

Explanatory Statement

ETR Payments Administrative Scheme (FaHCSIA) Determination 2012

Summary

This instrument sets out the rules for an administrative scheme for education tax refund payments (ETR payments). The purpose of the administrative scheme is to make sure that all families who would have been eligible for the education tax refund for 2011-12, are eligible for an ETR payment.

Twelve categories are established under the Determination for entitlement to an ETR payment through the administrative scheme. Payment will be made to a person either automatically by the Department of Human Services (Centrelink) or the Department of Veterans' Affairs, or a person may be able to request consideration for an ETR payment under the Determination.

The instrument is made under subitem 24(1) of Part 2 of Schedule 1 to the *Family Assistance and Other Legislation Amendment (Schoolkids Bonus Budget Measures) Act 2012*.

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

Background

In the 2012-13 Budget, the Australian Government announced that it was introducing a new payment to help families with school costs – the Schoolkids Bonus. From 1 January 2013, the Schoolkids Bonus will be paid upfront to all eligible families in two instalments in January and July each year. The Schoolkids Bonus will replace the Education Tax Refund which means families no longer need to keep receipts and claim the Education Tax Refund with their tax.

As part of the transition to the new Schoolkids Bonus, the Education Tax Refund for 2011-12 will be paid as a direct payment to eligible families. Families will be eligible for the maximum amount they would have been able to claim under the Education Tax Refund. This transitional payment is the 'ETR payment'.

Most families received the ETR payment automatically from 20 June 2012, based on their eligibility on 8 May (the day the 2012-13 Budget was handed down). This is the 'statutory scheme'.

However, where a person's circumstances on 8 May 2012 do not give rise to an entitlement to an ETR payment but an Education Tax Refund would have been available to the person for the 2011-2012 income year, an ETR payment may be made through the administrative scheme.

As administrative scheme is required because the 8 May 2012 test date was used for the purposes of the statutory scheme, however when a person's circumstances over the course of 2011-12 are taken into account, this may result in different outcomes in some cases (for example, if they only had a child in their care for part of the year). In these circumstances, generally an automatic payment could not be made in June 2012 because eligible people were not easily identifiable in the system.

An ETR payment may also be available under the administrative scheme in situations where a person received a lower amount of ETR payment than would have been available to them under the Education Tax Refund.

Explanation of the Provisions

Chapter 1 – General provisions

Part 1 - Preliminary

These sections set out the name, commencement date and purpose of the determination.

Part 2 – Interpretation

Section 1.04 Definitions

Subsection 1.04 defines key terms used in the Determination.

Section 1.05 Other rules for interpreting this Determination

Subsection 1.05 makes clear out that terms used in the determination have the same meaning as in the primary legislation.

Chapter 2 – Entitlement to ETR payment

Part 1 – General

Section 2.01 Entitlement categories and criteria

Subsection 2.01) provides that each of the sections in Part 2 of Chapter 2 is an **entitlement category**, the **entitlement criteria** for each category is set out in the same parts, as well as who is an **eligible student** under each category . Part 2 of Chapter 2 contains 12 different entitlement categories.

The first note at the end of section 2.01 provides guidance that there can be more than one eligible student for some entitlement categories, where a person has two or more students in their care who meet the criteria. Some entitlement categories do not provide for eligible students because entitlement is in respect of the person themselves rather than for a student in their care.

Section 2.02 General rules about more than one entitlement under this Chapter

Section 2.02 makes sure that an ETR payment can only be made once for each child. However if a person meets the criteria under more than one category, they will receive an ETR payment under the category that gives them the highest payment.

Section 2.03 When a person is entitled to an ETR payment

Subsection 2.03 provides that if the Secretary is satisfied that a person meets the entitlement criteria for an entitlement category in Part 2 of Chapter 2, the person is entitled to an ETR payment under the Determination and is called an **entitled person**.

Subsection 2.03(3) makes clear that to be entitled a person does not need to make a claim for an ETR payment. However, in some circumstances set out in Chapter 4, a person may make a claim if they do not automatically receive an ETR payment by the Secretary and the Secretary has approved a form for that purpose.

Section 2.04 When a person meets the FTB criterion

Subsection 2.04(1) provides that a person meets the **FTB criterion** for the purposes of the Determination if at 8 May 2012 the person was entitled to fortnightly instalments of FTB Part A or was entitled to FTB Part A under an FTB lump sum claim. It applies to the entitlement categories in the following sections: 2.05 (Early primary school starters); 2.06 (Early secondary school starters) and 2.07 (Individuals turning between 20 and 25 in 2012).

