Farm Household Support Amendment (Relief Measures) Bill (No. 1) 2019

Michael Klapdor
Social Policy Section

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Date introduced: 17 October 2019
House: House of Representatives
Portfolio: Agriculture
Commencement: On the earlier of proclamation or six months after Royal Assent.

Links: The links to the Bill, its Explanatory Memorandum and second reading speech can be found on the Bill’s home page, or through the Australian Parliament website.

When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the Federal Register of Legislation website.

All hyperlinks in this Bills Digest are correct as at November 2019.
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The Bills Digest at a glance

The Farm Household Support Amendment (Relief Measures) Bill (No. 1) 2019 (the Bill) will:

- increase the maximum time a person is able to access the Farm Household Allowance (FHA) from four years over a lifetime to four years in each specified ten year period
- change the allowable deduction regime to provide for losses from a farm enterprise and farm-related businesses to be deducted from the amount of income assessed under the FHA income test
- introduce a one-off lump sum ‘relief payment’ for those who have exhausted their four year maximum FHA period by 1 July 2020—the payment will be worth $7,500 for a single recipient or $6,500 for a member of a couple ($13,000 for a couple combined) and
- allow for the Minister for Agriculture to prescribe further lump sum payments—including the amount of the payment and the eligibility conditions—through the Minister’s Rule (a legislative instrument).

The measures were announced on 17 October 2019 as the next instalment of the Government’s response to the 2019 Independent Review into the FHA program, following on from changes introduced in July 2019.

The changes to the maximum time a person can receive the FHA were recommended by this Review.

The Review recommended much broader changes to the income test arrangements than those proposed in the Bill, including a decoupling of the FHA from the social security system.

The Review found that linking the FHA program to drought via supplementary or relief payments could lead to perverse outcomes—it recommended the Government provide relief payments through a program separate from the FHA.

Providing the Minister with the power to provide further relief payments through legislative instrument is a significant measure. The Minister will be able to set qualification criteria and the payment amounts through changes to the Minister’s Rule. While any such legislative instrument will be subject to disallowance by the Parliament, the power is very broad in scope with no guiding principles or eligibility criteria set out in the Farm Household Support Act 2014. The scope of the power to make these payments appears to be unprecedented, especially when compared with comparable payments such as lump-sum disaster payments which have some eligibility criteria and guidance on payment rates set out in legislation.

The Bill has broad support from non-government parties and stakeholders.

According to the Explanatory Memorandum the measures in the Bill are expected to cost $47 million through to June 2023.
Purpose of the Bill

The purpose of the Farm Household Support Amendment (Relief Measures) Bill (No. 1) 2019 (the Bill) is to amend the Farm Household Support Act 2014 (FHS Act) and the Social Security (Administration) Act 1999 (SS Admin Act) to:

• increase the maximum time a person is able to access the Farm Household Allowance (FHA) from four years over a lifetime to four years in each specified ten year period (Schedule 1)

• change the allowable deduction regime to provide for losses from a farm enterprise and farm-related businesses to be deducted from the amount of income assessed under the FHA income test (Schedule 2)

• introduce a one-off lump sum ‘relief payment’ for those who have exhausted their four year maximum FHA period by 1 July 2020—the payment will be worth $7,500 for a single recipient or $6,500 for a member of a couple ($13,000 for a couple combined) (Schedule 3) and

• allow for the Minister for Agriculture to prescribe further lump sum payments—including the amount of the payment and the eligibility conditions—through the Farm Household Support Minister’s Rule 2014 (Minister’s Rule), which is a legislative instrument (Schedule 3).

The measures were announced on 17 October 2019 as the next instalment of the Government’s response to the 2019 Independent Review of the FHA program. The changes to the maximum time a person can receive the FHA were recommended by this Review.

Structure of the Bill and the Bills Digest

The Bill contains three schedules. The Bills Digest provides information on the FHA including recent changes in the ‘Background’ section and examines the proposed amendments in the ‘Key issues and provisions’ section below.

Background

Farm Household Allowance

The FHA is an income support payment which assists eligible farmers and their partners who are experiencing financial hardship. It is paid at the same rate as the social security payment Newstart Allowance (or the same rate as Youth Allowance if the recipient is aged under 22 years). The payment is time-limited: farmers can only receive the payment for up to four cumulative years.

FHA recipients are granted a Health Care Card which enables access to discounted medicines under the Pharmaceutical Benefits Scheme and other concessions. Recipients can also receive a $4,000 activity supplement to pay for approved activities including training or professional advice. Recipients required to have a Farm Financial Assessment can receive a separate supplement worth up to $1,500 to assist with the cost of the assessment. A temporary supplement, the FHA Supplement, was payable to FHA recipients during one or both supplement payments periods:

1. B McKenzie (Minister for Agriculture), Making the FHA work better for farmers, media release, 17 October 2019.
3. Department of Human Services (DHS), Farm Household Allowance, DHS website, last updated 18 October 2019.
4. Prior to 1 August 2018, the maximum cumulative period was three years. This was extended to four years via the Farm Household Support Amendment Act 2018. See M Klapdor, New Bill to extend the Farm Household Allowance, FlagPost, Parliamentary Library blog, 27 June 2018.
5. Department of Agriculture (DoA), Farm Household Allowance, DoA website, last reviewed 17 October 2019.
1 September 2018 to 1 December 2018 and 2 December 2018 to 1 June 2019. The supplement amount for each period was $3,000 each for members of a couple and $3,600 for singles.\(^6\)

