

EXPLANATORY STATEMENT

A New Tax System (Family Assistance)(Child Care Benefit – Children in respect of whom no-one is eligible) Amendment Determination 2008 (No.1)

Summary

This Determination is made under subsection 49(3) of the *A New Tax System (Family Assistance) Act 1999* (the Family Assistance Act).

This Determination is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The purpose of this Determination is to amend the *A New Tax System (Family Assistance)(Child Care Benefit – Children in respect of whom no-one is eligible) Determination 2006* (the Children in respect of whom no-one is eligible Determination) which specifies classes of FTB children in respect of whom no-one is eligible for child care benefit (CCB) under Division 4 of Part 3 of the Family Assistance Act.

The Children in respect of whom no-one is eligible Determination is amended as a consequence of the introduction the ‘regular care child’ concept into the family assistance law by the *Child Support Legislation Amendment (Reform of the Child Support Scheme – New Formula and Other Measures) Act 2006* (the Amending Act) with effect from 1 July 2008. ‘Family assistance law’ is defined in section 3 of the *A New Tax System (Family Assistance)(Administration) Act 1999* as including, among others, that Act and the *A New Tax System (Family Assistance) Act 1999* (Family Assistance Act).

As a result of the amendments no one is eligible for CCB in respect of a regular care child in the circumstances in which no one is eligible in respect of an FTB child. The amendments made by this Determination commence the day after it is registered.

Background

Currently, to be eligible for CCB for a child, the child must be an ‘FTB child’ of the individual or the individual’s partner.

The ‘FTB child’ is currently defined in sections 22 to 29 of the Family Assistance Act. If a child is in the care of more than one individual, the child is not an FTB child of an individual if the child is in the individual’s care for less than 10% of the time.

Amendments that were made to the family assistance law by the Amending Act have altered, from 1 July 2008, the concept of an ‘FTB child’ relevant to eligibility for family assistance including for family tax benefit (FTB) and CCB.

As a result of the changes made by the Amending Act, a child in respect of whom an individual has at least 35% of care is an FTB child of that individual (subsection 22(7) of the Family Assistance Act, as amended refers) and a child in respect of

whom an individual has 14% to 34% of care is a 'regular care child' of the individual (subsection 3(1) of the Family Assistance Act, as amended refers).

Amendments were made by the Amending Act to the CCB eligibility provisions so that, from 1 July 2008, eligibility for CCB arises for both categories of children, FTB children and regular care children.

The Children in respect of whom no-one is eligible Determination includes references to an FTB child only. As a consequence of the changes to the CCB eligibility provisions, amendments to the Children in respect of whom no-one is eligible Determination are made to ensure that a 'regular care child' is afforded the same treatment as an 'FTB child' under that Determination.

Consultation

The amendments made by this Determination were not consulted given that they are consequential on the amendments made by the Amending Act (as announced in the 2006-2007 Budget) and which commenced on 1 July 2008.

Regulatory Impact Analysis

This instrument does not require a Regulation Impact Statement (RIS) and /or a Business Cost Calculator Figure. This instrument is not regulatory in nature, will not impact on business activity, and will have no, or minimal, compliance costs or competition impact. It is not expected that any compliance costs will be incurred by business as a result of this instrument.

Explanation of Amendments

Name of the Determination

Section 1 states the name of this Determination.

Commencement

Section 2 states that this Determination commences on the day after it is registered.

Amendment of the A New Tax System (Family Assistance)(Child Care Benefit – Children in respect of whom no-one is eligible) Determination 2006

Section 3 states that Schedule 1 amends the *Children in respect of whom no-one is eligible Determination*.

Explanation of item 1 in Schedule 1

Item 1 – Section 3, note 2

Section 3 provides definitions of certain terms used in the Children in respect of whom no-one is eligible Determination. Section 3, note 2 advises the reader that the term 'FTB child' (used in section 4) is defined in subsection 3(1) of the Family

Assistance Act. Item 1 amends note 2 to advise the reader that both an FTB child and a regular care child are defined in subsection 3(1).

Item 2 – Paragraph 4(2)(b)

Subsection 4(2) provides that a child in respect of whom no-one is eligible for CCB under Division 4 of Part 3 of the Family Assistance Act, is an FTB child of a carer or a carer's partner to whom a session of care was provided by the carer.

Item 2 amends subsection 4(2) so that this exemption extends to a regular care child in the same situation.