Subsection 2.04(2) provides that a person's **8 May 2012 FTB rate** is the amount of FTB Part A they were entitled to on 8 May 2012.

Part 2 – Entitlement categories and criteria

Part 2 sets out the 12 entitlement categories and criteria for an ETR payment under the administrative scheme.

Section 2.05 – Early primary school starters

This entitlement category covers children who turn five after 31 July 2012 (born on or after 1 August 2007) but who were in primary school on 8 May 2012. While generally children born on or after 1 August 2007 would not have met the age cut-off for school commencement in any state or territory, where a child has been assessed as 'school ready', they are able to commence school at an earlier age.

Children who turned 5 before 31 July 2012 were captured under the statutory scheme and FTB customers would have received an automatic payment for these children.

This category makes sure that FTB customers caring for an early school starter, who was in school on 8 May, will be entitled to an ETR payment.

Section 2.06 Early secondary school starters

This entitlement category covers children who turn 12 after 31 July 2012 (born on or after 1 August 2000), who were in secondary school on 8 May 2012. A child may meet the requirements under this category if they had accelerated through primary school due to being a gifted student. Under the statutory scheme a person with a child of this age would have only been entitled to the primary school rate for the student.

Children who turned 12 before 31 July 2012 were captured under the statutory scheme as secondary students and would have received an automatic payment at the secondary school rate.

This category makes sure that FTB customers caring for an early secondary school starter, who were in secondary school on 8 May, will be entitled to a 'top-up' ETR payment so that they will receive the secondary school rate in total for the child.

Section 2.07 Individuals turning between 20 and 25 in 2012

This entitlement category covers students on a qualifying payment born on or after 1 July 1986 but before 1 January 1993 (that is students who are aged 20 to less than 25 years old in 2011-2012) who were in a full-time secondary course on 8 May 2012.

These students were not entitled to an ETR payment under the statutory scheme but would have been eligible for the Education Tax Refund in 2011-12. Depending on the payment type, the ETR payment under this category may be made to the student, or to the person receiving the qualifying payment on the student's behalf, such as the parent or carer.

Subsection 2.07(1) provides that this entitlement category has a number of subcategories for different payment types.

FTB

Subsection 2.07(2) provides that a person meets the criteria for this entitlement category if the person was entitled to FTB Part A on 8 May 2012 for a child turning 20 to 25 in 2012 who was in full-time secondary study.

Subsection 2.07(3) provides that a person can be paid for each student in their care who meets the criteria.

DVA education allowance

Subsection 2.07(4) provides that a student is an eligible student for the purposes of this entitlement subcategory if the student was turning 20 to 25 in 2012 and was in full-time secondary study.

Subsection 2.07(5) provides that a person meets the criteria for this entitlement category if all or part of a DVA education allowance was paid in respect of an eligible student for a period that included 8 May 2012. The person must have been a parent

or guardian receiving the whole or part of the DVA education allowance. If the DVA education allowance was paid to a third party (such as a boarding facility), the parent or guardian with whom the eligible student usually lives would be entitled to an ETR payment under this section.

Social security pension, social security benefit or prescribed educational scheme payment

In addition to parents, guardians or carers being entitled to an ETR payment on behalf of a student under this category, some students may be entitled to an ETR payment themselves where they are in receipt of a qualifying payment.

Subsection 2.07(6) provides that a person would be entitled to an ETR Payment if they were:

- entitled to a social security pension, social security benefit or prescribed educational scheme payment on 8 May 2012; and
- turning 20 to 25 in 2012 ; and
- undertaking full-time secondary study on 8 May 2012, or if the person was receiving pensioner education supplement, undertaking qualifying study (qualifying study is defined in section 1.04).

Section 2.08 Individuals receiving other payments not eligible under statutory scheme

This entitlement category covers students aged 16 to 19 years in 2012 (born on or after 1 January 1993 but before or on 8 May 1996), that is students, who were in full-time secondary study but receiving a payment on 8 May 2012 which did not entitle them to an ETR payment under the statutory payment. This will include people that are in receipt of payments such as carer payment, parenting payment or special benefit.

Subsection 2.08(1) provides that a person would be entitled to an ETR payment if they were:

- entitled to a social security pension, social security benefit or prescribed educational scheme payment on 8 May 2012; and
- aged 16 to 19 years in 2012; and
- undertaking full-time secondary study on 8 May 2012, or if the person was receiving pensioner education supplement, undertaking qualifying study.