The FHA was introduced in 2014 via the FHS Act and replaced a number of financial supports offered to farmers during times of drought, in particular, the Exceptional Circumstances Relief Payment. The previous Exceptional Circumstances arrangements had been found to be inequitable and ineffective as they could result in farm businesses being less responsive to drought conditions.\(^7\)

The FHA was designed to support farmers in financial difficulty regardless of the specific cause or whether they were located within a specific drought declared area. It is intended to give farmers ‘breathing space to implement plans and seek training to become financially self-sufficient, so they are better placed to sustain their farming business’.\(^8\)

**Number of recipients**

According to the Department of Agriculture, as at 4 October 2019, more than 12,700 people had received the FHA since it was introduced in 2014.\(^9\) There were around 6,600 people receiving the FHA as at 4 October 2019.\(^10\)

**Expenditure**

Estimated actual expenditure for the FHA in 2018–19 was $163.4 million but this was expected to decrease to $59.7 million in 2019–20 (not including the impact of the measures proposed in the Bill).\(^11\) The Department of Agriculture’s *Annual Report 2018–19* states that $114.2 million was spent on FHA payments in 2018–19.\(^12\)

**Payment rates**

The current payment rates for the FHA are set out in Table 1.

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10. Ibid.
Table 1: Farm Household Allowance payment rates

<table>
<thead>
<tr>
<th>Recipient circumstances</th>
<th>Maximum basic rate</th>
<th>Energy Supplement</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single, aged under 22, no dependent children</td>
<td>$455.20</td>
<td>$7.00</td>
<td>$462.20</td>
</tr>
<tr>
<td>Single, aged 22 or over, no dependent children</td>
<td>$559.00</td>
<td>$8.80</td>
<td>$567.80</td>
</tr>
<tr>
<td>Single, aged 60 or over, no dependent children, after 9 continuous months on payments</td>
<td>$604.70</td>
<td>$9.50</td>
<td>$614.20</td>
</tr>
<tr>
<td>Single, aged under 22, with dependent children</td>
<td>$596.50</td>
<td>$9.20</td>
<td>$605.70</td>
</tr>
<tr>
<td>Single, aged 22 or over, with dependent children</td>
<td>$604.70</td>
<td>$9.50</td>
<td>$614.20</td>
</tr>
<tr>
<td>Partnered, aged 22 or over</td>
<td>$504.70</td>
<td>$7.90</td>
<td>$512.60</td>
</tr>
<tr>
<td>Partnered, aged under 22, no dependent children</td>
<td>$455.20</td>
<td>$7.00</td>
<td>$462.20</td>
</tr>
<tr>
<td>Partnered, aged under 22, with dependent children</td>
<td>$499.90</td>
<td>$7.70</td>
<td>$507.60</td>
</tr>
</tbody>
</table>


**Other supports available**

The FHA is only one of the Australian Government supports available to farms in difficulty, particularly during drought. Other supports available include the Farm Management Deposits scheme, concessional taxation arrangements, concessional loans, cash payments under the Drought Community Support Initiative, counselling and mental health supports.13

**Eligibility for the FHA**

To be eligible for the FHA, an individual must be a farmer or partner of a farmer and meet residency requirements, income and assets tests as well as mutual obligation requirements. The income and assets tests and mutual obligation requirements are different from those that apply to Newstart Allowance and are designed to allow farmers to remain on their farm rather than being

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forced to sell off some or all of their farm assets in order to qualify for support. Certain waiting or preclusion periods may also apply before an eligible recipient can start receiving the FHA.\textsuperscript{14}

\textbf{Income test}

To meet the FHA income test, a claimant must have income below the cut-off point for Newstart Allowance or Youth Allowance, whichever applies (the cut-off point is the point at which a person’s Newstart Allowance rate is reduced to zero under the Newstart Allowance income test).\textsuperscript{15}

The current income test cut-off for a single Newstart Allowance recipient is $1,075.34 per fortnight and for a partnered recipient it is $983.34 (each).\textsuperscript{16}

Deductions can apply in determining assessable income. Allowable deductions are set out in the Minister’s Rule.\textsuperscript{17} The Minister’s Rule currently provides for allowable deductions in relation to farm income to be any amounts that would reduce a person’s ordinary income under section 1075 of the \textit{Social Security Act 1991} (SS Act). This section relates to permissible deductions of business income such as expenses necessary for the conduct of a business with the purpose of earning a taxable income.\textsuperscript{18}

The Minister’s Rule also provides that where a farm enterprise has less than zero income for the year, some off-farm income may be deducted in calculating total income using what is known as the ‘off-farm income offset’.\textsuperscript{19} Off-farm income is any amount earned, derived or received that was not produced by an activity of the farm enterprise (such as agistment payments, interest payments and rental income). The deduction can only be used where the ordinary farm income from the farm enterprise is less than zero and the off-farm income is being used to pay interest on a loan related to the farm enterprise. A maximum of $80,000 of off-farm income can be deducted from assessable income under the income test in this way, if the FHA claimant meets all the applicable requirements for this deduction.\textsuperscript{20}

\textbf{Assets test}

There are two parts of the assets test: one applies to non-farm assets and the other to farm assets.

