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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

FARM HOUSEHOLD SUPPORT AMENDMENT BILL 2007

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Minister for Agriculture,
Fisheries and Forestry, the Hon Peter McGauran MP)

FARM HOUSEHOLD SUPPORT AMENDMENT BILL 2007

OUTLINE

On 7 November 2006, the Prime Minister made an announcement to allow agriculturally dependent small business operators to access the same Exceptional Circumstances (EC) assistance as is already provided to farmers.

The *Farm Household Support Amendment Bill 2007* (the Bill) makes amendments to the *Farm Household Support Act 1992* (FHS Act), and consequential amendments to the *Age Discrimination Act 2004* (AD Act) and the *Social Security Act 1991* (SS Act), in order to provide agriculturally dependent small business operators with access to EC assistance.

Agriculturally dependent small business operators are currently able to access EC Relief Payments through ex-gratia arrangements. The amendments to the FHS Act will formalise these arrangements as well as provide agriculturally dependent small business operators with access to a Health Care Card.

The consequential amendments to the SS Act will provide agriculturally dependent small business operators with concessions for the Youth Allowance and Austudy means tests, mirroring those that are currently provided to farmers.

The consequential amendment to the AD Act will make certain that the AD Act applies consistently to the provisions in the FHS Act that relate to payments made to farmers, and those made to agriculturally dependent small business operators.

Sections in the FHS Act that limit access to assistance based on a person's age, and which have not already been granted exemptions from the operation of the AD Act, will be repealed in order to bring it into line with the intent of the AD Act.

The amendments affect agriculturally dependent small business operators where 70 per cent or more of their gross business income is derived from providing farming related goods and services to farmers in EC declared areas. In effect, the amendments will allow eligible small business operators to access the same assistance that is currently provided to farmers, until 30 June 2008.

The viability of many agriculturally dependent small businesses is highly dependent on the viability of farm businesses. While farm businesses have been the first group to experience the effects of the worsening drought, agriculturally dependent small businesses in drought affected areas are consequently beginning to experience severe financial hardship.

Without the assistance provided by these amendments, the ability of some small businesses to service rural and regional communities may be at risk. This will have significant impacts on these communities and the broader economy.

FINANCIAL IMPACT STATEMENT

The Australian Government has allocated \$127 million towards the measures covered by the amendments, which will be available until 30 June 2008. This amount is included in the \$210 million for the entire package of small business assistance measures that was announced on 7 November 2006.

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NOTES ON CLAUSES

Section 1 – Short Title

1. This section provides that the Bill, once enacted, may be cited as the *Farm Household Support Amendment Act 2007*.

Section 2 – Commencement

2. This section provides that the Bill will commence on the day it receives Royal Assent.

Section 3 – Schedule(s)

3. This section provides that each Act referred to in the Schedules is amended or repealed in accordance with the applicable items in the Schedules concerned, and also provides that any other items in the Schedules have effect according to their terms.

4. Schedule 1 of the Bill contains amendments to the *Farm Household Support Act 1992* (the Act) relating to the availability of Exceptional Circumstances (EC) support to agriculturally dependent small business operators, consequential amendments to the *Social Security Act 1991* and the *Age Discrimination Act 2004*, and transitional provisions.

Schedule 1 – Amendments

Part 1 – Amendments of the Farm Household Support Act 1992

Item 1 – At the end of paragraph (c) of the title

5. This item provides for the title to reflect the extension of EC Relief Payments to eligible small business operators.

Item 2 – Subsection 3(2)

6. This item provides for the definition of ‘ABN’ (Australian Business Number). The insertion of this definition is consequential to item 10, which provides the criteria to be met by small business operators who wish to access EC Relief Payments under the Act.

Item 3 – Subsection 3(2) (definition of *exempt assets*)

7. This item provides for the definition of ‘exempt assets’. As small business operators have not previously been able to access EC Relief Payments, it is necessary for the definition of ‘exempt assets’ to be extended to include specific exempt assets relevant to agriculturally dependent small business operators, as well as those assets relevant to farmers. The ‘exempt assets’ definition will be used to determine if a small business operator can access EC assistance, as well as to calculate the correct rate for

the payment of EC Relief Payments, and Youth Allowance and Austudy eligibility and benefits.

Items 4 and 5

8. Item 4 provides for the definition of 'small business'. This will be used to determine a person's eligibility to receive EC Relief Payments, and associated ancillary benefits, in accordance with the criteria specified in item 10.

9. Item 5 provides that part-time employees are to be taken into account as an appropriate fraction of a full-time equivalent, for the purposes of the definition of 'small business' in item 4.