Section 2.09 Individuals in part-time secondary study on 8 May 2012

Under this entitlement category, students in a part-time secondary course on 8 May 2012 would be entitled to an ETR payment. ETR payments under the statutory scheme focussed on full-time students. This may include students who are combining part-time study with job searching.

Subsection 2.09(1) provides that a person would be entitled to an ETR payment if they were:

- entitled to a social security pension, social security benefit or payment under a prescribed educational scheme payment on 8 May 2012; and
- aged less than 25 years in 2012; and
- undertaking secondary study in the six month period beginning 1 January 2012.

Section 2.10 Individuals aged under 16 years receiving income support

Under this entitlement category, children aged less than 16 years on 8 May 2012 who have a recognised independence status with DHS and receive income support will be entitled to an ETR payment. This category would include children whose parents are unable to exercise their responsibilities or who are orphans.

Subsection 2.10(1) provides that a person would be entitled to an ETR payment if they were:

- entitled to a social security pension, social security benefit or payment under a prescribed educational scheme payment on 8 May 2012;
- aged less than 16 years on 8 May 2012;
- undertaking a course of primary education or undertaking full-time secondary study on 8 May 2012.

Section 2.11 Individuals with a nil rate of income support on 8 May 2012

Under this entitlement category, students who were eligible for income support during 2011-12, but not on the 8 May 2012 test date, will be entitled to an ETR payment. This would include situations where a student's income in the fortnight including 8 May 2012 exceeded the limit and their income support was reduced to nil on 8 May 2012. The ETR payment under this category may be made to the student, or to the person receiving the qualifying payment on the student's behalf, such as the parent or carer.

Subsection 2.11(1) provides that this entitlement category has a number of subcategories for different payment types.

Youth allowance

Subsection 2.11(2) provides that a student is an eligible student for the purposes of this entitlement subcategory if the student was born after 1 July 1986 and on 8 May 2012, the student was undertaking full-time secondary study.

Subsection 2.11(3) provides that a person would be entitled to an ETR payment if they were a parent or payment nominee and were paid an instalment of youth

allowance in respect of the eligible student at any point in the 2011-2012 income year other than in respect of 8 May 2012.

ABSTUDY

Subsection 2.11(4) provides that a student is an eligible student for the purposes of this entitlement subcategory if the student was born after 1 July 1986 and on 8 May 2012, the student was undertaking full-time secondary study.

Subsection 2.11(5) provides that a person would be entitled to an ETR payment if they were a parent or guardian of the student and were paid the whole or part of ABSTUDY living allowance for the student at any point in the 2011-12 income year other in respect of 8 May 2012. If the instalment was paid to a third party, the parent or guardian with whom the eligible student usually lives would be entitled to an ETR payment under this section.

DSP and pensioner education supplement

Subsection 2.11(6) provides that a student is an eligible student for the purposes of this entitlement subcategory if the student was born after 1 July 1986 and on 8 May 2012, the eligible student was undertaking qualifying study.

Subsection 2.11(7) provides that a person would be entitled to an ETR payment if they were a payment nominee and were paid an instalment of DSP and pensioner education supplement in respect of the eligible student at any point in the 2011-2012 income year, but not in respect of 8 May 2012.

Social security pension, social security benefit or prescribed educational scheme payment

In addition to parents, guardians or carers being entitled to an ETR payment on behalf of a student under this category, some students may be entitled to an ETR payment where they are in receipt of a qualifying payment.

Subsection 2.11(8) provides that a person would be entitled to an ETR payment if they were:

- paid an instalment of social security pension, social security benefit or prescribed educational scheme payment at any point in the 2011-12 income year other than in respect of 8 May 2012; and
- born after 1 July 1986 (aged less than 25 in 2012); and
- undertaking full-time study in respect of a secondary course or if the person was receiving pensioner education supplement, undertaking qualifying study.

Section 2.12 Individuals who ceased secondary study before 8 May 2012

This entitlement category covers a child or young adult who finished secondary school before 8 May 2012, so that the person or young adult was not a full-time secondary student on 8 May 2012. This will primarily apply to children who completed Year 12 in 2011. Depending upon the payment type, the ETR payment

under this category may be made to the student, or to the person receiving the qualifying payment on the student's behalf, such as the parent or carer.

