

## EXPLANATORY STATEMENT

### CLEAN ENERGY ADVANCES FOR APPROVED CARE ORGANISATIONS ADMINISTRATIVE SCHEME DETERMINATION 2012

#### Summary

The *Clean Energy Advances for Approved Care Organisations Administrative Scheme Determination 2012* (the Determination) is made under subitem 36(1) of Part 3 of Schedule 2 to the *Clean Energy (Household Assistance Amendments) Act 2011*. It provides for a scheme under which payments of clean energy advances may be made to approved care organisations (within the meaning of the *A New Tax System (Family Assistance) Act 1999* (the Family Assistance Act)) in particular circumstances.

#### Background

Part 1 of Schedule 2 to the *Clean Energy (Household Assistance Amendments) Act 2011* amends the Family Assistance Act and the *A New Tax System (Family Assistance) (Administration) Act 1999* (the Family Assistance Administration Act) to provide for clean energy advances for individuals. Under the family assistance law, an approved care organisation may be entitled to be paid family tax benefit (FTB) for children who are clients of the organisation. The Determination will provide for payments of clean energy advances to be made to approved care organisations.

The advance period for clean energy advances is the period 1 July 2012 to 30 June 2013. Generally, entitlement to a clean energy advance is based on whether an entitlement determination for FTB is in force for the approved care organisation, at particular times. The amount of the advance will be calculated following similar methods to those for clean energy advances for individuals.

The Determination also provides for top-up payments of clean energy advances to be paid to approved care organisations in certain circumstances. The number of children in respect of whom an approved care organisation can receive FTB may vary during the income year, as children may be clients of the organisation for varying periods of time. Therefore, an approved care organisation's entitlement to a top up will be determined after the end of the advance period, based on the number of children in respect of whom the approved care organisation receives FTB during the income year.

## **Consultation**

No consultation was undertaken as it was considered unnecessary. The purpose of the Determination is to establish a scheme under which payments of clean energy advance may be made to approved care organisations. Under the family assistance law, approved care organisations can claim FTB in respect of individuals who are clients of the organisation. In 2010-11, approximately 60 organisations received FTB for an estimated 3,000 children. Under the Determination, the method for calculating the amount of clean energy advance that will be paid to approved care organisations is largely modelled on the methods for working out the amount of a clean energy advance to individuals under the family assistance law and thus places approved care organisations on a similar footing to eligible individuals.

The clean energy advance effectively involves an increase of 1.7 per cent in FTB payable to eligible approved care organisations for the financial year 2012-13. This is the same as the increase in FTB that will be payable to eligible individuals under the family assistance law. Given this, the Determination is beneficial in nature to the small number of approved organisations that are anticipated to be covered by the scheme.

The scheme will confer the benefit of the clean energy advance on approved care organisations without the organisation having to make a claim. Payment of the advance to approved care organisations will be made automatically in the same way as payments to individuals. Changes during 2012-13 to the number of children for whom an approved care organisation is entitled to FTB may result in a top-up payment of clean energy advance after the end of 2012-13. The top-up would equal the amount that would have been paid if the clean energy advance were calculated after the end of 2012-13 having regard to the actual number of children for whom FTB was paid for each day in 2012-13, less the amount of the original payment of clean energy advance. The top-up will ensure that the total amount of clean energy advance paid to an approved care organisation will equal 1.7 per cent of FTB paid to the organisation for the year.

## **Regulatory Impact Analysis**

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 entitlements to government payments and do not impose compliance costs on businesses, and do not require or encourage business to alter their behaviour.

## **Statement of Compatibility with Human Rights**

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

### *Overview of the Legislative Instrument*

Under the family assistance law, an approved care organisation may be entitled to be paid FTB for children who are clients of the organisation. The Legislative Instrument will provide for payments of clean energy advances to be made to approved care organisations who receive FTB. The clean energy advance effectively involves an increase of 1.7 per cent in FTB payable to approved care organisations for the financial year 2012-13.

Changes during 2012-13 to the number of children for whom an approved care organisation is entitled to FTB may result in a top-up payment of clean energy advance after the end of 2012-13. The top-up will ensure that the total amount of clean energy advance paid to an approved care organisation will equal 1.7 per cent of FTB paid to the organisation for 2012-13.

The purpose of the Legislative Instrument is to help approved care organisations adjust to a low emissions economy, and assist with the cost impacts resulting from a carbon price, by providing for payments of clean energy advances.

