

EXPLANATORY STATEMENT

A New Tax System (Family Assistance) (Child Care Benefit – Recognised Work or Work Related Commitments) Amendment Determination 2011 (No.1)

Authority

The *A New Tax System (Family Assistance) (Child Care Benefit – Recognised Work or Work Related Commitments) Amendment Determination 2011 (No.1)* (this Determination) is made under subsection 15(2) of the *A New Tax System (Family Assistance) Act 1999* (the Family Assistance Act), which forms part of the family assistance law.

Subsection 15(2) gives the Minister power to determine, by legislative instrument, that individuals included in a specified class are individuals who are taken to have recognised work or work related commitments for the purposes of section 15.

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

Purpose of this Determination

This Determination makes amendments to the *A New Tax System (Family Assistance) (Child Care Benefit – Recognised Work or Work Related Commitments) Determination 2006* (the Recognised Work Determination) to remove the Secretary's power of delegation in section 7, which is redundant as a result of amendments made by Schedule 3 to the *Family Assistance and Other Legislation Amendment (Child Care and Other Measures) Act 2011* (the Child Care and Other Measures Act). Schedule 3 effectively commences on 22 August 2011.

The amendments made by Schedule 3 to the Child Care and Other Measures Act, amend, among others things, the definition of *family assistance law* in subsection 3(1) of the *A New Tax System (Family Assistance) (Administration) Act 1999* (Family Assistance Administration Act) to include any instrument (including regulations) made under the Family Assistance Administration Act or the Family Assistance Act.

The amendment to the definition of *family assistance law* affects the operation of subsection 221(1) of the Family Assistance Administration Act. Subsection 221(1) contains the Secretary's power of delegation. It provides that the Secretary may delegate to an officer all or any of the powers of the Secretary under the *family assistance law*. Prior to the amendments made by the Child Care and Other Measures Act, the definition of *family assistance law* did not include a reference to instruments and therefore the Secretary's power to delegate in section 221(1) did not extend to delegating the Secretary's powers under instruments. However, as a result of the amendments to the definition of *family assistance law*, from the commencement day of Schedule 3 to the Child Care and Other Measures Act, the Secretary's power of delegation in subsection 221(1) extends to powers which are exercised by the Secretary under instruments (including regulations) under the Family Assistance Administration Act or the Family Assistance Act.

Currently, section 7 of the Recognised Work Determination contains an express delegation provision which enables the delegation of any of the Secretary's powers under the Recognised Work Determination. However, as a result of the amendments made by the Child Care and Other Measures Act and upon the commencement day of Schedule 3 to that Act, the authority for delegation of powers under the Recognised Work Determination is in subsection 221(1) of the Family Assistance Administration Act. Section 7 of the Recognised Work Determination is therefore a redundant provision. This Determination removes this section.

Consultation Statement

The proposed amendment to section 4 (delegation) was not consulted. This amendment was considered unnecessary to consult as the amendment is minor and machinery in nature. The amendment simply reflects the changes to the source of the Secretary's delegation power as a consequence of the amendments made by the Child Care and Other Measures Act; it does not have any impact on the nature or exercise of that power.

Regulation Impact Statement

Office of Best Practice Regulation was consulted in the preparation of this Determination and assessed that no Regulation Impact Statement was required in relation to the amendments included in this Determination.

Explanation of Provisions

Sections 1, 2 and 3 of this Determination are functional provisions.

Section 1 sets out the name of this Determination.

Section 2 specifies that this Determination commences on the day on which Schedule 3 to the *Family Assistance and Other Legislation Amendment (Child Care and Other Measures) Act 2011* commences. Schedule 3 commences on the 28th day after that Act is given Royal Assent. Royal Assent was given on 25 July 2011.

Section 3 states that Schedule 1 amends the *A New Tax System (Family Assistance) (Child Care Benefit – Recognised Work or Work Related Commitments) Determination 2006*.

Section 7 of the Recognised Work Determination provides for delegation of the Secretary's powers in that Determination. As a result of the amendments made by the Child Care and Other Measures Act, from the commencement day of Schedule 3 to that Act, the power to delegate the Secretary's powers under the Recognised Work Determination is in subsection 221(1) of the Family Assistance Administration Act. Therefore **Item 1 of Schedule 1** omits the Secretary's power of delegation in section 7, which from that date is a redundant provision.