The non-farm and liquid assets test assesses liquid assets, such cash held in bank accounts, term deposits and shares; and non-farm assets such as jewellery, furniture, investment properties, businesses and vehicles. The family home and up to two hectares of land surrounding it (on a single title and used only for domestic purposes) is exempt from the non-farm assets test.\textsuperscript{21} A farm asset is any asset that is used or held wholly or mainly for the purposes of a farm enterprise and includes land used for the purpose of a farm enterprise, water resources or access rights, livestock, crops, plant or equipment, and the unpaid portion of a loan used to purchase farm assets.\textsuperscript{22}

\begin{enumerate}
\item These include the Newly Arrived Resident’s Waiting Period, the seasonal worker preclusion period and the income maintenance period. See DAWR, \textit{Farm Household Allowance: guidelines}, DAWR, Canberra, July 2019, pp. 18–23.
\item DHS, ‘Farm Household Allowance: income and assets test’, DHS website, last updated 20 September 2019.
\item Farm Household Support Minister’s Rule 2014, section 6.
\item Ibid., op. cit., pp. 35–38.
\item Ibid., p. 37.
\item Ibid, ‘Farm Household Allowance: income and assets test’, op. cit.
\item DAWR, \textit{Farm Household Allowance: guidelines – legislative changes from 5 April 2017}, DAWR, Canberra, April 2017, p. 4.
\end{enumerate}
The combined value of assessable non-farm assets must not exceed the asset limits for Newstart Allowance. The current asset test limits are:

- single homeowner: $263,250
- single non-homeowner: $473,750
- couple homeowner combined: $394,500
- couple non-homeowner combined: $605,000.\(^{23}\)

The farm assets test assesses the net value of the farm’s assets. To be eligible for the FHA, the total value of farm assets must not exceed $5 million.\(^{24}\)

In some cases, hardship provisions can apply which allow for some assets to be made exempt from the assets test. This can occur where a person is unable to rearrange their financial affairs, is in severe financial hardship and is unable to sell or borrow against an asset.\(^{25}\)

**Mutual obligation requirements**

The mutual obligation requirements for the FHA require a recipient to complete a Farm Financial Assessment and enter into a Financial Improvement Agreement.\(^{26}\)

The Farm Financial Assessment considers the financial position of the farmer, their partner and the farm. As noted above, up to $1,500 can be provided to help cover the cost of consulting a prescribed advisor to complete the assessment.

The Financial Improvement Agreement is a plan for working towards financial self-reliance and sets out activities to be undertaken to improve the farmer’s financial situation. Activities can include undertaking training or study, obtaining professional advice, seeking or being willing to undertake paid work or any other activities approved by the Department of Agriculture and Water Resources.\(^{27}\)

**Recent policy changes**

**Farm Household Support Amendment (Temporary Measures) Act 2018**

In August 2018, the Coalition Government introduced and passed the *Farm Household Support Amendment (Temporary Measures) Act 2018* to temporarily increase the farm assets value limit to $5 million from 1 September 2018 to 30 June 2019 and provide for two instalments of the FHA Supplement during the same period.\(^{28}\)

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\(^{24}\) The farm asset value limit was temporarily increased to $5,000,000 (from $2,550,000) between 1 September 2018 to 30 June 2019. This increase was made permanent from 1 July 2019 as a result of amendments in the *Farm Household Support Amendment Act 2019*, These amendments also removed indexation of the farm asset value limit—previously the value limit was indexed on 1 July of each year in line with movements in the Consumer Price Index. M Klapdor, *Farm Household Support Amendment Bill 2019*, Bills digest, 8, 2019–20, Parliamentary Library, Canberra, 2019, p. 9.


\(^{26}\) DHS, "Farm Household Allowance: how to work with your caseworker", DHS website, last updated 25 July 2019.

\(^{27}\) DAWR, *Farm Household Allowance: guidelines*, op. cit., pp. 43–44.

Then Minister for Agriculture and Water Resources, David Littleproud, stated that ‘these temporary measures are designed to help our farmers in need in the short term while we undertake an independent review of the program’.  

2019–20 budget measure—forced disposal of livestock

In the 2019–20 Budget, the Government announced that it would provide $3.1 million over two years from 2018–19 to exempt net income from the forced sale of livestock from the FHA income test, where that income is invested in a Farm Management Deposit.

The measure was implemented via the [Farm Household Support (Forced Disposal of Livestock) Minister’s Rules 2019](https://www.gov.au/australian-government/environment-and-energy/energy/farm-household-support) which modified the definition of income in the [SS Act](http://www.legislation.gov.au). To meet the requirements, the disposal (including killing) of livestock must occur wholly or mainly for one of the following reasons:

- an action by the Australian Government or a state or territory government that has the effect that land or water cannot be used to support the livestock commercially (for example, compulsory acquisition of an estate in land or changing a law governing how land or water may be used), other than an action taken with the farmer’s free consent
- drought or natural disaster affecting the availability of pasture, fodder or water so that the farm could not reasonably support the livestock
- reasonable concern for the welfare of the livestock
- a requirement by or under a law of the Commonwealth, a state or a territory to dispose of the livestock.

An amount received for the forced disposal of livestock must be deposited in a Farm Management Deposit or Centrelink must be notified that it will be deposited within 42 days.

