

EXPLANATORY STATEMENT

Social Security (Clean Energy Advance – Top-up Payment) (FaHCSIA) Determination 2012

The *Social Security (Clean Energy Advance – Top-up Payment) (FaHCSIA) Determination 2012* is made under section 914G of the *Social Security Act 1991* (the Act).

Background

The *Clean Energy (Household Assistance Amendment) Act 2011* (the Household Assistance Act) makes amendments to the Social Security Act to 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, paid from May to June 2012.

The clean energy advance period will cover a period of six to 18 months, depending on the type of payment the person receives.

Generally, the clean energy advance provisions introduced by the Household Assistance Act apply from 14 May 2012, with most payments to be made over the period 14 May to 30 June 2012. Section 914G of the Act allows the Minister to determine, by legislative instrument, the circumstances in which top-up payments of clean energy advance may be paid to people where a change of circumstances during the clean energy advance period results in the person's initial clean energy advance not providing appropriate assistance for their anticipated increased energy costs.

Purpose

The operation of the Determination will mean that, if the person's change of circumstance during the clean energy advance period results in:

- the person starting to receive a different clean energy qualifying payment that is paid at a higher rate than their previous clean energy qualifying payment (for example, a person who moves from newstart allowance to the age pension if they reach age pension age during 2012-13);
- the person starting to receive the same clean energy qualifying payment at a higher rate (for example, where a person separates from their partner during the year and moves from a partnered to single rate of the same payment);
- the person starting to receive a different clean energy qualifying payment that has a longer clean energy advance period (for example, where a person changes from newstart allowance to austudy); or

- the person not being able to receive the entire advance amount because of a multiple qualification exclusion (for example where someone transfers from age pension at partnered rate to war widow pension at the single rate);

the person will receive an additional amount of clean energy advance equivalent to the difference between the higher and lower advance amounts for the number of days remaining in the advance period.

This may happen more than once during a clean energy advance period, and may result from people switching from, to or between payments under the Act, the *Veterans' Entitlements Act 1986* (the Veterans' Entitlements Act) and the *Military Rehabilitation and Compensation Act 2004* (the MRCA).

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 qualify for a top-up payment.

There are a number of circumstances that will qualify a person for a top-up payment. As there are different clean energy advance periods for different social security payments, and different clean energy advance periods that apply for payments under the Veterans' Entitlements Act and the MRCA, the timing of a person's change in circumstances can also affect whether the person qualifies for a top-up payment.

Subsection 4(1) provides that if the Secretary pays a clean energy advance to a person and subsequently that person has a change in circumstances, as set out in subsection 4(2), that results in the person either having a higher rate of clean energy advance daily rate or a longer clean energy advance period, the person will qualify for a top-up payment.

Subsection 4(2) sets out when a person's change of circumstances will qualify them for a top-up payment.

Paragraph 4(2)(a) provides that a person who was paid a clean energy advance as a result of 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 will qualify for a top-up payment if:

- their change of circumstances does not alter the length of the clean energy period that applies to the person and the change of circumstances occurs before 20 March 2013; or
- their change of circumstances results in receipt of a different payment with a longer clean energy period and the change of circumstances occurs before 1 July 2013; or
- their change of circumstances means that they receive a clean energy underlying payment as set out in subsection 5Q(1) of the *Veterans Entitlements Act 1986* and the change of circumstances occurs before 20 March 2013; or
- their change of circumstances means that they receive a payment of compensation under Division 2 of Part 2 of Chapter 5 of the *Military Rehabilitation and Compensation Act 2004* and the change of circumstances occurs before 20 March 2013; or
- their change of circumstances means that they receive a payment of ABSTUDY Living Allowance and the change of circumstances occurs before 1 July 2013; or
- their change of circumstances means that they receive a VCES payment or a MRCAETS payment and the change of circumstances occurs before 1 July 2013.