Subsection 2.12(1) provides that this entitlement category has a number of subcategories for different payment types.

FTB

Subsection 2.12(2) provides that a person meets the criteria for this entitlement subcategory if the person is entitled to FTB Part A for a student in the 2011-12 income year or would have been entitled for the child if not for the FTB annual child income cut-out. The student must have been born after 1 July 1986 but on or before 8 May 1996 (aged 16 to less than 25 in 2012) and not in secondary study on 8 May 2012, but had undertaken secondary study in the six month period beginning on 1 July 2011 or 1 January 2012.

Subsection 2.12(3) provides that each of the FTB children is an eligible student for the purposes of this entitlement subcategory.

Youth allowance

Subsection 2.12(4) provides that a student is an eligible student for this entitlement subcategory if the student was born after 1 July 1986 but on or before 8 May 1996 (aged 16 to less than 25 in 2012) and the student was not in secondary study on 8 May 2012 but had undertaken secondary study in the six month period beginning 1 July 2011 or 1 January 2012.

Subsection 2.12(5) provides that a person meets the criteria for this entitlement subcategory if the person was a parent or payment nominee and was paid an instalment of youth allowance in respect of the eligible student at any point in the 2011-2012 income year.

ABSTUDY

Subsection 2.12(6) provides that a student is an eligible student for the purposes of this entitlement subcategory if the student was born after 1 July 1986 but on or before 8 May 1996 (aged 16 to less than 25 in 2012) and the student was not in secondary study on 8 May 2012 but had undertaken secondary study in the six month period beginning 1 July 2011 or 1 January 2012.

Subsection 2.12(7) provides that a person would be entitled to an ETR payment if they were a parent or guardian or the student and were paid the whole or part of ABSTUDY living allowance for the student at any point in the 2011-2012 income year. If the instalment was paid to a third party, the parent or guardian with whom the eligible student usually lives would be entitled to an ETR payment under this section.

DSP and pensioner education supplement

Subsection 2.12(8) provides that a student is an eligible student for the purposes of this entitlement subcategory if the student was born after 1 July 1986 but on or

before 8 May 1996 (aged 16 to less than 25 in 2012) and the student was not in secondary study on 8 May 2012 but had undertaken secondary study in the six month period beginning 1 July 2011 or 1 January 2012.

Subsection 2.12(9) provides that a person meets the criteria for this entitlement subcategory if the person was a payment nominee and had been paid an instalment of DSP and pensioner education supplement for the student at any point in the 2011-2012 income year.

DVA education allowance

Subsection 2.12(10) provides that a student is an eligible student for the purposes of this entitlement subcategory if the eligible student was born after 1 July 1986 but before or on 8 May 1996 (aged 16 to less than 25 in 2012) and the student was not in secondary study on 8 May 2012 but had undertaken secondary study in the six month period beginning 1 July 2011 or 1 January 2012.

Subsection 2.12(11) provides that a person meets the criteria for the purposes of this entitlement subcategory if the person was a parent or guardian to which whole or part of a DVA education allowance was paid in respect of an eligible student at any point in the 2011-2012 income year. If the DVA education allowance was paid to a third party, the parent or guardian with whom the eligible student usually lives would be entitled to an ETR payment under this section.

Social security pension, social security benefit or prescribed educational scheme payments

In addition to parents, guardians or carers being entitled to an ETR payment on behalf of a student under this category, some students may be entitled to an ETR payment where they are in receipt of a qualifying payment.

Subsection 2.12(12) provides that a person would be entitled to an ETR payment if they were:

- paid an instalment of social security pension, social security benefit or prescribed educational scheme payment at any point in the 2011-2012 income year;
- born after 1 July 1986 but before or on 8 May 1996 (aged 16 to less than 25 in 2012); and
- not in secondary study on 8 May 2012 but had undertaken secondary study in the six month period beginning 1 July 2011 or 1 January 2012.

Section 2.13 Student who died before 8 May 2012

This entitlement category covers students who died before 8 May 2012 and did not attract an ETR payment under the statutory scheme. The parent or guardian of the student would be entitled to receive an ETR payment under this category.

Subsection 2.13(1) provides that this entitlement category has a number of subcategories for different payment types.

FTB

Subsection 2.13(2) provides that a person would be entitled to an ETR payment if, at any point in the 2011-2012 income year, the person was entitled to FTB Part A for a student who was born after 1 July 1986 (aged less than 25 in 2012) but who died more than 14 weeks before 8 May 2012. The student must have been a primary or secondary student during the 2011-2012 income year.