Independent Review of the Farm Household Allowance

The Independent Review was completed in February 2019. The Review Panel was chaired by Michele Lawrence, a dairy farmer and member of the Agriculture Industry Advisory Council.

The Review made six broad recommendations:

1. decoupling the FHA from the SS Act with the aim of simplifying the application process and tailoring the eligibility settings to farm businesses
2. strengthening mutual obligation requirements to make them more meaningful and enable farmers to plan through current hardships and future business shocks or to leave the industry with dignity
3. refocus the Rural Financial Counselling Service to focus on business coaching
4. improve communications of the FHA’s purpose and requirements
5. distinguish the FHA from drought and promote its broader purpose of supporting farmers during financial hardship irrespective of the cause

32. Ibid.
33. Lawrence et al., Independent Review of the FHA, op. cit.
6. build in regular assessment of the performance of the scheme.\textsuperscript{34}

\textit{Farm Household Support Amendment Act 2019}

In July 2019, the Coalition Government introduced and passed the \textit{Farm Household Support Amendment Act 2019}.\textsuperscript{35} That Act:

- made permanent the temporary increase in the FHA farm assets value limit to $5 million
- removed indexation of the farm assets value limit to movements in the Consumer Price Index (CPI) and
- clarified the treatment of allowable deductions for the purposes of the FHA income test so that farm business deductions apply to farm business income, and off-farm deductions apply to off-farm income.\textsuperscript{36}

The Act implemented only part of one of the actions associated with the Independent Review’s recommendations: maintaining the $5 million farm asset limit.\textsuperscript{37} However, the amendments to indexation were counter to the Review’s suggestion that the limit continue to be indexed to movements in the Consumer Price Index.\textsuperscript{38}

\textbf{Committee consideration}

\textit{Senate Rural and Regional Affairs and Transport Legislation Committee}

On 17 October 2019, the Senate referred the Bill to the Senate Rural and Regional Affairs and Transport Legislation Committee for inquiry and report by 7 November 2019.\textsuperscript{39} The Committee tabled its report on 7 November 2019.\textsuperscript{40} Details of the inquiry are at the Committee website.

The Committee recommended the Bill be passed stating:

The prompt enactment of this bill will make sure farmers can receive ongoing financial assistance, while also providing a broader scope for off-farm income streams which do not jeopardise the eligibility of farmers for the FHA. Given the importance of these measures, the committee recommends that the bill be passed as a matter of priority.\textsuperscript{41}

Australian Labor Party (Labor) senators made additional comments to the Committee’s report stating their position that there should be no time-limit for FHA recipients while the current drought is ongoing. Labor senators noted: ‘the Government has not provided a coherent rationale for cutting farmers off and then providing the equivalent of six months payment up-front when the regular payment is withdrawn’.\textsuperscript{42}

Labor senators also raised concerns with the proposed relief payment:

\begin{itemize}
  \item \textsuperscript{34} Ibid., p. x.
  \item \textsuperscript{35} Parliament of Australia, \textit{Farm Household Support Amendment Bill 2019 homepage}, Australian Parliament website.
  \item \textsuperscript{36} M Klapdor, \textit{Farm Household Support Amendment Bill 2019}, op. cit., p. 3.
  \item \textsuperscript{37} Lawrence et al., Independent Review of the FHA, op. cit., p. 25.
  \item \textsuperscript{38} Ibid.
  \item \textsuperscript{39} Senate Rural and Regional Affairs and Transport Legislation Committee, \textit{Farm Household Support Amendment (Relief Measures) Bill (No. 1) 2019 [Provisions]}, Senate, Canberra, November 2019, p. 1.
  \item \textsuperscript{40} Ibid.
  \item \textsuperscript{41} Ibid., p. 13.
  \item \textsuperscript{42} Australian Labor Party Senators, \textit{Additional Comments}, Senate Rural and Regional Affairs and Transport Legislation Committee, \textit{Farm Household Support Amendment (Relief Measures) Bill (No. 1) 2019 [Provisions]}, The Senate, Canberra, November 2019, p. 15.
\end{itemize}
Currently, there is confusion as to why the payment is being paid to farmers and submitters have raised concerns that the relief payment should not be considered as an exit payment. The Government must explain the intent behind the relief payment and under what circumstances additional relief payments will be made by the Minister’s rules.43

**Senate Standing Committee for the Scrutiny of Bills**

At the time of writing, the Senate Standing Committee for the Scrutiny of Bills was yet to consider the Bill.

**Policy position of non-government parties/independents**

**Australian Labor Party**

Labor supports the Bill. Shadow Minister for Agriculture Joel Fitzgibbon stated in his second reading speech: ‘We support this bill, just as we've supported every other bill—this is the 12th we've supported. This is the 12th package of amendments to the farm household allowance, and we've supported each and every one of them’.44

Labor has also called on the Government to remove the four year limit on the FHA altogether. Fitzgibbon stated:

> We need to take away the time cap, which is forcing farmers off income support, and park it away until we get to the other end of this drought, and let's all pray that it comes sooner rather than later. I don't think there's an Australian out there who thinks that we should be throwing farming families off income support—a very modest payment—at this point in time.45

**Centre Alliance Party**

The Centre Alliance Party supports the Bill. Rebekha Sharkie MP commended the Bill to the House in her second reading speech and noted the findings of the Independent Review of the FHA, particularly recommendations relating to mutual obligation requirements and the need for a focus on long-term viability and structural change.46