### *Human rights implications*

The payment of clean energy advances in the context of FTB is likely to engage the right to social security contained in article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), as well as Article 26 of the Convention on the Rights of the Child (CRC), which specifically recognises the right of a child to benefit from social security.

The right to social security in article 9 of the ICESCR requires a social security system be established and that a country must, within its maximum available resources, ensure access to a social security scheme that provides a minimum essential level of benefits to all individuals and families that will enable them to acquire at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education.

Article 26 of the CRC requires countries to recognise the right of the child to benefit from social security. Benefits should take into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child.

By providing for payments of clean energy advances to approved care organisations who receive FTB for children who are clients of the organisation, the Legislative Instrument clearly advances these rights.

### *Conclusion*

The Legislative Instrument is compatible with human rights because it advances the protection of human rights.

## **Explanation of the Provisions**

### **Part 1 Preliminary**

#### **Section 1 Name of Determination**

Section 1 sets out the name of the Determination, which is the *Clean Energy Advances for Approved Care Organisations Administrative Scheme Determination 2012*.

#### **Section 2 Commencement**

Section 2 provides for the commencement of the Determination. Subitem 36(4) of the *Clean Energy (Household Assistance Amendments) Act 2011* provides that, for the purposes of subsection 12(1) of the *Legislative Instruments Act 2003*, an instrument made under subitem 36(1) (except for an instrument of revocation) does not take effect until the end of the disallowance period in either House of the Parliament. Consistent with subitem 36(4), section 2 provides that the Determination commences on the later of 14 May 2012 and the day after the end of the period in which it could be disallowed in either House of the Parliament.

#### **Section 3 Purpose**

Section 3 states that the purpose of the Determination is to provide for a scheme under which payments of clean energy advances may be made to approved care organisations (within the meaning of the Family Assistance Act) in particular circumstances occurring in relation to the period starting on 14 May 2012 and ending on 30 June 2013.

## **Section 4 Interpretation**

Subsection 4(1) contains definitions of key terms used in the Determination. Some of these terms are defined more fully in the context in which they occur. Subsection 4(1) includes a definition of approved care organisation, which has the same meaning as in subsection 3(1) of the Family Assistance Act. Subsection 3(1) of that Act provides that an approved care organisation means an organisation approved by the Secretary under section 20. Under section 20 the Secretary may approve an organisation that coordinates or provides residential care services to young people in Australia as an approved care organisation for the purposes of the Family Assistance Act.

Subsection 4(2) provides that a term used in this Determination in relation to payment of FTB to an approved care organisation has the same meaning as in the Family Assistance Act and the Family Assistance Administration Act.

## **Part 2 Entitlement to clean energy advances**

### **Section 5 Entitlement of approved care organisation to a clean energy advance**

Section 5 sets out the circumstances in which an approved care organisation is entitled to a clean energy advance.

Similarly to clean energy advances for individuals, section 5 sets out the circumstances for an approved care organisation to be entitled to a clean energy advance before 1 July 2012, and those in which an approved care organisation may be entitled to a clean energy advance if the determination is made on or after 1 July 2012.

Subsection 5(1) provides for the Secretary to make an entitlement determination for an approved care organisation on a day during the period starting 14 May 2012 and ending on 30 June 2012 if the approved care organisation is entitled to payment of FTB by instalment. Under subsection 5(1) the Secretary may determine that an approved care organisation is entitled to a clean energy advance on a day during that period if, in relation to that day, a determination under section 16 of the Family Assistance Administration Act is in force in respect of the approved care organisation as a claimant.

Subsection 5(2) deals with entitlement of an approved care organisation to a clean energy advance in circumstances where there was no instalment entitlement determination in force for the approved care organisation on a day in the period 14 May 2012 to 30 June 2012. Under subsection 5(2), the Secretary may determine that an approved care organisation is entitled to a clean energy advance if, in relation to any day from 1 July 2012 to 30 June 2013, a determination under section 16 (entitlement to FTB by instalments) or section 17 (FTB entitlement for a past period) of the Family Assistance Administration Act is in force in respect of the approved care organisation as a claimant.

Notes under subsections 5(1) and (2) inform the reader that the amount of the advance is worked out under sections 6 and 7 of the Determination.

There may be circumstances where an approved care organisation will satisfy the circumstances under subsection 5(1) or (2) for entitlement to a clean energy advance. However, subsection 5(3) provides that an approved care organisation is not entitled to more than one clean energy advance under section 5.