Paragraph 4(2)(b) provides that a person who was paid a clean energy advance as a result of receiving a payment of austudy, youth allowance or disability support pension for a person who is under 21 years without dependent children will qualify for a top-up payment if:

- their change of circumstances does not alter the length of the clean energy period that applies to the person and the change of circumstances occurs before 1 July 2013; or
- their change of circumstances results in receipt of a different payment with a shorter clean energy period that applies to the person and the change of circumstances occurs before 20 March 2013; or
- their change of circumstances means that they receive a clean energy underlying payment as set out in subsection 5Q(1) of the *Veterans Entitlements Act 1986* and the change of circumstances occurs before 20 March 2013; or

- their change of circumstances means that they receive a payment of compensation under Division 2 of Part 2 of Chapter 5 of the *Military Rehabilitation and Compensation Act 2004* and the change of circumstances occurs before 20 March 2013; or
- their change of circumstances means that they receive a payment of ABSTUDY Living Allowance and the change of circumstances occurs before 1 July 2013; or
- their change of circumstances means that they receive a VCES payment or a MRCAETS payment and the change of circumstances occurs before 1 July 2013.

Paragraph 4(2)(c) provides that a person who was paid a clean energy advance for the period commencing on 1 July 2013 and ending 31 December 2013 because they received a payment of austudy, youth allowance or disability support pension for a person who is under 21 years without dependent children will qualify for a top-up payment if they have a change of circumstance before 1 January 2014 and continue to receive one of those payments or an ABSTUDY Living Allowance, a VCES payment or MRCAETS payment.

Subsection 4(3) provides that a person will not qualify for a top-up payment if they were paid a clean energy advance for the period commencing on 1 July 2013 and ending 31 December 2013 and have a change of circumstances that means they are now receiving a payment other than austudy, youth allowance, disability support pension for a person under 21 years without a dependent child, an ABSTUDY Living Allowance, a VCES payment or a MRCAETS payment. This is because a person in these circumstances will be moving to a payment that now includes a component of clean energy supplement. Accordingly, a top-up of clean energy advance is not required to assist them to meet the increased costs of living associated with the introduction of a carbon price.

Section 5 sets out the method of calculating a person's first top-up payment.

A person's first top-up payment is to be calculated in accordance with Method Statement 1 at the end of section 5.

The first step in Method Statement 1 is to multiply the original clean energy advance daily rate (as used to calculate the person's original payment) by the number of days from the person's original payment start day until the day before the change in circumstances. The person's original payment start day will either be the first day of the relevant clean energy advance period or the first day the person qualified for a clean energy advance, whichever occurs last.

The second step in Method Statement 1 is to multiply the new clean energy advance daily rate by the number of days remaining in the relevant clean energy advance period on and from the change day.

Under step 3, the amounts at steps 1 and 2 are added together. The result is then rounded up to the nearest \$10 in step 4. The result of step 4 is known as the new clean energy advance amount and the original payment is deducted from the new clean energy advance amount to arrive at the top-up payment at step 5.

Section 6 sets out the method of calculating a person's top-up payment where they have previously received a top-up payment under the Determination and have a subsequent change in circumstances that qualifies them for a top-up payment.

The first step in Method Statement 2 is to multiply the original clean energy advance daily rate (as used to calculate the person's original payment) by the number of days from the person's original payment start day until the day before the first change in circumstances. The person's original payment start day will either be the first day of the relevant clean energy advance period or the first day the person qualified for a clean energy advance, whichever occurs last.

Step 2 is to calculate the number of days from the first change day to the day before the second change day and multiply this number by the second clean energy advance daily rate. Step 2 is repeated as needed for subsequent changes in circumstance multiplying the number of days between change days by the clean energy advance daily rate that applies for the particular period.

Step 3 is to calculate the number of days from the most recent change day until the end of the new clean energy advance period and multiply that figure by the most recent clean energy advance daily rate.

The results of steps 1, 2 and 3 are added up in step 4. The result of step 4 is then rounded up to the nearest \$10 in step 5.

Step 6 is to calculate the sum of the original payment and any previous top-up payments that have been made to the person under the Determination. This result is then deducted from the amount calculated at step 5 and the result becomes the top-up payment at step 7.

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 government payment recipients will receive further top-up payments of household assistance for the impacts of a carbon price in the event they have a change of circumstances during the Clean Energy Advance period.

This is necessary to fulfil the Government's commitment to at least offset the average cost impacts of a carbon price for all low-income households.

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.

By providing for top-ups of the Clean Energy Advance payment to help people in receipt of government payments offset their increased costs of living, the Legislative Instrument clearly advances these rights.

Conclusion

The Legislative Instrument is compatible with human rights because it advances the human right to social security.

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