**Katter’s Australian Party**

Katter’s Australian Party MP Bob Katter supports the Bill, stating in his second reading speech:

> We're here to talk about family farm assistance. We applaud the government for extending that to four years but, unfortunately and sadly, if you want to look at an average figure for droughts—not that there is an average figure—you're probably looking at about seven years. Under intense pressure they have added a cash payment at the end of the four years. We appreciate that as well.47

**Pauline Hanson’s One Nation Party**

Senator Pauline Hanson reportedly criticised the current assistance for farmers as ‘lousy’ and has proposed allowing farmers to continue to receive the FHA beyond the proposed four year time

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43. Ibid.
45. Ibid.
limit.\textsuperscript{48} The proposal would allow the Secretary of the Department of Agriculture to provide ‘exceptional circumstances certificates’ which would allow FHA recipients to continue to receive the payment beyond the time limit if the area they reside in is still in drought.\textsuperscript{49}

**Position of major interest groups**

**Independent Review Panel**

The members of the Independent Review of the FHA panel made a submission to the Senate Rural and Regional Affairs and Transport Legislation Committee’s inquiry into the Bill.\textsuperscript{50} In the submission the panel stated their support for the Bill on the condition that further amendments would follow. The panel members stated: ‘We do not believe that the proposed amendment addresses the systemic concerns underpinning the broader recommendations in our report’.\textsuperscript{51}

**NSW Farmers’ Association**

The NSW Farmers’ Association stated its support for the Bill in its submission to the Senate committee inquiry into the Bill but noted that ‘many issues identified by our members and other stakeholders are yet to be addressed’.\textsuperscript{52} The Association wanted more information on what supports would be available to farmers who have reached their four year limit in ten (under the proposed amendments) and clarity around the purpose of the proposed lump sum relief payments. The Association raised concerns with the implementation of the changes to the off-farm income offset and issues with the current application process for the FHA:

Our members are of the view that the overall procedure for processing applications and assessing loss and income needs to be overhauled, rather than tinkering with different parts. There is significant complexity in the application process and in the ongoing reporting requirements, and these need to be addressed.\textsuperscript{53}

**Isolated Children’s Parents’ Association of Australia Inc.**

The Isolated Children’s Parents’ Association of Australia Inc. (ICPAA) stated its support for the Bill in a submission to the Senate committee inquiry.\textsuperscript{54} The ICPAA also suggested the Government should consider expanding FHA eligibility to non-farmers from rural areas.\textsuperscript{55}

**Financial implications**

According to the Explanatory Memorandum the measures in the Bill are expected to cost $47 million through to June 2023.\textsuperscript{56} This is not the net fiscal impact as the Explanatory

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\textsuperscript{48} R Viellaris, ‘Hanson sprays at PM’, The Courier-Mail, 31 October 2019, p. 3.
\textsuperscript{49} Ibid.
\textsuperscript{50} M Lawrence, R Slonim and G Somerset, Submission to the Senate Rural and Regional Affairs and Transport Legislation Committee, Inquiry into the Farm Household Support Amendment (Relief Measures) (No. 1) Bill 2019, [Submission no. 5], 25 October 2019.
\textsuperscript{51} Ibid., [p. 1].
\textsuperscript{52} NSW Farmers’ Association, Submission to the Senate Rural and Regional Affairs and Transport Legislation Committee, Inquiry into the Farm Household Support Amendment (Relief Measures) (No. 1) Bill 2019, [Submission no. 2], 28 October 2019, [p. 1].
\textsuperscript{53} Ibid., [p. 2].
\textsuperscript{54} Isolated Children’s Parents’ Association of Australia Inc., Submission to the Senate Rural and Regional Affairs and Transport Legislation Committee, Inquiry into the Farm Household Support Amendment (Relief Measures) (No. 1) Bill 2019, [Submission no. 4], October 2019, p. 1.
\textsuperscript{55} Ibid., p. 2.
\textsuperscript{56} Explanatory Memorandum, Farm Household Support Amendment (Relief Measures) (No. 1) Bill 2019, p. 3.
Memorandum states that this figure does not include the costs of service delivery or cost-offsets from tax revenue.

Statement of Compatibility with Human Rights

As required under Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011 (Cth), the Government has assessed the Bill’s compatibility with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of that Act. The Government considers that the Bill is compatible.  

Parliamentary Joint Committee on Human Rights

At the time of writing, the Parliamentary Joint Committee on Human Rights had not considered the Bill.

Key issues and provisions

The Bill proposes to:

- increase the maximum time a person is able to access the FHA from four years over a lifetime to four years in each specified ten year period
- change the allowable deduction regime to provide for losses from a farm enterprise and farm-related businesses to be deducted from the amount of income assessed under the FHA income test
- introduce one-off lump sum ‘relief payment’ for those who have exhausted their four year maximum FHA period by 1 July 2020—the payment will be worth $7,500 for a single recipient or $6,500 for a member of a couple ($13,000 for a couple combined)
- allow for the Minister for Agriculture to prescribe further lump sum payments—including the amount of the payment and the eligibility conditions—through the Minister’s Rule (a legislative instrument).

Schedule 1—Time limit on payment

When the FHA was first introduced in 2014, the time limit for receipt of the payment was three years in a person’s lifetime. Former Minister for Agriculture, Barnaby Joyce, stated at the time: ‘The three years of income support provided by the allowance will give farm families time to plan for their future and take action to achieve greater financial security and self-reliance’.  