### **Part 3            Amount of clean energy advance**

#### **Section 6        Amount of clean energy advance**

Section 6 sets out how the amount of an approved care organisation's clean energy advance is worked out, if the approved care organisation is determined to be entitled to an advance under section 5 of the Determination. The amount of the approved care organisation's clean energy advance is worked out by following similar methods to those that apply in working out the amount of an individual's clean energy advance under the Family Assistance Act.

Subsection 6(1) requires the Secretary to work out the amount of the approved care organisation's clean energy advance on the day that the Secretary determines that the approved care organisation is entitled to a clean energy advance under section 5 (i.e. on the 'decision day').

Subsection 6(2) then sets out a method statement to be followed to work out the amount of the approved care organisation's clean energy advance if the decision day is before 1 July 2012. In this case, step 1 of the method statement requires working out the approved care organisation's clean energy daily rate on the decision day. An approved care organisation's clean energy daily rate for a day is worked out in accordance with the method statement in subsection 7(1). It is assumed for the purposes of step 1, that the approved care organisation's annual FTB rate for an individual is the annual rate that would apply following indexation on 1 July 2012. The note to step 1 informs the reader that an approved care organisation's annual FTB rate is specified in subsection 58(2) of the Family Assistance Act. The annual rate is relevant to working out an approved care organisation's daily FTB rate for the purposes of the method statement in subsection 7(1).

In step 2 of the method statement, the approved care organisation's clean energy daily rate worked out at step 1, is multiplied by 365, resulting in the amount of the approved care organisation's clean energy advance.

Subsection 6(3) applies if the decision day falls in the 2012-13 income year, and sets out a method statement in accordance with which the approved care organisation's amount of clean energy advance is to be worked out. The first step is to work out the sum of the approved care organisation's clean energy daily rates for each day beginning on 1 July 2012 and ending on the decision day. The clean energy daily rates (worked out using the method statement in subsection 7(1)) for each day in this period is based on the number of individuals in respect of whom the approved care organisation is entitled to be paid FTB for each of those days. (Section 34 of the Family Assistance Act sets out when an approved care organisation is eligible for FTB in respect of an individual, and sections 16 and 17 of the Family Assistance Administration Act deal with entitlement determinations for the payment of FTB by instalments or for a past period, respectively).

In the second step the approved care organisation's clean energy daily rate on the decision day is multiplied by the number of days remaining in the 2012-13 income year after the decision day. The third step of the method statement provides that the sum of the amounts worked out under step 1 and step 2 is the amount of the approved care organisation's clean energy advance.

Subsection 6(4) applies if the decision day is on or after 1 July 2013. In this case, the approved care organisation's amount of clean energy advance would be the sum of the clean energy daily rates for each day in the 2012-13 income year. The daily rate for each of those days (worked out under section 7) would be based on the actual number of individuals in respect of whom the approved care organisation is entitled to be paid FTB on each day.

## **Section 7 Clean energy daily rate**

Section 7 provides for the calculation of an approved care organisation's clean energy daily rate. Subsection 7(1) requires that an approved care organisation's clean energy daily rate for a day is to be worked out following the method statement in subsection 7(1).

If an approved care organisation is entitled to be paid FTB on a day, the first step in working out the approved care organisation's clean energy daily rate for that day is to multiply the approved care organisation's daily rate of FTB for an individual on that day by the number of individuals in respect of whom the approved care organisation is entitled to be paid FTB on that day.

A note to step 1 of the method statement explains to the reader that subsection 58(3) of the Family Assistance Act sets out the approved care organisation's daily FTB rate for an individual. An approved care organisation's daily rate of FTB for an individual is the annual rate divided by 365. If subsection 6(2) of the Determination applies, the approved care organisation's annual rate of FTB for an individual is affected, for the purpose of working out the approved care organisation's clean energy daily rate, by the assumption stated in step 1 of the method statement in subsection 6(2). The assumption is that an approved care organisation's annual rate of FTB for an individual that is to be indexed on 1 July 2012 had already been indexed on the decision day. Currently an approved care organisation's annual rate of FTB for an individual is \$1372.40. Therefore, an approved care organisation's daily rate of FTB for an individual is currently \$3.76.

Under step 2 of the method statement, the amount at step 1 is multiplied by 0.017, which is then rounded to the nearest cent (rounding 0.5 cents upwards), to obtain the approved care organisation's clean energy daily rate for that day.

Subsection 7(2) clarifies that, if the first step of the method statement in subsection 7(1) does not apply in relation to a day then the approved care organisation's clean energy daily rate for that day is nil.

#### **Part 4            Top-up payments of clean energy advance**

#### **Section 8        Top-up payments of clean energy advance**

Generally, an approved care organisation is eligible for FTB in respect of an individual if the individual satisfies the conditions in subsection 34(1) of the Family Assistance Act. This includes that the individual is a client of the organisation.

