After section 24A

Insert:

24AA  Rate of exceptional circumstances relief payment—how worked out for small business operators

(1) The fortnightly rate at which exceptional circumstances relief payment is payable to a person who qualifies for the payment under subsection 8A(5) is the sum of the following rates:
Schedule 1 Amendments relating to exceptional circumstances relief payment

Part 1 Amendment of the Farm Household Support Act 1992

(a) the fortnightly rate at which:
   (i) if the person is of youth allowance age—youth allowance would be payable to the person if he or she were entitled to receive youth allowance; or
   (ii) if the person is not of youth allowance age—newstart allowance would be payable to the person if he or she were entitled to receive newstart allowance;
(b) if the person is a member of a couple and the partner allowance rate in relation to the person’s partner exceeds the income support payment rate in relation to the person’s partner—the fortnightly rate that is the difference between those rates.

(2) For the purposes of subsection (1):

*income support payment rate*, in relation to a person’s partner, means the fortnightly rate at which that partner is receiving one (if any) of the following payments:
   (a) social security pension;
   (b) a social security benefit (except newstart allowance or youth allowance);
   (c) a pension under Part II, III or IV of the *Veterans’ Entitlements Act 1986*.

*partner allowance rate*, in relation to a person’s partner, means the fortnightly rate at which:
   (a) that partner is receiving partner allowance; or
   (b) partner allowance would be payable to that partner if that partner were entitled to receive partner allowance.

(3) For the purposes of calculating a rate referred to in this section, the value of assets that are exempt assets for the purposes of this Act because the person carries on a small business is to be disregarded.

(4) If, but for subsubparagraph 8A(1)(b)(i)(C), the person would also qualify for exceptional circumstances relief payment under subsection 8A(1), then, for the purposes of calculating a rate referred to in this section, the value of assets that are exempt assets for the purposes of this Act because the person is a farmer is also to be disregarded.
$10,000 in salary and wages from other sources disregarded—whole financial years

(5) For the purposes of calculating a rate referred to in subsection (1) for a person, for a fortnight all or part of which falls during:
   (a) the 2006-07 financial year; or
   (b) the 2007-08 financial year; or
   (c) if 30 June in a later year is prescribed as the closing day for the purposes of this section, a later financial year that ends at the end of that closing day;

disregard the salary and wages of the person from other sources or, if the person is a member of a couple, the salary and wages of the person and the person’s partner from other sources, in the amount worked out under subsection (6).

(6) Disregard the lesser of:
   (a) the total amount of salary and wages of the person from other sources or, if the person is a member of a couple, of the person and the person’s partner from other sources for the fortnight; and
   (b) the amount worked out using the following formula:

\[
\frac{\text{Amount previously disregarded in that financial year}}{\text{Number of days remaining in that financial year}} \times \frac{\text{Number of days in the fortnight that fall within that financial year}}{\text{Number of days in that financial year}} - 10,000
\]

where:

amount previously disregarded in that financial year means the total amount of salary and wages of the person from other sources or, if the person is a member of a couple, of the person and the person’s partner from other sources already disregarded in calculating a rate referred to in subsection (1) for the person for fortnights that fall in whole or in part in that financial year, because of a previous application, or previous applications, of this subsection and subsection (5).

number of days remaining in that financial year means the number of days in the period beginning at the start of the fortnight, and ending at the end of 30 June in that financial year.
$10,000 in salary and wages from other sources disregarded—part financial years

(7) If a closing day is prescribed for the purposes of this section that is not 30 June, then, for the purposes of calculating a rate referred to in subsection (1) for a person, for a fortnight all or part of which falls during the period:

(a) beginning at the start of the immediately preceding 1 July;

and

(b) ending at the end of the closing day;

disregard the salary and wages of the person from other sources or, if the person is a member of a couple, the salary and wages of the person and the person’s partner from other sources, in the amount worked out under subsection (8).

(8) Disregard the lesser of:

(a) the total amount of salary and wages of the person from other sources or, if the person is a member of a couple, of the person and the person’s partner from other sources for the fortnight; and

(b) the amount worked out using the following formula:

$$\left( \frac{10,000 \times \text{Total number of days in the period}}{365} - \frac{\text{Amount previously disregarded in the period}}{\text{Number of days remaining in the period}} \right) \times \frac{\text{Number of days in the fortnight that fall within the period}}{\text{Number of days remaining in the period}}$$

where:

(amount previously disregarded in the period) means the total amount of salary and wages of the person from other sources or, if the person is a member of a couple, of the person and the person’s partner from other sources already disregarded in calculating a rate referred to in subsection (1) for the person for fortnights that fall in whole or in part in the period, because of a previous application, or previous applications, of this subsection and subsection (7).

(number of days remaining in the period) means the number of days in the period beginning at the start of the fortnight, and ending at the end of the closing day.
(9) A person’s *salary and wages from other sources* are salary and wages that are not earned from work that is in any way related to the small business carried on by the person or, where the person is a member of a couple, the person’s partner.

**16 Subsection 24B(3)**

After “for the purposes of this Act”, insert “because the person is a farmer”.
Part 2—Consequential amendments

Age Discrimination Act 2004

17 Paragraph 41(2AA)(a)

After “24A”, insert “, 24AA”.

