

Explanatory Statement

Economic Security Strategy Payments Administrative Scheme (FaHCSIA) Determination 2009

Summary

This instrument is made under subitem 1(1) of Schedule 4 to the *Social Security and Other Legislation Amendment (Economic Security Strategy) Act 2008*.

The purpose of this instrument is to provide for a scheme for economic security strategy payments to families and carers.

This instrument commences on the day after it is registered on the Federal Registrar of Legislative Instruments.

Background

The legislation for the economic security strategy payments enables the establishment of an administrative scheme under which payments can be made to a person in particular circumstances where the statutory schemes for those payments do not produce appropriate results.

Families and carers are ineligible for an economic security strategy payment in respect of a child under the statutory schemes if the child was not in their care on the announcement date of 14 October 2008, even though the child may have been in their care when the stimulus payments were made. This Determination will acknowledge the special circumstances of people who did not have care of a child on the announcement dates.

In broad terms, under this Determination a person may be entitled to a payment for a child who entered or returned to their ongoing care between 15 October and 31 December 2008.

Explanation of the Provisions

Part 1 Preliminary

Section 1 Name of Determination

Section 1 states the name of this Determination as the *Economic Security Strategy Payments Administrative Scheme (FaHCSIA) Determination 2009*.

Section 2 Commencement

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

Section 3 Purpose

Section 3 states that the purpose of the Determination is to provide, in the circumstances specified, for economic security strategy (ESS) payments to be made to families and carers.

Section 4 Interpretation

Subsection 4(1) defines key terms used in the Determination. Some of these terms are defined more fully in the context in which they occur.

Subsection 4(2) provides that a term used in relation to payment of family tax benefit (FTB) or economic security strategy payment to families has the same meaning as in the Family Assistance Act. Similarly subsection 4(3) provides that a term used in relation to payments or allowances for carers has the same meaning as in the Social Security Act.

Part 2 ESS payment circumstances

Section 5 Entitlement to an ESS payment to families

Subsection 5(1) provides that a person is entitled to an ESS payment under this Determination if the person was entitled to FTB Part A for an FTB child under 16 who entered or re-entered the person's ongoing care during the period beginning on 15 October 2008 and ending on 31 December 2008 and one of the following conditions applies to the person.

The first condition is that the person was entitled to FTB Part A for the child at some time during the period starting on 1 July and ending on 13 October 2008 and the person was not entitled to FTB Part A for the child for 14 October 2008 because there were special circumstances that prevented the child from being in the person's care on that day.

An example of special circumstances might be where there has been temporary loss of care of the child for a period including 14 October 2008, due to the person's incapacity to care for the child for the period.

The second condition is where the person is not a parent of the child and has or had ongoing care of the child under a formal foster care arrangement.

The third condition is that the person is not a parent of the child (e.g. is a grandparent) and has or had ongoing care of the child due to an inability or failure of the child's parents to provide care of the child.

The concept of 'ongoing care' as used in these rules is defined in subsection 4(1) as being care that continues, or is likely to continue, for at least 26 weeks.

Finally, the person must claim the ESS payment in accordance with section 10 of the Determination in order to be entitled to an ESS payment to families.

Subsection 5(2) sets out the circumstances in which a person is not entitled to an ESS payment to families for an FTB child. There are six such circumstances.

First a person is not entitled to an ESS payment to families for a particular FTB child under this Determination if the person has been paid an ESS payment to families for the child under the statutory scheme (ie. a payment under Division 4B of Part 3 of the Family Assistance Administration Act).

Second, a person is not entitled to an ESS payment to families under this Determination if the person was a member of a couple on the relevant day and their partner has been paid an ESS payment to families for the child under the statutory scheme (i.e. a payment under Division 4B of Part 3 of the Family Assistance Administration Act).