As individuals may be clients of an approved care organisation for varying periods, the number of individuals in respect of whom an approved care organisation is eligible, and entitled to be paid FTB, may vary throughout the income year. This variation could occur after an approved care organisation has been paid a clean energy advance.

In general terms, section 8 of the Determination provides for entitlement to a top-up payment of clean energy advance in certain circumstances where the number of individuals for whom the approved care organisation is entitled to be paid FTB varies during the advance period, and after the advance has been paid. Entitlement to a top-up will arise if the amount of the clean energy advance originally paid is less than that which would have been paid had it been worked out after the end of the 2012-13 income year having regard to the actual number of individuals in respect of whom the organisation is entitled to be paid FTB on each day in the advance period. In contrast to top-up payments of clean energy advances for individuals, which can be paid during the 2012-13 income year, an approved care organisation can only become entitled to a top-up after the end of the 2012-13 income year.

Subsection 8(1) sets out the entitlement conditions for a top-up payment of clean energy advance. An approved care organisation will be entitled to a further payment of clean energy advance if the following conditions are met:

- the Secretary pays a clean energy advance (the original payment) to an approved care organisation in circumstances where there has been an entitlement determination under section 5 of the Determination; and
- the decision day is before 1 July 2013; and
- on a day or days after the decision day and before 1 July 2013, the number of individuals in respect of whom the approved care organisation is entitled to be paid FTB changes, so that the amount of the original payment is less than the amount that would have been paid had the decision day been on or after 1 July 2013.

The amount of the top-up is equal to the shortfall, i.e. between the original payment and the amount worked out had the decision day been on or after 1 July 2013.

Had the decision day been on or after 1 July 2013, the approved care organisation's amount of clean energy advance would have been worked out by calculating the sum of the clean energy daily rates on each day in the 2012-13 income year, with reference to the actual number of individuals in respect of whom the organisation is entitled to be paid FTB.

Subsection 8(2) clarifies that subsection 8(1) cannot apply until on or after 1 July 2013. This is because an approved care organisation's clean energy daily rates on each day in the 2012-13 income year cannot be known until after the end of that income year.

Example:

On 1 June 2012 (the decision day) the Secretary determines that an approved care organisation is entitled to a clean energy advance. The approved care organisation is entitled to be paid FTB in respect of 10 individuals on this day, so the amount of the clean energy advance would be worked out under subsection 6(2). Based on current FTB rates, the amount of the approved care organisation's clean energy advance is calculated to be \$233.60.

On 1 October 2012, the approved care organisation becomes entitled to FTB in respect of a further 5 individuals. Later in the income year, 7 individuals are no longer clients of the organisation, so that from 1 March 2013, and for the remaining days in the 2012-13 income year, the approved care organisation is entitled to be paid FTB in respect of 8 individuals.

To determine whether the approved care organisation is entitled to a top-up, the original payment of \$233.60 must be compared with the amount that would have been paid had the decision day been on or after 1 July 2013. If the effect of the variations in the number of individuals on 1 October 2012 and again on 1 March 2013 is that the original payment is less than the amount that would have been paid had the decision day been on or after 1 July 2013, the approved care organisation will be entitled to a top-up, of the shortfall between these two amounts.

If the decision day was on or after 1 July 2013, the amount of the approved care organisation's clean energy advance is the sum of the clean energy daily rates on each day in the 2012-13 income year. The approved care organisation's clean energy daily rate on each day from 1 July 2012 to 30 September 2012 (92 days), worked out with regard to 10 individuals, is \$0.64. From 1 October 2012 to 28 February 2013 (151 days) the approved care organisation had 15 individuals, resulting in a clean energy daily rate on each of those days of \$0.96. The clean energy daily rate for each of the remaining days in the income year (122 days), when the approved care organisation has 8 individuals, is \$0.51. If the decision day had been on or after 1 July 2013, the approved care organisation's clean energy advance amount would have been the sum of those clean energy daily rates during 2012-13, i.e.  $(\$0.64 \times 92) + (\$0.96 \times 151) + (\$0.51 \times 122) = \$266.06$ . As the original payment of \$233.60 is less than the amount that would have been paid had the decision day been on or after 1 July 2013, then the approved care organisation is entitled to a top-up payment of clean energy advance, equal to the shortfall, i.e. \$32.46.

