

## **Farm family restart scheme: definition of 'farmer'; whether significant part of income derived from farming activities**

**DRINKWATER and SECRETARY TO THE DFaCS (No. 19990408)**

**Decided:** 9 June 1999 by R. Handley.

### **The issue**

The issue in this matter was whether Drinkwater met the statutory definition of 'farmer' which, in turn, required a consideration of whether he derived a 'significant' part of his income from farming enterprises.

### **Background**

Drinkwater and his wife in 1993 purchased a farm with the intention of breeding ostriches. They had researched the industry potential before their purchase, expected that the farm would not generate profits for several years, and that both would need to supplement any farm income in this time with income from off-farm employment. Drinkwater worked casually and part-time off the farm, whilst his wife worked full-time. He was injured whilst so working in 1995 and received Workers Compensation payments to early 1999. On 16 January 1998 he lodged a claim for restart income support under the Farm Family Restart Scheme, at which time his income for the preceding financial year included a notional \$10,400 in farm income together with \$29,918 Workers' Compensation payments. His claim was rejected in February 1998 on the basis that he did not derive a significant part of his income from the farm. This decision was affirmed by an authorised review officer and in September 1998 by the SSAT.

### **The law**

The relevant legislation is found in the *Farm Household Support Act 1992* (the Act) which provides that restart income support is available to certain eligible farmers within the terms of s.8B of the Act, which provides:

**8B.** Subject to this Division, a person is qualified for restart income support in respect of a period if:

- (a) the period begins on or after the restart scheme payment commencement day; and
- (b) throughout the period, the person:
  - (i) is a farmer; and
  - (ii) is at least 18; and
  - (iii) is an Australian resident; and
  - (iv) is in Australia; and
- (c) the person has been a farmer for a continuous period of at least 2 years immediately before the period; and
- (d) a certificate of inability to obtain finance issued in respect of the person has effect throughout the period.

In turn, s.3(2) of the Act defines 'farmer' as follows:

'farmer' means a person who:

- (a) has a right or interest in the land used for the purposes of a farm enterprise; and
- (b) contributes a significant part of his or her labour and capital to the farm enterprise; and
- (c) derives a significant part of his or her income from the farm enterprise;

### **The submissions**

The Department did not dispute that Drinkwater met the several requirements of these provisions, save only the third element of the definition of 'farmer'. The core issue was, therefore, whether Drinkwater derived a 'significant' part of his income from the farm. The term 'significant' is not defined in the Act.

Drinkwater contended that he and his wife had carefully planned the farming venture, were aware of likely establishment costs and time, and that the collapse of the ostrich industry had occurred worldwide. Consequent upon this collapse, they had considered diversifying their farming but had difficulty obtaining further finance, and had agisted some of their acreage. Drinkwater argued that he worked full-time on the establishment and maintenance of the farm. On the advice of his accountant he had included in his taxation returns a notional wage from the farm of \$200 a week. It was not disputed that at the time of his application to the Department this farm income was only a quarter of his total income.

### **The decision**

The Tribunal referred to the *Oxford Dictionary* definition of 'significant' as meaning 'considerable amount or effect or importance, not insignificant or negligible' and noted that the *Acts Interpretation Act* by s.15AA required that the purpose or object of legislation be considered in determining the meaning of a legislative provision. The Tribunal noted that in the Explanatory Memorandum the legislation was described as intending to '... provide a welfare safety net for farm-

ers who are experiencing financial hardship ...' In the Second Reading Speech the then Minister had made similar comments, referring to the need to provide financial assistance to farmers experiencing hardship through exceptional circumstances.

The Tribunal found that Drinkwater had intended that farm-derived income would be the principal source of his income. These expectations were undermined by the unexpected collapse of the ostrich industry, together with his injury during off-farm employment (and a separate injury sustained in her employment by his wife). Having regard to the purpose of the Scheme, as noted above, the Tribunal concluded that '... it is the person's intention as to their principal source of income which is crucial (in determining whether the income derived is 'significant') evidenced by their labour contribution or effort in the farm business': Reasons, para. 35.

### **Formal decision**

The Tribunal found that a significant part of Drinkwater's income was derived from his farming enterprise, and that he therefore satisfied the definition of 'farmer' provided in the legislation. The Tribunal thus set aside the decision under review.

[P.S.]