

# Federal Court Decision

## Farm household support scheme: definition of farmer

SECRETARY TO THE DFACS v WALLACE

Federal Court of Australia

**Decided:** 20 June 2002 by Dowsett J.

DFACS appealed to the Federal Court against a decision of the AAT that Wallace was qualified to receive both financial assistance and restart income support under the *Farm Household Support Act 1992* (the Act) because he was a farmer.

### The facts

Wallace had owned and run a farm from 1984 to 1990. He commenced full-time employment with Centrelink in November 1991 and bought another farm in August 1996. He moved to the farm in January 1998. The farm was 205 acres, the average size for a farm in the area, and Wallace grew seasonal crops and grazed livestock.

Wallace was transferred interstate in 1998 for four months and then ceased work with Centrelink in November 1999. He gave evidence that he returned to the farm on two or three occasions when interstate, using his leave entitlements. He also stated that he spent more time working on the farm (58%) than working for Centrelink in the two years prior to making his claim.

### The law

Sections 8 and 52 of the Act authorise the payment of financial assistance to a farmer. Farmer is defined in s.3 as:

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 AAT decision

The AAT concluded that Wallace was a farmer and entitled to support. It accepted that his farm was not a hobby farm and that Wallace had given reasonable estimates of the time he spent working on the farm. The predominant reason the farm had made a loss over the

relevant period was because of the weather and farm prices. Wallace's income from the farm in 1997/98 was \$26,665 and from his employment \$36,199, and in 1998/99 \$15,496 and \$39,238. The AAT found that Wallace derived a significant part of his income from the farm. It also decided that Wallace had a degree of control over his farm because he remained 'connected' to it.

### Significant part of income

The AAT had relied on the AAT case of *Drinkwater and Secretary to the Department of Family and Community Services* (1999) 29 AAR 365, which was based on the Centrelink manual. When deciding whether the farm provided a significant part of the person's income, the AAT stated 'that it is the person's intention as to their principle source of income which is crucial'. Dowsett J rejected this reasoning and stated that the definition of *farmer* did not refer to a *principle source of income* and the use of this expression could be misleading.

The definition compares the gross income from the farm with total gross income. The dictionary defined significant as important, notable and consequential.

It is arguable that farm income may be a significant part of total income for reasons other than its proportion of that total ... However par (c) of the definition focuses on the significance of farm income as a part of the whole income of the claimant.

(Reasons, para. 10)

The AAT had found that Wallace was not a hobby farmer. The Federal Court stated that just because someone was a hobby farmer they would necessarily be excluded from support under the scheme. The definition of *farmer* is expressed in the present tense. That is, there is a history of deriving income and contributing labour and capital that continues. It assumes an ongoing farm enterprise. To decide if a person meets the definition of *farmer* the whole history of the person's involvement in the farm must be examined. A continuing involvement will depend on the person's intention to continue working on the farm for at least the immediate future. It is also not necessary for the income from the farm to be a significant part of total income each year but rather the whole period of involvement.

In this case Wallace exhibited a continuing involvement with the farm and a continuing intention that farm income was to be a major source of income. He was not operating a hobby farm. His farm income at 42% in 1997/98 and 36% in 1998/99 was a significant part of his income. It was argued that Wallace's absence for four months meant that he did not satisfy the definition of farmer. The Court stated that this was one aspect to be taken into account and a person could still satisfy the definition of farmer even when absent from the farm, because of ill health for example.

### Formal decision

The Federal Court dismissed the appeal.

[C.H.]

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