Third, a person is not entitled to an ESS payment to families under this Determination if the person was a member of a couple on the relevant day and their partner was paid an ESS payment to families for the same FTB child, and the amount was not reduced by a specified percentage due to a blended family determination under section 28 of the Family Assistance Act, or a determination for separated members of a couple for a period before separation under section 29 of that Act.

For the purpose of these rules, the relevant day is defined in subsection 5(3) as the first day that the person is or was entitled to FTB Part A for the FTB child during the period starting on 15 October 2008 and ending on 31 December 2008.

Fourth, the claimant must also satisfy the reconciliation conditions for the 2008-09 income year on or before 29 January 2010. Under paragraph 5(2)(d), if a person is entitled to FTB Part A for a child because of a past-period claim made after 30 June 2009 but does not satisfy the reconciliation conditions, paragraph 5(2)(d) provides that the person is not entitled to an ESS payment to families for the FTB child.

Fifth, under paragraph 5(2)(e), a person is not entitled to an ESS payment to families under this Determination for a child, if the person is entitled to FTB Part A for the child because of a claim made after 29 January 2010.

Sixth, under paragraph 5(2)(f), where a person is being paid FTB by instalments for an FTB child and entitlement for another child arises because that child entered the person's care, the Secretary must become aware of this change in circumstances not later than 29 January 2010 if the person is to be entitled to an ESS payment under this Determination for that child.

The note at the end of section 5 clarifies for the reader that, there may be duplicate ESS payments for an FTB child, made to different people. For example, if a new carer meets the conditions under the Determination for the child, the new carer would be entitled to an ESS payment to families under this Determination for the child despite the previous carer having already been paid an ESS payment to families under the statutory scheme for the same child.

Section 6 Qualification for an ESS payment to carers

Subsection 6(1) provides that a person is qualified for an ESS payment under this Determination if the person was receiving a carer allowance or carer payment for a care receiver under 16 who entered or re-entered the person's ongoing care during the period beginning on 15 October 2008 and ending on 31 December 2008 and one of the following conditions applies to the person.

The first condition is that the person was qualified for carer allowance or carer payment for the care receiver at some time during the period starting on 1 July and ending on 13 October 2008 and the person was not receiving carer allowance or carer payment for the care receiver for 14 October 2008 because there were special circumstances that prevented the child from being in the person's care on that day.

An example of special circumstances might be where the carer is temporarily unable to provide care due to illness.

The second condition is where the person is not a parent of the child and has or had ongoing care of the care receiver under a formal foster care arrangement.

The third condition is that the person is not a parent of the child (e.g. is a grandparent) and has or had ongoing care of the care receiver due to an inability or failure of the care receiver's parents to care for the child.

The concept of 'ongoing care' as used in these rules is defined in subsection 4(1) as being care that continues, or is likely to continue, for at least 26 weeks.

Finally, the person must claim the ESS payment in accordance with section 10 of the Determination in order to be qualified for an ESS payment to carers.

Subsection 6(2) sets out the circumstance in which a person is not qualified for an ESS payment to carers. A person is not qualified for an ESS payment to carers if the person has been paid an economic security strategy payment under Division 4 of Part 3 of the Social Security Administration Act for the same care receiver.

The first note at the end of section 6 clarifies for the reader that, more than one ESS payment may be made for the same care receiver to different people. The second note clarifies that two ESS payments may be made to the same person for the same child if the person is qualified under section 6 for both carer payment and carer allowance for the same child.

Part 3 Amount of ESS payment

Section 7 Amount payable to a person entitled to FTB Part A

Subsection 7(1) provides that the amount of an ESS payment to families under this determination for a relevant child will be \$1000.

Subsection 7(1) is subject to subsection 7(2). Subsection 7(2) has the effect of applying subsections 91(3), (4) and (5) of the Family Assistance Act for the purposes of working out the amount of a person's ESS payment for a child under this Determination, in the same way as those subsections apply for a payment under the statutory scheme. If a person's rate of FTB Part A in respect of a relevant child for the day that the child re-entered or entered the person's care (as relevant) takes account of a shared care percentage, then the amount of the person's ESS payment to families in respect of the relevant child is that percentage of \$1,000.

