

EXPLANATORY STATEMENT

Social Security (Clean Energy– Multiple Qualification Exclusion) (FaHCSIA) Determination 2012

The *Social Security (Clean Energy – Multiple Qualification Exclusion) (FaHCSIA) Determination 2012* is made under section 918 of the *Social Security Act 1991*.

Background

The *Clean Energy (Household Assistance Amendment) Act 2011* (the Household Assistance Act) makes amendments to the *Social Security Act 1991* (the Act) that include financial assistance for increases in the cost of living arising from the introduction of a carbon price on 1 July 2012. The initial assistance will generally be delivered in a lump sum clean energy advance before commencement of the carbon pricing scheme. Ongoing, permanent clean energy supplements will be paid from the end of the clean energy advance lump sum period as a distinct component of the person's rate of social security payment.

Section 918 of the Act allows the Minister to determine, by legislative instrument, the circumstances in which people will not qualify for a clean energy bonus under the Act if they have already been paid, or are qualified for, a clean energy bonus under another act or scheme.

Purpose

The operation of the Determination is to ensure that clean energy bonuses are only paid to people who ought to receive them. The Determination sets out the circumstances in which people are not able to receive a clean energy advance or clean energy supplement under the social security law if they have already received a clean energy advance or supplement under other legislation, such as the Veterans' Entitlements Act, or under an administrative scheme such as ABSTUDY.

For example, without the Determination, a person who switches from a payment under the Veterans' Entitlements Act to a payment under the Social Security Act would qualify for a further clean energy advance that would cover the same clean energy advance period. This may result in the person receiving greater assistance than other people in similar circumstances. A person in this situation may still qualify for a top-up payment under the *Veterans' Entitlements (Clean Energy Advance – Top-up Payment) Determination 2012*, where they have experienced a change in circumstances that would otherwise result in a higher rate of clean energy advance.

Similarly, without the Determination, a person who receives a clean energy advance because they are receiving ABSTUDY (which is an administrative scheme and not a legislated payment) and who switches to newstart allowance during the clean energy advance period, would qualify for a new clean energy advance. This may result in the person receiving greater assistance than other people in similar circumstances. It would be more appropriate to provide this person with a top-up payment under the ABSTUDY scheme rather than a further clean energy advance.

Additionally, there are some people who may receive welfare payments under more than one Act and, if they receive a clean energy supplement under more than one Act, they may receive greater assistance than other people in similar circumstances.

The Determination is a legislative instrument.

Explanation of provisions

Section 1 states the name of the Determination.

Section 2 states that the Determination commences on 14 May 2012. This date corresponds with the commencement of the provisions of the Act under which the Determination is made.

Section 3 contains the interpretation provisions.

Section 4 sets out the circumstances in which a person will not qualify for a clean energy advance payment despite any provisions in the Act or another Act or scheme.

Subsection 4(1) provides that a person will not qualify for a clean energy advance under the Act if they have previously been paid, or are qualified for, a clean energy advance under:

- the Veterans' Entitlements Act except where the person is qualified for a pension under Part II or Part IV of that Act at a rate determined under or by reference to Division 4 of Part II of that Act; or
- the MRCA except where the person is in receipt of a permanent impairment payment or a Special Rate Disability Pension; or
- the ABSTUDY scheme; or
- the VCES; or
- the MRCAETS.

Subsection 4(2) provides that a person will not qualify for a clean energy advance if they have already been paid a clean energy advance because they were receiving a social security payment other than austudy, youth allowance or disability support pension for a person who is under 21 years without dependent children, and the person has a change of circumstances that means they start to receive austudy, youth allowance or disability support pension for a person who is under 21 years without dependent children.

Subsection 4(3) provides that a person will not qualify for a clean energy advance if they have already been paid a clean energy advance because they were receiving a payment of austudy, youth allowance or disability support pension for a person who is under 21 years without dependent children, and the person has a change of circumstances that means they start to receive a social security pension or benefit other than austudy, youth allowance or disability support pension for a person who is under 21 years without dependent children.

Subsection 4(4) confirms that a person who is excluded from receiving a clean energy advance as a result of the Determination may still qualify for a top-up payment under one of the top-up instruments listed.

Section 5 provides that a person will not qualify to have a clean energy supplement used to calculate their rate of social security payment if they are also in receipt of certain payments under the Veterans' Entitlements Act or the MRCA and have a clean energy supplement added to their rate of payment under that act.

Paragraph 5(a) provides that a person who is in receipt of a payment under the Veterans' Entitlements Act will not qualify to have a clean energy supplement added to their rate of social security payment unless their payment under the Veterans' Entitlements Act is a pension under Part II or IV of that Act calculated by reference to Division 4 of Part II of that Act.

Paragraph 5(b) provides that a person who is in receipt of payments under the MRCA will not qualify to have a clean energy supplement added to their rate of social security payment unless their payment under MRCA is a permanent impairment payment or a Special Rate Disability Pension under the MRCA.

Consultation

The Government established a working group of community sector leaders to help advise the Government on an assistance package for Australian households under a carbon pricing mechanism. This Household Assistance Working Group, a sub-group advising the Multi Party Climate Change Committee, helped to inform the Government's policy-making process.

Members of the working group came from non-government organisations that represent those people the Government wanted to ensure received adequate assistance, especially people in low-income households. The Government also consulted with State and Territory Governments on aspects of household assistance to ensure it connects with and complements programs and activities already in place across the country.

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.

Statement of Compatibility with Human Rights

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

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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

The introduction of a carbon price is expected to increase the Consumer Price Index by 0.7 per cent. Low- and middle-income households will receive financial assistance to help offset this price increase. People receiving government pensions and other government payments will receive assistance through a clean energy advance, delivered before the carbon price starts on 1 July 2012, and through an ongoing clean energy supplement once the carbon price impact is reflected in the normal indexation of government payments.

The objective of this instrument is to ensure that equitable levels of household assistance are provided to government payment recipients by preventing multiple clean energy payments to individuals in certain circumstances.

Human rights implications

The payment of clean energy advances and supplements is likely to engage the right to social security recognised in Article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

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.

While the instrument limits the number of clean energy payments that individuals can receive, it does not remove access to social security for any individual. The effect of the instrument will be to deliver equitable levels of assistance to individuals and meet the Government's commitment to at least offset the expected average cost impact for all low-income households.

Conclusion

The Legislative Instrument is compatible with human rights because it delivers equitable levels of social security assistance to individuals.

**Minister for Families, Community Services and Indigenous Affairs and
Minister for Disability Reform, the Hon Jenny Macklin MP**