Subsection 2.13(3) provides that each of the children mentioned above is an eligible student for the purposes of this entitlement subcategory.

The note under subsection 2.13(3) provides guidance that a person would have been entitled to an ETR payment in respect of an eligible student under the statutory scheme for FTB children who died 14 weeks or less before 8 May 2012.

Social security pension, social security benefit or prescribed educational scheme payments

Subsection 2.13(4) provides that a student is an eligible student for the purposes of this entitlement subcategory if the eligible student was born after 1 July 1986 (aged less than 25 in 2012) but died before 8 May 2012 and the student had been a primary or secondary student during the 2011-2012 income year.

Subsection 2.13(5) provides that a person would be entitled if an instalment of social security pension, social security benefit or a prescribed educational scheme payment was paid in respect of the student who died (regardless of whether it was made to the person) at any point in the 2011-2012 income year and the person was a parent or guardian of the student.

Section 2.14 Individuals with a change in circumstances on or before 8 May 2012

This entitlement category allows an ETR payment to be made where a person was entitled to FTB Part A or DVA education allowance, but was not entitled on 8 May 2012 due to a change in circumstances before this date (such as starting a new relationship which affected eligibility). It also captures people who had full care or a higher percentage of care for a student before 8 May 2012, to allow the person to receive a ETR payment 'top-up' based on the amount they would have been entitled to had their circumstances for the whole 2011-12 financial year been taken into account.

Subsection 2.14(1) provides that this entitlement category has a number of subcategories for different payment types.

FTB

Subsection 2.14(2) provides that each of the children mentioned in this category is an eligible student for the purposes of this entitlement subcategory.

Subsection 2.14(3) provides that a person is entitled where they entitled to FTB Part A for a student at some point in the 2011-12 income year. The student must have been born after 1 July 1986 and must have been a primary or secondary student on in the six month period beginning 1 July 2011 or 1 January 2012.

Finally, in the period 1 July 2011 to 7 May 2012 an event occurred which ended the person's FTB Part A entitlement or reduced the person's entitlement for the child:

- the first event captured is that the person became no longer entitled to FTB Part A in the period due to a change in circumstances, but would not include situations where a person's rate of FTB Part A was reduced to nil solely because they provided a higher income estimate (as this would be dealt with at reconciliation); or
- the eligible student was an FTB child of the person in the period but not on 8 May 2012; or
- the third event is the person had full care or a higher shared care percentage for the eligible student in the period, but only had a shared care percentage or a lower shared care percentage for the eligible student on 8 May 2012.

However, under subsection 2.14(4), the person is not entitled to an ETR payment for an eligible student under this entitlement subcategory if:

- the person has been paid a full amount of ETR payment under the statutory scheme for the same child, the amount of which was not reduced by a shared or blended care percentage; or
- the person was a member of a couple on 8 May 2012 and the partner of the person has been paid an ETR payment for the same child; or
- the person is a member of a couple, and the partner of the person was paid an ETR payment for the same eligible student; or
- the eligible student has been paid an ETR payment under the statutory scheme and the eligible student was living at home or a dependent child on 8 May 2012 (in this situation, the family would have already received an ETR payment for that child) .

DVA education allowance

Subsection 2.14(5) provides that a student is an eligible student for this entitlement subcategory if the student was born after 1 July 1986 and the student was a primary

or secondary student in the six month period beginning 1 July 2011 or 1 January 2012.

Subsection 2.14(6) provides that a person is entitled if they were a parent or guardian of the eligible student to whom whole or part of a DVA education allowance was paid in respect of an eligible student at any point in the 2011-12 income year. If the DVA education allowance was paid to a third party, the parent or guardian with whom the eligible student usually lives would be entitled to an ETR payment under this section. The final criteria is in the period 1 July 2011 to 7 May 2012, the DVA education allowance for the eligible student was reduced to nil due to a change in circumstances; or the portion of a DVA education allowance paid in relation to the eligible student was greater than the portion paid in relation to the eligible student on 8 May 2012.