Subsection 7(3) defines a relevant child as a child who attracts an ESS payment for the person.

Section 8 Amount payable to a person receiving carer payment

Section 8 provides that the amount of an ESS payment for carers for a person who is receiving carer payment is as follows:

- (a) for a single person — \$1 400;
- (b) for a partnered person — \$1 050;
- (c) for a member of an illness separated couple — \$1 400;
- (d) for a member of a respite care couple — \$1 400;
- (e) for a partnered person (partner in gaol) — \$1 400.

Section 9 Amount payable to a person receiving carer allowance

Subsection 9(1) provides that, subject to subsection (2) or (3), the amount of an ESS payment to carers for a person who is receiving carer allowance will be \$1000 for each care receiver.

Subsection 9(2) provides that if a person is receiving carer allowance because the person is qualified for carer allowance for two disabled children under subsection 953(2) of the Social Security Act, the amount of an ESS payment to carers for the person is to be calculated as if the two disabled child are a single care receiver.

Subsection 9(3) provides that if a person is receiving a share of carer allowance pursuant to a declaration under subsection 981(1) of the Social Security Act, the amount of an ESS payment to carers for the person is to be the equivalent share of \$1000.

Part 4 Claiming and paying an ESS payment

Section 10 How to claim an ESS payment

Section 10 sets out that a claim for an ESS payment under the Determination must be made to Centrelink not later than 29 January 2010 and comply with any requirements of the Secretary. The Secretary may require that the claim be made in a particular manner and form, contain certain information and attach documents as required.

Section 11 Payment of ESS payment

Section 11 provides that if a person is entitled to an ESS payment under the Determination, the Secretary must make the payment to the person or their payment nominee, if applicable. According to subsection 11(1) the payment must be made in a lump sum, on the day that the Secretary considers to be the earliest day on which it is reasonably practicable for the payment to be made and in a way the Secretary considers appropriate.

Subsection 11(2) defines payment nominee by reference to section 219TB of the Family Assistance Administration Act and section 123B of the Social Security Administration Act.

Part 5 Debt recovery

Section 12 ESS payment made because of false or misleading statement

Section 12 provides that an amount of an ESS payment is a debt owed to the Commonwealth by a person if a reason for the person being paid the amount was that the person knowingly made a false or misleading statement or knowingly provided false information in connection with their claim.

A note makes it clear that the whole or only part of an ESS payment can be a debt under this provision.

Section 13 Debt arising in relation to an ESS payment to families

Section 13 provides that an amount of an ESS payment to families is a debt owed to the Commonwealth where the person is paid an ESS payment and the determination relating to the person's entitlement to FTB Part A is later changed such that the person would not have been entitled to an ESS payment to families, and a reason for the determination needing to be changed is that the person knowingly made a false or misleading statement or knowingly provided false information in relation to their FTB Part A.

Subsection 13(1) applies where it is determined that the person is not entitled to FTB Part A or their entitlement is varied, for the period starting on 15 October 2008 and ending on 31 December 2008.

Subsection 13(2) applies where a person receives the ESS payment because of the application of subparagraph 5(1)(b)(i) and it is determined that the person is not entitled to FTB Part A or their entitlement is varied, for the period starting on 1 July 2008 and ending on 13 October 2008.

A debt also arises where a person's ESS payment would have been reduced had the person not knowingly made a false or misleading statement or not knowingly given false information in relation to their FTB Part A. The amount of the debt owed to the Commonwealth is the amount of the reduction in their ESS payment.