Item 6 – Subsection 6(1)

10. This item broadens the objects of the Act to include assistance for agriculturally dependent small business operators who have been adversely affected by exceptional circumstances.

Items 7 – Part 1A (heading)

11. This item changes the heading of Part 1A to reflect the inclusion of an end date for EC assistance to small business operators.

Item 8 – At the end of Part 1A

12. Item 8 indicates that payments to eligible small business operators will end on 30 June 2008, or on a later day as prescribed by regulation.

13. As assistance to farmers in some EC declared areas has now been made available until 31 March 2009, enabling the end date to be extended by regulation will allow small business operators to continue to access assistance where they are reliant on providing agriculturally related goods and services to farmers in areas that continue to be EC declared, if required.

Item 9 – Subsubparagraph 8A(1)(b)(i)(D)

14. This item repeals the requirement for a person to be at least 18 years of age to be eligible for EC Relief Payments. This will make the Act consistent with the intent of the *Age Discrimination Act 2004* and the changes made to that Act in April 2006.

Item 10 – At the end of section 8A

15. This item specifies the eligibility criteria that will determine if an agriculturally dependent small business operator can access assistance.

16. The criteria applicable to agriculturally dependent small business operators broadly mirror those that apply to farmers. However, applicants under the small business provisions must be able to demonstrate that 70 per cent, or more, of their

gross business income is derived from providing farm related goods and services to farmers in EC declared areas.

17. This criterion is measured by examining the small business' gross income in any continuous two year period, nominated by the applicant, within the seven years immediately preceding the date of the application. If the business has not been in operation for two years at the time of the application, this criterion is to be measured by examining the gross business income for the time that the business has been in operation.

18. By measuring gross business income in this way, farmers who have had to diversify due to the drought can demonstrate that their income has been reliant on the agriculture sector, at some point during this most recent drought. This also allows the administering agency, Centrelink, to apply the criterion consistently to all small business operators applying for assistance.

19. Similar to farmers, to be eligible, an applicant under the small business provisions must show that he or she contributes a significant part of his or her labour and capital to the business, and that he or she derives a significant part of his or her income from the business.

Item 11 – Paragraph 10(3)(a)

20. This item provides for specific assets to be exempt from the asset tests under section 10 of the Act.

21. For farmers who qualify to receive EC Relief Payments under section 8A(1), these assets will be the 'exempt assets' for farmers as provided under item 3.

22. For small business operators who qualify to receive EC Relief Payments under item 10, these assets will be the 'exempt assets' for small business operators as provided under item 3.

23. Where a person who qualifies to receive EC Relief Payments as a small business operator under item 10 would also qualify to receive EC Relief Payments under section 8A(1), but no longer derives a significant income from their farm due to the drought, then the 'exempt assets' will include the relevant farm and small business assets.

24. These provisions do not apply to farmers who continue to derive a significant amount of income from their farms, but who also operate small agriculturally dependent businesses. The EC Relief Payment assets test, and the Youth Allowance and Austudy means tests will continue to apply without concession to this category of farmers.

Item 12 – At the end of section 12

25. This item states that people receiving EC Relief Payments as a farmer, under section 8A(1) of the Act cannot also receive EC Relief Payments as a small business operator under item 10. The reverse is also applicable.

Items 13 and 14

26. The introduction of new provisions allowing small business operators to access EC Relief Payments requires that the Act specify how the rate of payment is to be calculated. As small business operators have not previously been eligible to access EC Relief Payments prior to the introduction of these amendments, section 24A, which provides for the rate of payment to be calculated, applies only to farmers. The amendments in items 13 and 14 ensure that section 24A continues to apply only to farmers, with similar provisions that determine how EC Relief Payments are to be calculated for eligible small businesses included under item 15.

27. Item 13 specifies that the rate of payment calculation in section 24A relates to a person who has qualified for payment as a farmer under section 8A(1). This item also amends the title of the section to reflect that the section relates to the calculation of EC Relief Payments for farmers, distinguishing it from the section relevant to small businesses.

28. Item 14 specifies that the exempt assets that are relevant to calculating the rate of payment under section 24A are those that apply to farmers and not those that apply to eligible small business operators.

Item 15 – After section 24A

29. This item provides the rate of calculation of EC Relief Payments for eligible small business operators. The provisions mirror those that are applicable to farmers, including the \$10,000 non-business salary and wage exemption, which operates in the same manner as for farmers.

30. As the programme was announced in November 2006, assistance has not been provided to small business operators for the entire financial year. Regardless of this, eligible small business operators will be eligible for the full \$10,000 non-business wage and salary exemption during the 2006-07 financial year. Since farmers receiving EC Relief Payments are eligible for the full \$10,000 off-farm wage and salary exemption regardless of when they enter the programme, this condition has also been extended to eligible small business operators.