The 2013 Intergovernmental Agreement on National Drought Reform (which led to the establishment of the FHA) was reviewed in 2018 but the Review did not raise the three year time limit on claiming FHA as a significant issue. Further, the Secretary of the Department of Agriculture and Water Resources Daryl Quinlivan told a Senate Estimates hearing that the issue of the time limit ‘was not raised in any prominent way in the review and it has not been a major part of the conversations with Commonwealth and state ministers on the matter that I have been party to’.

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57 Ibid., pp. 12–15.
60 Senate Rural and Regional Affairs and Transport Legislation Committee, Official committee Hansard, 24 May 2018, p. 20.
The time limit was increased to four years from 1 August 2018 as a result of amendments made by the Farm Household Support Amendment Act 2018. Then Minister for Agriculture and Water Resources David Littleproud stated:

When the farm household allowance program was introduced in 2014, the cumulative period of farm household allowance available to an eligible farmer or their partner was set at three years, or 1,095 days.

However, this government has seen firsthand and listened to the experiences of Australian farmers. We know that some farmers and their families have been, and continue to be, subject to pressures that extend beyond a cumulative three year period and need more time to recover from hardship and get back on their feet.61

The more recent Independent Review of the FHA found that changes in the time limit can create expectations of ongoing support and impeded the effectiveness of the program in delivering structural change.62 The Independent Review quoted two witnesses on the change to a four year time limit:

The theory of a three year payment was a good one and was able to be used as leverage to get people to act. After the introduction of the fourth year the message of ‘no more, this is it’ was erased. Some customers are already asking ‘if it does not rain will there be a fifth year?’ (Farm Household Case Officer, Victoria)

It was difficult when the fourth year was announced as it undid the work of the counsellors telling people it is time limited and they need to use the time to do the hard thinking and make the strategic decisions to be able to improve their circumstances. (Rural financial counsellor, New South Wales)63

The Independent Review considered that further changes to the four year time limit should not occur but found that the four years in a lifetime limit was unrealistic and should be changed to four years in every ten. The Review found:

Allowing access only once in a lifetime does not acknowledge that good and viable farmers can be affected by multiple financial downturns outside of their control over the course of their lives.64

The Independent Review recommended the four years in ten time limit as it:

...provides farmers with a reasonable level of support over their lifetime and strikes a balance between acknowledging the variability of agriculture and supporting farmers in need, while not impeding structural change and entrenching welfare dependency.65

Key provisions

Items 1–4 of Schedule 1 amend sections 3, 4 and 5 of the FHS Act (which set out the objects of the Act, the simplified outline and the definitions, respectively) to change references to the current four year time limit with references to the new fours years in a specified ten year period time limit.

63. Ibid.
64. Ibid., pp. 38–39.
65. Ibid., p. 39.
**Item 6** repeals subsection 6(1) of the *FHS Act* and inserts **proposed subsections 6(1) and 6(1A)** which define the new terms **specified 10 year period** and **meets the four years or less requirement**. A specified 10 year period is a period of ten years beginning on 1 July 2014 or on a tenth anniversary of 1 July 2014. A person is considered to meet the four years or less requirement if, on a day FHA is payable to an individual, they have not received FHA for more than 1,460 days in the specified 10 year period in which the day falls. Under the proposed changes, those who have exhausted their FHA time limit will not be able to benefit from the amendment until the next ten year period commences from 1 July 2024.

Paragraph 8(h) of the *FHS Act* provides for the current four year time limit for FHA qualification for a farmer. **Item 9** repeals and substitutes paragraph 8(h) to add the qualification requirement that the person meets the four years or less requirement.

**Item 10** repeals and substitutes paragraph 9(j) to apply the same qualification requirement to a farmer’s partner.

**Schedule 2—Farm business losses**

**Current FHA income test**

The current income test arrangements for the FHA are complex and the Independent Review of the FHA found the current design creates confusion and ‘unintended perverse outcomes’. In particular, the Review found that the income test treatment of non-farm income acted as a disincentive for farmers to earn income through contracting or agistment activities which are classified as ‘non-farm’ despite using farm equipment or land. The Review recommended decoupling the FHA from social security income test arrangements and designing a FHA-specific income test drawing more on taxation classifications of income where appropriate.

As discussed in the ‘Background’ section to this Bills Digest, the current income test provides for allowable deductions from assessable income in a way that replicates the treatment of business expenses and income under the social security means test. The current income test also provides for a special non-farm income offset where non-farm income that is used to pay interest on a farm-related loan can be excluded from the income test. This non-farm income offset can only be used where the farm enterprise is making a loss and a maximum of $80,000 in non-farm income can be excluded in this way.

**2019 changes**

Some small changes were made to the income deduction arrangements from 1 July 2019 as a result of amendments in the *Farm Household Support Amendment Act 2019*. The amendments clarified that the business deductions that arose from the farm business could be applied only to farm income and deductions that arose from non-farm businesses could only be applied to non-farm income. The amendments did not change the non-farm income offset component of the income test.