Section 14 Debts arising in relation to ESS payments to carers

Section 14 provides that an amount of an ESS payment to carers is a debt owed to the Commonwealth where the person is paid an ESS payment because the person is receiving carer allowance or carer payment, and a decision is made to cancel carer allowance or carer payment paid in respect of the care receiver and a reason for the cancellation was that the person knowingly made a false or misleading statement or knowingly provided false information.

Subsection 14(1) applies where the person is not qualified for carer payment or carer allowance, the person's carer payment or carer allowance is not payable or the number of care receivers for whom the person qualifies for carer allowance is reduced during the period starting on 15 October 2008 and ending on 31 December 2008.

Subsection 14(2) applies where a person receives the ESS payment because of the application of subparagraph 6(1)(b)(i). In these circumstances a debt arises where the person is not qualified for carer payment or carer allowance, the person's carer payment or carer allowance is not payable or the number of care receivers for whom the person qualifies for carer allowance is reduced during the period starting on 1 July 2008 and ending on 13 October 2008.

Subsection 14(3) provides that a debt also arises where a person's ESS payment would have been reduced had the person not knowingly made a false or misleading statement or not knowingly provided false information to obtain the ESS payment or carer allowance or carer payment. The amount of the debt owed to the Commonwealth is the amount of the reduction.

Section 15 Person other than payee obtaining payment of cheque

Section 15 deals with the situation where an ESS payment is made by cheque and a person other than the payee obtains value for the cheque without the endorsement of the payee. In this situation, the amount of the cheque is a debt due by the person to the Commonwealth.

Section 16 Provisions for debt recovery

The effect of subsection 16(1) is that the provisions of the *A New Tax System (Family Assistance) (Administration) Act 1999* relating to debt recovery (and non-recovery) apply to a debt of an ESS payment to families under the Determination as if it were a debt under the family assistance law.

The effect of subsection 16(2) is that the provisions of the *Social Security Act 1991* relating to debt recovery (and non-recovery) apply to a debt of an ESS payment to carers under the Determination as if it were a debt under the social security law.

Part 6 Miscellaneous

Section 17 Internal review of decisions

Subsection 17(1) enables a decision relating to an ESS payment to families to be reviewed by the Secretary as if it were a family assistance decision reviewable under the internal review provisions in the Family Assistance Administration Act and in accordance with those rules.

Subsection 17(2) enables a decision relating to an ESS payment to carers to be reviewed by the Secretary as if it were a social security decision reviewable under the internal review provisions in the Social Security Administration Act and in accordance with those rules.

Section 18 Review by the Administrative Appeals Tribunal

Section 18 provides that a person may apply to the Administrative Appeals Tribunal for review of a decision made under this Determination if that decision has been affirmed, varied or set aside and substituted with a new decision after internal review under section 17.

Section 19 Delegation

Subsection 19(1) provides that the Secretary can delegate to an officer all or any of the powers of the Secretary under the Determination. The effect of subsection 19(2) is that the Secretary must not delegate any powers to an officer of an agency (other than the Department) unless the head of the agency has agreed to the delegation.

Section 20 Decisions to be in writing

Paragraph 20(a) requires that decisions made by officers under the Determination must be in writing. Paragraph 20(b) provides that a decision is taken to be in writing if it is made, or recorded, by operation of a computer.

Section 21 Secretary may arrange for use of computer programs for decision making

Subsection 21(1) provides that the Secretary may arrange for the use of computer programs for any purposes for which the Secretary may make decisions under the Determination. The effect of subsection 21(2) is that a decision made by the operation of a computer program as contemplated in subsection 21(1) is taken to be a decision made by the Secretary.

Consultation

Consultation was not required in the development of this Determination.

Regulatory Impact Analysis

The Determination does not require a Regulatory Impact Statement or a Business Cost Calculator Figure. The Determination is not regulatory in nature, will not impact on business activity and will have no, or minimal, compliance costs or competition impact.

The measures in this legislative instrument affect individuals' entitlements to government payments and do not impose compliance costs on businesses, and do not require or encourage business to alter their behaviour.