Social Security Act 1991

18 Section 547F

Repeal the section, substitute:

547F Exclusion of certain assets that are exempt under the Farm Household Support Act 1992

(1) If:

(a) an exceptional circumstances certificate referred to in section 8A of the Farm Household Support Act 1992 was issued in respect of a person; and

(b) the certificate has effect;

the person’s assets do not include any asset that is an exempt asset in respect of the person for the purposes of that Act because the person is a farmer.

(2) The person’s assets do not include any asset that is an exempt asset in respect of the person for the purposes of the Farm Household Support Act 1992:

(a) in a case where:

(i) the person is receiving exceptional circumstances relief payment because the person qualifies for the payment only under subsection 8A(5) of that Act; and

(ii) paragraph (b) does not apply;

because the person carries on a small business; and

(b) in a case where the person:

(i) is receiving exceptional circumstances relief payment because the person qualifies for the payment under subsection 8A(5) of that Act; and
Amendments relating to exceptional circumstances relief payment  
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(ii) but for subsubparagraph 8A(1)(b)(i)(C) of that Act, would also qualify under subsection 8A(1) of that Act for the payment; because the person carries on a small business and the person is a farmer.

19 Section 573E
Repeal the section, substitute:

573E Exclusion of certain assets that are exempt under the Farm Household Support Act 1992

(1) If:
   (a) an exceptional circumstances certificate referred to in section 8A of the Farm Household Support Act 1992 was issued in respect of a person; and
   (b) the certificate has effect;
   the person’s assets do not include any asset that is an exempt asset in respect of the person for the purposes of that Act because the person is a farmer.

(2) The person’s assets do not include any asset that is an exempt asset in respect of the person for the purposes of the Farm Household Support Act 1992:
   (a) in a case where:
       (i) the person is receiving exceptional circumstances relief payment because the person qualifies for the payment only under subsection 8A(5) of that Act; and
       (ii) paragraph (b) does not apply; because the person carries on a small business; and
   (b) in a case where the person:
       (i) is receiving exceptional circumstances relief payment because the person qualifies for the payment under subsection 8A(5) of that Act; and
       (ii) but for subsubparagraph 8A(1)(b)(i)(C) of that Act, would also qualify under subsection 8A(1) of that Act for the payment; because the person carries on a small business and the person is a farmer.
Part 3—Transitional provisions

20 Definition

In this Part:

*commencing day* means the day on which this Act commences.

*Principal Act* means the *Farm Household Support Act 1992*.

*Secretary* has the same meaning as in the Principal Act.

21 Person already receiving payment in the nature of exceptional circumstances relief payment

(1) This item applies if, immediately before the commencing day, a person is receiving a payment on the basis that the following are satisfied:

(a) qualification criteria similar to those in subsection 8A(5) of the Principal Act, inserted by item 10 of this Schedule;

(b) payability criteria similar to those in Division 2 of Part 2 of the Principal Act.

(2) The following applies:

(a) the person is taken to have made a proper claim for exceptional circumstances relief payment for the purposes of Part 3 of the Principal Act;

(b) the Secretary is taken to have made a determination under subsection 19(2) of the Principal Act, with effect from the start of the commencing day, that the claim is granted at the rate at which payment was received immediately before the commencing day;

(c) the Secretary is taken to have made a determination in writing under subsection 10(1) of the Principal Act (the *assets determination*), with effect from the start of the commencing day, that the value of the person’s assets does not exceed the person’s asset value limit;

(d) unless sooner revoked, the assets determination continues to have effect:

(i) if the next determination in respect of the person’s assets takes effect less than 6 months after the commencing day—until that determination takes effect;

or
(ii) if subparagraph (i) does not apply—until the end of 6 months from the commencing day.

(3) The Secretary may, by determination in writing, revoke or vary a determination that:
(a) because of paragraph (2)(b), the Secretary is taken to have made under subsection 19(2) of the Principal Act; or
(b) because of paragraph (2)(c), the Secretary is taken to have made under subsection 10(1) of the Principal Act;
in circumstances in which the Secretary could have revoked or varied a determination actually made under those subsections.

(4) Sections 53 and 53A of the Principal Act apply in relation to a determination under subitem (3) in the same way as they apply in relation to a determination under subsection 19(2) or 10(1) of the Principal Act.

(5) A determination made under subitem (3) is not a legislative instrument.

22 Person applying for payment in the nature of exceptional circumstances relief before commencement

(1) This item applies if, before the commencing day, a person applies for a payment on the basis that the following are satisfied:
(a) qualification criteria similar to those in subsection 8A(5) of the Principal Act, inserted by item 10 of this Schedule;
(b) payability criteria similar to those in Division 2 of Part 2 of the Principal Act;
but is not receiving payment on that basis immediately before the commencing day.

(2) The person is taken to have made a proper claim for exceptional circumstances relief payment for the purposes of Part 3 of the Principal Act, and to have made the claim on the commencing day.
Schedule 2—Other amendments of the Farm Household Support Act 1992

Farm Household Support Act 1992

1 Subparagraph 7(a)(ii)
Repeal the subparagraph.

2 Subsection 21(4)
Omit “under section 21A or 22”.

3 Sections 21A and 22
Repeal the sections.