Item 16 – Subsection 24B(3)

31. This item provides that assets exemptions applicable to farmers accessing Farm Help Income Support payments only include those assets applicable to farmers, not the small business assets under that item, or both.

Part 2 – Consequential amendments - Age Discrimination Act 2004

Part 17 – Paragraph 41 (2AA)(a)

32. This item provides for the *Age Discrimination Act 2004* to apply consistently to farmers and eligible small business operators who have applied for assistance under the *Farm Household Support Act 1992*.

33. Providing payments that are dependent on age, as outlined under section 24A of the *Farm Household Support Act 1992*, would be unlawful under the *Age Discrimination Act 2004*, if not for an exemption applicable to that section provided under section 41 of the *Age Discrimination Act 2004*. Item 15, which inserts section 24AA into the *Farm Household Support Act 1992*, mirrors section 24A in its effect, but is applicable to eligible small business operators, rather than farmers. So that small businesses can lawfully be provided payments based on their age, an exemption for the new section in item 15 is required.

34. Item 17 provides the same exemption under the *Age Discrimination Act 2004* that applies to section 24A to the new section 24AA. This will allow the *Age Discrimination Act 2004* to apply consistently to farmers and eligible small business operators.

Part 2 – Consequential amendments – Social Security Act 1991

Item 18 – Section 547F

35. This item will allow farmers and eligible small business operators to have specific farm or small business assets exempt from the Youth Allowance means test.

36. Where a farmer holds an EC Certificate, their assets to be assessed under the Youth Allowance means test will not include the ‘exempt assets’ for farmers as specified in item 3.

37. Where a small business operator meets the eligibility criteria in item 10 and is receiving EC Relief Payments, their assets to be assessed under the Youth Allowance means test will not include the ‘exempt assets’ for small business operators as specified in item 3.

38. Where a small business operator meets the eligibility criteria in item 10 and is in receipt of EC Relief Payments, and would also meet the eligibility criteria under section 8A(1) if they derived a significant income from the farm if not for drought, their assets to be assessed under the Youth Allowance means test will not include the ‘exempt assets’ for small business operators and farmers as specified in item 3.

Item 19 – Section 573E

39. This item will allow farmers and eligible small business operators to have specific farm or small business assets exempt from the Austudy means test.

40. Where a farmer holds an EC Certificate, their assets to be assessed under the Austudy means test will not include the ‘exempt assets’ for farmers as specified in item 3.

41. Where a small business operator meets the eligibility criteria in item 10 and is receiving EC Relief Payments, their assets to be assessed under the Austudy means test will not include the ‘exempt assets’ for small business operators as specified in item 3.

42. Where a small business operator meets the eligibility criteria in item 10 and is in receipt of EC Relief Payments, and would also meet the eligibility criteria under section 8A(1) if they derived a significant income from the farm if not for drought, their assets to be assessed under the Austudy means test will not include the 'exempt assets' for small business operators and farmers as specified in item 3.

Part 3 – Transitional provisions

Item 20 – Definition

43. This item provides definitions of 'commencing day', 'Principal Act' and 'Secretary' for the purpose of Part 3.

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

44. This item provides for those small business operators who are already receiving ex-gratia EC Relief Payments to come under the operation of the new legislative arrangements upon Royal Assent of the Bill.

45. The effect of this item will be to ensure that small business operators who are already accessing assistance continue receive payments. Additionally, these small business operators will be able to access a Health Care Card under section 1061ZK of the *Social Security Act 1991*, and concessions for access to Youth Allowance and Austudy as provided in items 18 and 19.

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

46. This item applies to a person who has applied to receive EC Relief Payments under the current ex-gratia arrangements, but whose eligibility has not been determined prior to the commencement of the Bill.

47. A person to whom this item applies will come under the operation of the Act upon Royal Assent of the Bill, and will be entitled to access all avenues of appeal available to those who apply for assistance on or after the date of Royal Assent.

48. Subsection (5) of this item is included to assist readers, indicating that the instrument referred to is not a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003*.

Schedule 2 – Other amendments of the Farm Household Support Act 1992

Items 1-3

49. These items repeal sections 7(a)(ii), 21A and 22, and amend section 21(4) in the *Farm Household Support Act 1992* as they refer to age qualifications that are not exempt from the operation of the *Age Discrimination Act 2004*. This makes the *Farm Household Support Act 1992* consistent with the provisions and intent of the *Age Discrimination Act 2004*, and the amendments made to that Act in April 2006.