However, under subsection 2.14(7), a person is not entitled to an ETR payment for an eligible student under this entitlement subcategory if:

- the person was receiving instalments of FTB Part A at 8 May 2012 (a person in this circumstance may be entitled under subsection 2.14(3)); or
- the person has been paid an ETR payment under the statutory scheme for the same child, the amount of which was not reduced under section 118ZZVC of the Veterans' Entitlements Act; or
- the person was a member of a couple on 8 May 2012, and the partner of the person has been paid an ETR payment for the same child; or
- the person is a member of a couple, and the partner of the person was paid an ETR payment for the same child; or
- the eligible student has been paid an ETR payment under the statutory scheme and the eligible student was living at home or a dependent child on 8 May 2012 (in this situation, the family would have already received an ETR payment for that child).

Section 2.15 Individuals with a change in circumstances on or after 9 May 2012

Consistent with the previous entitlement category, this category allows an ETR payment to be made where a person was not entitled to Family Tax Benefit Part A or DVA education on 8 May 2012 but became entitled *later* in the 2011-12 year due to a change in circumstances after this date. It also captures people who had full care or a higher percentage of care for a student after 8 May 2012, to allow the person to receive an ETR payment 'top-up' based on the amount they would have been entitled to had their circumstances for the whole 2011-12 financial year been taken into account.

Subsection 2.15(1) provides that this entitlement category has a number of subcategories for different payments. The provisions mirror those under Section 2.14.

Section 2.16 A person able to demonstrate they were entitled for an amount under the Education Tax Refund that is greater than the amount paid under the statutory scheme

Under this entitlement category, a person who is able to demonstrate that they would have been entitled for a greater amount of Education Tax Refund under the taxation legislation than the amount paid under the statutory scheme, or where no amount was paid under the statutory scheme, may be entitled an ETR payment or 'top-up'. The ETR payment under this category may be made to the student, or to the person receiving the qualifying payment on the student's behalf, such as the parent, carer or an approved care organisation.

Subsection 2.16(1) provides that this entitlement category has two subcategories.

Greater entitlement under this determination than statutory scheme in relation to another individual

Subsection 2.16(2) provides that a person meets the criteria if the person would have been entitled to the Education Tax Refund (a tax offset under subsection 61-610(1) of the *Income Tax Assessment Act 1997*) for 2011-12, and the amount they would have been entitled to is more than they were paid under the statutory scheme. Subsection 61-610(1) establishes an Education Tax Refund entitlement for a person with a student in their care.

Under subsection 2.16(4), a person is not entitled to an ETR payment under this subcategory if the eligible student has already received an ETR payment under the statutory scheme. This makes sure that people don't receive two payments for the same child and the eligible student was living at home or a dependent child on 8 May 2012 (in this situation, the family would have already received an ETR payment for that child).

Greater entitlement under this determination than the statutory scheme in relation to independent students

Subsection 2.16(5) provides that a person meets the criteria if the person would have been entitled to the Education Tax Refund (a tax offset under subsection 61-610(2) of the *Income Tax Assessment Act 1997*) for 2011-12 and the amount they would have been entitled to is more than they were paid under the statutory scheme. Subsection 61-610(2) establishes an Education Tax Refund entitlement for students who are independent.

Chapter 3 – Calculating the amount of an ETR payment

Chapter 3 sets out how to calculate the amount of ETR payment for each entitlement category under the Determination.

Section 3.01 Calculation of ETR payment amount

Section 3.01 provides that where a person is entitled to an ETR payment, the Secretary must calculate the amount of the ETR payment in accordance with this chapter.

Section 3.02 Calculation of amount for early primary school starters

Paragraph 3.02 provides that for an entitled person under section 2.05, the amount of an ETR payment is \$409 for each eligible student, unless affected by percentages applied for separated parents and blended families in the FTB system.

Section 3.03 Calculation of amount for early secondary school starters

Paragraph 3.03 provides that for an entitled person under section 2.06, the amount of ETR payment is \$409 for each eligible student, unless affected by percentages applied for separated parents and blended families in the FTB system.

The note clarifies that as the individual would have already been entitled to receive a \$409 primary school payment for the child under the statutory scheme, the additional \$409 amount under this section is a 'top-up' payment.

Section 3.04 Calculation of amount for individuals turning between 20 and 25 in 2012

Subsection 3.04(1) provides that for an entitled person under section 2.07, the amount of ETR payment is worked out by using the method statement in this section.

An entitled person under this category will be entitled to an ETR payment of up to \$818, adjusted for the number of days in 2011-12 they were under 25.

Section 3.05 Calculation of amount for individuals receiving other payments not eligible under statutory scheme

Section 3.05 provides that for an entitled person under section 2.08, the person is entitled to an ETR payment amount of \$818.