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66. Ibid., pp. 17–24.
Proposed amendments—broadening the income offset provisions

Schedule 2 of the Bill proposes to replace the existing income test deduction arrangements, including the non-farm income offset arrangements. The new arrangements will mean that farm business losses can be used as a deduction against any other assessable income under the income test. The definition of farm business will include the farm enterprise and farm-related businesses—those that use the same equipment or other physical assets. A limit on the loss amount a person and their partner (if any) can deduct from their assessable income in this way will apply—$100,000 in a financial year. A person and their partner cannot have their assessable income reduced below zero under the proposed provisions.

The proposed amendments allow for the existing social security business income assessments and deductions to apply in working out a person’s assessable income under the income test (currently, subsection 67(3) of the FHS Act prevents the permissible deductions for business income provisions under the SS Act applying to income from farm enterprises). The only FHA-specific deduction that will apply will be in relation to farm business losses.

Key provisions

Section 67 of the FHS Act sets out how to work out allowable deductions for the purposes of working out an FHA claimant’s ordinary income (the income assessed under the income test). Subsections 67(2) and (5) allow for the Minister’s Rule to prescribe the kinds of allowable deductions that relate to a farm enterprise, maximum amounts that can be deducted and circumstances where the allowable deduction provisions may not apply.

As noted above, the Minister’s Rule currently allows for the same business deductions as apply under the SS Act to apply to farm income for the purposes of section 67. The Minister’s Rule also provides for the ‘off-farm income offset’ which allows for a deduction where certain off-farm income is used to pay interest on a loan related to the farm enterprise. Currently, the upper limit on the amount that can be deducted under this offset is $80,000.

Item 1 of Schedule 2 repeals and substitutes section 67 of the FHS Act to shift all the key provisions which set out allowable deductions from the FHS Act to the Minister’s Rules.

Items 2 and 3 amend Parts 1 and 2 of the Minister’s Rule to provide for the new allowable deduction regime. Under the proposed changes, the provisions relating to general business deductions that apply as under the SS Act and the off-farm income offset provisions will be removed.

The new provisions will allow for a farm business that operates at a loss to claim the loss amount as a deduction on their ordinary income. The maximum amount that can be deducted by the person and their partner (if any) is $100,000 per annum. A farm business is defined at proposed section 7B of the Minister’s Rule as a business that is a farm enterprise and any directly related business. A directly related business, also defined in the same section, is one that relies to a large extent on the use of shared equipment or other shared physical assets with the farm enterprise. The amount of the loss is calculated as the difference between the farm business’ income and any reductions. Reductions are the same deductions as are made for a tax year under Division 1A of Part 3.10 of the SS Act were you to assume the income from the farm business for the tax year.

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69. Farm Household Support Minister’s Rule 2014, proposed sections 6 and 7.
70. Farm Household Support Minister’s Rule 2014, proposed section 7A.
exceeded the reductions (that is, as if the business were not making a loss) and the person was the only person carrying on the farm business.

While the definition of farm business can capture some activities that would previously have been considered ‘off-farm income’—for example, income from agistment—the new provisions will no longer allow for off-farm income used to pay interest as an offset. However, the provisions will enable any losses from the farm or farm-related businesses to reduce the level of income from other sources (such as financial investments or other employment) that will be assessed under the FHA income test.

**Schedule 3—Relief payments**

Schedule 3 of the Bill provides for a lump-sum relief payment to be paid to farmers who reach (or have reached) the FHA time limit prior to 1 July 2020. The Schedule also gives the Minister a rule-making power to make further lump sum payments, including the eligibility for and amount of the payment.

**Relief payment for reaching the time limit**

The proposed relief payment for those who have received the FHA for 1,460 days (four years) prior to 1 July 2020 will be paid at a rate of $6,500 for a member of couple ($13,000 combined if both members of the couple qualify) and $7,500 for a single person. The only qualifying criterion for the payment is that the person has received the FHA for four years prior to 1 July 2020. No claim is required for the payment and no debt will be raised against someone who receives the payment when they should not have (for example, due to error or where they received the incorrect rate of payment).

Officials from the Department of Agriculture told a Senate Estimates hearing in October 2019 that around 1,800 farmers and partners who are currently on the FHA are expected to have reached the four year limit by June 2020.

In his second reading speech on the Bill, Minister for Water Resources, Drought, Rural Finance, Natural Disaster and Emergency Management David Littleproud noted that the ‘FHA is not a drought measure’. However, the relief payment is explicitly a drought relief measure:

> ... in recognition of the extending severe drought conditions, this bill provides for a relief payment for those farmers who have or will exhaust their four years of payment up until 30 June 2020. Each couple that has come to the end of their four-year payment period will be given a drought relief payment of $13,000 and for singles this drought relief payment will be $7,500. That’s the equivalent of six months FHA payment.

Some FHA recipients have done everything they can to respond to their circumstances. Many have continued to face severe drought conditions. Nothing any of us can do will make it rain but we can ease this transition off payment. This creates more space for those people to take the time they need to decide what their long-term future holds.