## **Part 5        Payment of clean energy advance to approved care organisations**

### **Section 9     Payment of clean energy advance**

Section 9 of the Determination sets out the rules for how and when a payment of a clean energy advance is to be made to an approved care organisation that is entitled to an advance.

The Secretary must pay the clean energy advance in a single 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. These rules are the same as those for the payment of a clean energy advance to individuals under the Family Assistance Act.

A note under section 9 is to inform the reader that an approved care organisation is not required to make a claim for payment of a clean energy advance.

## **Part 6        Debt recovery**

### **Section 10    Debts arising in respect of a clean energy advance**

Section 10 deals with debts arising in respect of a clean energy advance. In broad terms, an approved care organisation will only incur a debt if the organisation's FTB entitlement determination during the 2012-13 income year is changed, revoked, set aside or superseded for the reason, or for reasons including the reason, that the approved care organisation knowingly made a false or misleading statement, or knowingly provided false information.

Subsection 10(1) provides that section 10 applies in relation to an approved care organisation that has been paid a clean energy advance.

Subsection 10(2) provides that, for the purposes of section 10, a relevant determination in relation to the approved care organisation, is the determination referred to in subsection 5(1) or (2), i.e. the FTB entitlement determination that was the basis for the approved care organisation's entitlement to a clean energy advance.

Subsection 10(3) then provides that the amount of the clean energy advance paid to the approved care organisation is a debt to the Commonwealth by the approved care organisation if, after it was paid, the relevant determination, as it relates to a day in the 2012-13 income year, is changed, revoked, set aside or superseded; and a reason for this was that the organisation knowingly made a false or misleading statement, or knowingly provided false information; and the advance would not have been paid had the change, etc. to the relevant determination occurred on or before the day the advance was paid.

Subsection 10(4) sets out when part of a clean energy advance will be a debt due to the Commonwealth by the approved care organisation in similar terms to subsection 10(3), only that under paragraph (c), the condition is that the amount of the advance would have been reduced had the change, revocation, setting aside or superseding of the relevant determination occurred on or before the day the advance was paid.

### **Section 11 Person other than payee obtaining payment of a cheque**

Section 11 provides for when a person will have a debt due to the Commonwealth in circumstances where they have obtained the benefit of a cheque for the payment of a clean energy advance. If a person other than the payee of an amount of clean energy advance paid by cheque, obtains possession of the cheque from the payee without endorsement by the payee, and the person obtains value for the cheque, the amount of the cheque will be a debt of the person owed to the Commonwealth.

### **Section 12 Provisions for debt recovery**

Section 12 provides that a debt in relation to a clean energy advance under the Determination is to be recovered in accordance with the debt recovery provisions in the Family Assistance Administration Act as if those Divisions applied to such a debt.

## **Part 7 Miscellaneous**

### **Section 13 Review of decisions**

Section 13 deals with the review of decisions made under the Determination.

Part 5 of the Family Assistance Administration Act provides for review of decisions under the family assistance law. This includes internal review, and review by the Social Security Appeals Tribunal, as well as enabling review from a decision of the Social Security Appeals Tribunal to the Administrative Appeals Tribunal. It is intended that the same review processes that would apply for the review of decisions related to clean energy advances for individuals also apply to review of decisions related to clean energy advances for approved care organisations under the Determination.

Section 13 provides that Part 5 of the Family Assistance Administration Act applies, as far as it is capable of doing so, to a decision under the Determination in relation to a clean energy advance for an approved care organisation, as if the decision were a decision relating to a clean energy advance for an individual under the family assistance law (family assistance law is defined in section 4 of the Determination to have the same meaning as in subsection 3(1) of the Family Assistance Administration Act).

## **Section 14 Delegation**

Subsection 14(1) provides for the Secretary to delegate to an officer all or any of his or her powers under the Determination. However, subsection 14(2) restricts the Secretary from delegating any powers under the Determination to an officer of an agency other than the Department unless the head of that agency has agreed to the delegation. The terms 'officer' and 'agency' are defined in subsection 4(1) of the Determination and have the same meaning as in subsection 3(1) of the Family Assistance Administration Act.

## **Section 15 Decisions to be in writing**

Paragraph 15(a) requires that decisions made by officers under the Determination must be in writing. Paragraph 15(b) provides that a decision is taken to be in writing if it is made, or recorded, by operation of a computer.

## **Section 16 Secretary may arrange for use of computer programs for decision making**

Subsection 16(1) provides for the Secretary to arrange for computer programs to be used for any purposes for which the Secretary may make decisions under the Determination. Under subsection 16(2) a decision made by the operation of a computer program is taken to be a decision made by the Secretary.