Section 3.06 Calculation of amount for individuals in part-time secondary study on 8 May 2012

Section 3.06 provides that for an entitled person under section 2.09, the person is entitled to an ETR payment of \$818.

Section 3.07 Calculation of amount for individuals aged under 16 years receiving income support

Subsection 3.07(1) provides that for an entitled person under section 2.10, the person is entitled to an ETR payment amount of \$409 if the person was a primary student and \$818 if the person was a secondary student.

Section 3.08 Calculation of amount for individuals with a nil rate of income support on 8 May 2012

Section 3.08 provides that for a person entitled under section 2.11, the amount of an ETR payment is worked out by using the method statement in this section.

An entitled person under this category will be entitled to receive a pro-rated ETR payment based on the number of days the eligible student or person was in receipt of a social security pension, social security benefit or a payment under a prescribed educational scheme in the 2011-2012 income year, up to a maximum of \$818.

Section 3.09 Calculation of amount for individuals who ceased secondary study before 8 May 2012

Subsection 3.09(1) provides that for an entitled person under section 2.12, the amount of an ETR payment is worked out using the method statement in this section. The amount of ETR payment paid to an entitled person will depend on when the eligible student or person ceased study. Further, the amount of ETR payment would be pro-rated based on the number of days in each six month period that the student is under 25 years and the student or the person is entitled to the qualifying payment.

For students who ceased their studies before 1 January 2012, the entitled person will receive an ETR payment of up to \$409. For students who ceased their studies between 1 January 2012 and 8 May 2012, the entitled person will receive an ETR payment of up to \$818.

Section 3.10 Calculation of amount for individuals in respect of students who died before 8 May 2012

Subsection 3.10(1) provides that for an entitled person under section 2.13, the amount of ETR payment is worked out using the method statement in this section. The amount of ETR payment to an entitled person will be pro-rated based on the number of days in the 2011-2012 income year that a qualifying payment was made in respect of the eligible student.

Section 3.11 Calculation of amount for individuals with a change in circumstances before 8 May 2012

Section 3.11 provides that for an entitled person under section 2.14, the amount of ETR payment is worked out using the method statement in this section.

The amount of payment will be pro-rated based on the number of days of care, and percentages of care, in relation to duration the child was dependent on the carer. It would also depend on whether the child was in study for the entire financial year. The amount of ETR payment will be up to \$409 for a child in primary school, and up to \$818 for a child in secondary school.

The ETR amount will be calculated and compared against any ETR payment the carer received in the statutory scheme. If the amount calculated under this section is higher, they will get a top-up.

Section 3.12 Calculation of amount for individuals with a change in circumstances on or after 9 May 2012

Section 3.12 provides that for an entitled person under section 2.15, the amount of ETR payment is worked out using the method statement in section 3.11.

The ETR amount will be calculated and compared against any ETR payment the carer received in the statutory scheme. If the amount calculated under this section is higher, they will get a top-up.

Section 3.13 Calculation of amount for individuals able to demonstrate they were eligible for an amount under the Education Tax Refund that is greater than the amount paid under the statutory scheme

Section 3.13 provides that for an entitled person under section 2.16, the amount of ETR payment is worked out using the method statement in this section.

The amount takes into account the number of days of receipt of a qualifying payment, percentages of care, and whether the student was in study for the entire financial year. This amount would be compared with that paid under the statutory scheme and a top-up ETR payment of \$409 for a child in primary school, and up to \$818 for a child in secondary school, may be available where the amount is higher.

Chapter 4 – Claiming and paying an ETR payment

Chapter 4 sets out how a person can make a claim for an ETR payment and how this is to be paid by the Secretary.

Section 4.01 Approved form and required information

Subsection 4.01(1) provides that the Secretary may approve a form (called the ***approved form***) for the purposes of making a claim for an ETR payment.

Subsection 4.01(2) provides that the approved form may contain a list of information or types of information (called required information) which are required to accompany a claim for an ETR payment. For example, the Secretary may require additional evidentiary information for the purposes of a particular entitlement category, such as evidence of the child attending primary school or undertaking a secondary course.

Section 4.02 A person may make claim for an ETR payment

Subsection 4.02(1) provides that a person may make a claim for an ETR payment to the Secretary. This would be in cases where an entitled person has not been 'automatically' paid by the Secretary.