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71. Farm Household Support Act 2014 (FHA Act), proposed sections 89E and 89F.
72. Senate Rural and Regional Affairs and Transport Legislation Committee, Official committee Hansard, [proof], 22 October 2019, p. 119.
74. Ibid.
Independent Review opposed relief payments through the FHA program

The Independent Review was against using the FHA to provide one-off relief payments. The Review heard evidence that the payment of the FHA Supplement lump sums had increased confusion around the purpose of the FHA program and that ‘the purpose and objective of the FHA has been lost to a large extent in the promotion of the supplementary payment’. 75 The Review heard from rural financial counsellors that these lump sum payments, presented as drought relief, diverted the FHA from its original purpose—assistance during the time of adjustment—to a welfare payment for those in drought. 76

The Independent Review found that the FHA Supplement payments provided in 2018 and 2019 had attracted a cohort of farmers not suited to the objectives of the FHA such as pensioners who switched payments in order to receive the lump-sum payments. 77

The Review considered that linking the FHA program to drought via supplementary payments could lead to perverse outcomes and concluded: ‘The Panel considers that the FHA program should not be used to provide one-off drought relief payments, and that the government should find alternative programs to provide such assistance’. 78

Power to make further relief payments

Schedule 3 will also give the Minister for Agriculture the power to make further relief payments through amendments to the Minister’s Rule. 79 The powers are very broad, allowing for the Minister to prescribe qualification requirements that might apply to these payments and the amounts. As with the relief payment for those who have exhausted their FHA time limit, there will be no requirement for a claim to be made and any overpayments cannot be raised as debts (except in cases of fraud). 80

Amendments to the Minister’s Rule are legislative instruments and can be disallowed by the House of Representatives or the Senate. 81 However, providing such a broad rule-making power to a Minister to make lump-sum payments of any amount and with no guiding criteria set out in the Act appears to be unprecedented. The lump-sum Australian Government Disaster Recovery Payment (AGDRP)—which is intended to be paid in the immediate aftermath of a major disaster such as a bushfire or flood—includes eligibility criteria and basic provisions for the amount of payment in the SS Act (which can then be further adjusted by the Minister). 82 The AGDRP is also a lump sum payment but is paid at a much lower rate than the proposed relief payment—$1,000 for

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<td>75.</td>
<td>Lawrence et al., Independent Review of the FHA, op. cit., p. 54.</td>
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<td>76.</td>
<td>Ibid.</td>
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<td>Ibid., p. 55.</td>
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<td>79.</td>
<td>FHA Act, proposed subsection 89E(2).</td>
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<td>80.</td>
<td>FHA Act, proposed subsection 89F(3).</td>
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<td>81.</td>
<td>Explanatory Memorandum, op. cit., p. 9; The Senate, ‘No. 19 Disallowance’, Guides to Senate Procedure, Parliament of Australia website, last reviewed June 2019. The Legislation Act 2003 sets out the requirements for legislative instruments. Legislative instruments must be tabled in Parliament (section 38) and are generally disallowable by the Parliament (sections 42 and 44). The legislative instrument to be made by the Minister under section 106 and proposed subsection 89E(2) of the FFA Act will be disallowable by either House of Parliament.</td>
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<td>82.</td>
<td>Social Security Act 1991, sections 1061K–1061P.</td>
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an adult and $400 for a child. These rates have not been changed since the payment was introduced in 2006.

The Explanatory Memorandum provides no information as to the kinds of situations in which further relief payments are envisaged. The Minister’s second reading speech also does not refer to the proposed rule-making power, the circumstances in which it might be used or why there is a need for this power. Deputy Prime Minister Michael McCormack has suggested that there will be further supplementary payments available to those who reach the FHA time limit due to the ongoing drought:

Well, the Farm Household Allowance of course is available for four years in every ten, and once farmers have finished with the Farm Household Allowance, if they’re coming off that, if they’ve been in drought for four years, well there’ll be a supplementary payment of $13,000 for couples. But we’re not going to allow any farmers in drought-stricken areas to miss out. To not know where their next income is coming from. We will support farmers, the legislation allows us to make supplementary payments, and we will continue to do that … It’s very, very important that people know that the Federal Government has their back. That certainly in those drought-stricken areas, there will be assistance, there will be ongoing assistance and we will be supporting our farmers.

Key provisions

**Item 3 of Schedule 3** inserts **proposed Part 4B—Relief payments** into the **FHS Act**.

**Proposed section 89E** sets out the qualification requirements for a relief payment:
- if 1,460 days of the FHA was payable to the person before 1 July 2020 or
- they meet the circumstances set out in the Minister’s Rule.

**Proposed section 89F** sets out the amount of a relief payment:
- if their previous FHA rate was calculated on the basis of them being a member of a couple—$6,500
- any other previous FHA circumstances—$7,500 or
- where the amount is paid under circumstances set out in the Minister’s Rule, an amount prescribed in the Minister’s Rule.

**Proposed section 89F** also provides that an amount paid as a relief payment that should not have been paid is not a debt due to the Commonwealth (except where the payment was obtained by fraud).

**Item 6** amends table item 6 at subsection 93(1) of the **FHS Act** so a relief payment is considered a ‘social security payment’ under the **SS Act**. **Item 7** amends table item 14 at section 95 so that the **SS Act** provisions relating to debt recovery through deductions from a person’s social security payment do not apply to relief payments.

**Item 9** repeals section 12L of the **SS Admin Act** and substitutes **proposed section 12L**, which provides that a claim is not required for FHA supplement or a relief payment made under the **FHS Act**.

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Item 10 adds relief payment to the list of payments defined as a *lump sum benefit* at subsection 47(1) of the *SS Admin Act*. This section provides for Centrelink’s administration of lump sum payments and sets out that they must be paid to the person entitled to them unless another provision applies, such as where the person has nominated another individual to receive their payments.