Subsection 4.02(2) provides that a claim must be in the approved form and contain the required information. For example, particular evidentiary information may be required for different entitlement categories.

Subsection 4.02(3) provides that if a person makes a claim to the Secretary in accordance with this section, the Secretary must consider the claim.

Section 4.03 Payment of ETR payment

Subsection 4.03(1) provides that the Secretary must make the payment to the person or the person's nominee in a lump sum. The ETR payment must also be made to the person or to the person's nominee on the date that the Secretary considers to be the earliest day on which it is reasonably practicable for the payment to be made and in such manner as the Secretary considers appropriate.

Subsection 4.03(2) defines **payment nominee** by reference to a person appointed by the Secretary under section 219TB of the Family Assistance Administration Act or a person appointed by the Secretary under section 123B of the Social Security Administration Act.

Chapter 5 – Debt recovery

Chapter 5 sets out the debt recovery provisions in relation to an ETR payment.

Section 5.01 ETR payment made because of false or misleading statement

Subsection 5.01(1) provides that an amount of an ETR payment paid to a person is a debt the person owes the Commonwealth if the amount was paid for any of the reasons set out in this section. Under paragraph 5.01(1)(a), an ETR payment paid to a person is a debt to the Commonwealth if the person knowingly made a false or misleading statement to the Commonwealth in relation to the person's claim under the Determination. Under paragraph 5.01(1)(b), an ETR payment paid to a person is a debt to the Commonwealth if the person knowingly gave false information to the Commonwealth in relation to the person's claim under the Determination.

The note under section 5.01 provides guidance that sometimes only part of an ETR payment will be a debt the person owes the Commonwealth.

Section 5.02 Person other than payee obtaining payment of cheque

Subsection 5.02(1) provides that the amount of a cheque for an ETR payment is a debt the person owes the Commonwealth if the circumstances of this section apply to the person. If an ETR payment is made by the cheque and the person is not the payee and obtains possession of the cheque and the cheque is not endorsed by the payee to the person and the person obtains value for the cheque.

Section 5.03 Provisions for debt recovery

Section 5.03 provides that a debt under Chapter 5 may be recovered in accordance with Divisions 3 and 4 of Part 4 of the Family Assistance Administration Act as if those Divisions applied to a debt under Chapter 5 of the Determination.

Chapter 6 – Miscellaneous

Section 6.01 Review of decisions

Section 6.01 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 an ETR payment for a person as if the decision were a decision relating to an ETR payment for an individual under the family assistance law.

Section 6.02 Delegation

Subsection 6.02(1) provides that the Secretary may delegate his or her powers under this Determination to an officer. However, under subsection 6.02(2) the Secretary may only delegate a power to an officer of an agency other than the Department, if the head of the agency has agreed to the delegation.

Section 6.03 Secretary arrange for use of computer programs for decision making

Subsection 6.03(1) provides that the Secretary may arrange for the use, under the Secretary's control of computer programs for any purposes for which the Secretary may make decisions under the Determination. Under subsection 6.03(2), a decision made by the operation of a computer program under an arrangement made under subsection (1) is taken to be a decision made by the Secretary.

Section 6.04 Decisions to be in writing

Subsection 6.04(1) provides that a decision of the Secretary under the Determination must be in writing. Under subsection 6.04(2), a decision of the Secretary is taken to be in writing if it is made, or recorded, by operation of a computer program.

Consultation

Consultation has taken place with the Department of Human Services, the Department of Veterans' Affairs, the Department of Education, Employment and Workplace Relations, the Australian Taxation Office and the Department of Industry, Innovation, Science, Research and Tertiary Education.

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.

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

The *Family Assistance and Other Legislation Amendment (Schoolkids Bonus Budget Measures) Act 2012* amended family assistance and veterans' entitlements legislation to allow a one-off ETR payment to be made to individuals entitled to certain payments on 8 May 2012. The one-off ETR payment will be made in place of the education expenses tax offset (also known as the Education Tax Refund) under taxation legislation for the 2011-12 income year. The Legislative Instrument will address circumstances in which Part 7A of the *A New Tax System (Family Assistance) Act 1999* or Part VIIIH of the *Veterans' Entitlements Act 1986* do not produce appropriate results, mainly due to the use of the 8 May 2012 test date.

Human rights implications

The ETR payment 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 ETR payments to a person who received a lower amount or did not receive an ETR payment under family assistance or veterans' entitlements legislation, the Legislative Instrument advances these rights.

Conclusion

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