

EXPLANATORY STATEMENT

Family Tax Benefit (Entitlement Exclusion – Newborn Upfront Payment and Newborn Supplement) Determination 2014 (No. 1)

Authority

The *Family Tax Benefit (Entitlement Exclusion – Newborn Upfront Payment and Newborn Supplement) Determination 2014* (this Determination) is made under subclause 35A(12) of Schedule 1 to the *A New Tax System (Family Assistance) Act 1999* (the Act).

Subclause 35A(12) enables the Minister, by legislative instrument, to prescribe circumstances in which an amount of newborn supplement is not to be added for one or more days in relation to an individual and an FTB child. The instrument can also prescribe circumstances in which an individual is not entitled to be paid the newborn upfront payment of family tax benefit (FTB).

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

Purpose of this Determination

Amendments to the family assistance law made by Part 1 of Schedule 2A to the *Family Assistance and Other Legislation Amendment Act 2013* commencing on 1 March 2014 will abolish the baby bonus and replace it with an increase to FTB. The change to FTB will involve a newborn supplement component added to the family tax benefit Part A rate for up to a 13 week period. There will also be a newborn upfront payment of FTB of \$500 if eligibility for the newborn supplement is established.

The Act provides some rules for preventing duplication of payment. Subclauses 35A(8), (9) and (10) of Schedule 1 to the Act provide that an individual and an FTB child cannot be eligible for newborn supplement of FTB under specified circumstances.

Subsection 58AA(2) of the Act provides that an individual and an FTB child cannot be entitled to be paid a newborn upfront payment of FTB under specified circumstances.

In broad terms, the circumstances specified in the Act are the most common situations that would otherwise result in duplication of payment if not prevented. For example, the individual's partner received parental leave pay (PPL) or newborn supplement for the child for at least 13 weeks.

The purpose of this Determination is to prescribe additional rules for preventing duplication of payment for less common situations. It does so by prescribing:

- the circumstances for when an individual cannot be eligible for newborn supplement, or is eligible for newborn supplement for less than 13 weeks; and
- the circumstances for when an individual cannot be entitled to be paid a newborn upfront payment of FTB.

Consultation statement

The Department of Human Services was consulted in the development of the policy for this Determination.

Regulatory impact statement

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

Explanation of Provisions

Section 1 states the name of the Determination, which is the *Family Tax Benefit (Entitlement Exclusions – Newborn Upfront Payment and Newborn Supplement) Determination 2014 (No. 1)*.

Section 2 states that the Determination commences on 1 March 2014.

Section 3 contains definitions for terms that are used in this Determination.

Section 4 provides that the prescribed circumstances for the purposes of subclause 35A(11) are set out in the table in **Schedule 1** to this Determination. Subclause 35A(11) of Schedule 1 to the Act provides that an amount of newborn supplement is not to be added under this clause for a day or days in relation to an individual and an FTB child of the individual in the circumstances prescribed in a legislative instrument.

Section 5 provides that the prescribed circumstances for the purposes of subsection 58AA(3) of the Act are set out in the table in **Schedule 2** to this Determination. Subsection 58AA(3) of the Act provides that subsection 58AA(1) does not apply to an individual and an FTB child in the circumstances prescribed in a legislative instrument. If subsection 58AA(1) does not apply, the individual is not entitled to be paid the newborn upfront payment of FTB.

Schedule 1 – Entitlement exclusion rules for newborn supplement table

The table in **Schedule 1** sets out 25 items, with each item relating to a set of circumstances. The circumstances are prescribed in column 2 of the table. If each of the circumstances under an item apply in relation to an individual, newborn supplement is not to be added to the individual's rate of FTB, for the day or days specified in column 3 of that same item.

Items 1 to 9 relate to situations where paid parental leave is payable for the same child. Items 10 to 25 relate to situations where newborn supplement is added for the same child.

Items 1 to 3 and 10 to 15 relate to the situation where an individual and a second person are members of the same couple while the second person receives the newborn supplement or PPL for the same child for less than 13 weeks. Items 4 to 5 and 16 to 19 relate to the situation where the individual and a second person are members of the same couple, after the second person has previously received the newborn supplement or paid parental leave for the same child. Items 6 to 9 and 20 to 25 relate to the situation where the individual and a second person are members of the same couple, after the second person and a third person were previously members of the same couple while the third person received the newborn supplement or paid parental leave for the same child.

EXAMPLE relating to the circumstance in item 19 of the table in Schedule 1:

Sophie has received 50 days of newborn supplement for her daughter Amelia. On 1 January 2015, Sophie reunites with Amelia's father Ben and Ben claims FTB for Amelia. On 1 March 2015, Sophie and Ben separate.

Ben's eligibility for newborn supplement is assessed to ensure that Sophie does not receive a duplicate benefit of newborn supplement. The assessment recognises that Sophie has not received the full benefit of the maximum 13 weeks (91 days) NBS period.

For the period that Ben and Sophie are members of a couple (day 1 to day 59 of Ben's NBS period), Ben is eligible for newborn supplement for the following number of days:

$$\begin{aligned} &91 - \text{the number of days Sophie received the newborn supplement} \\ &= 91 - 50 = 41 \text{ days} \end{aligned}$$

Therefore, while Ben is a member of a couple with Sophie, he can receive the newborn supplement for 41 days. Newborn supplement is not added to Ben's rate of FTB Part A from day 42 to day 59 of Ben's NBS period. This ensures that Sophie does not receive (through payment to Ben) more than 13 weeks (91 days) of newborn supplement.

For the period that Ben and Sophie are not members of the same couple (day 60 to day 91 of Ben's NBS period), no exclusions apply to Ben and the newborn supplement is to be added to Ben's rate of FTB Part A.

Schedule 2 – Entitlement exclusion rules for newborn upfront payment table

The table in **Schedule 2** sets out 3 items, with each item relating to a set of circumstances. The prescribed circumstances are set out in column 2 of the table. If each of the circumstances under an item apply in relation to an individual, the individual is not entitled to be paid the newborn upfront payment of FTB.

EXAMPLE: relating to the circumstance of Item 1 of the table in Schedule 2:

Emily receives newborn supplement and newborn upfront payment of FTB for her son Noah. Before the end of her NBS period, Emily partners with Noah's father Chris.

Emily and Chris later separate and both have shared care of Noah. Chris claims FTB for Noah and his eligibility for newborn supplement and the newborn upfront payment of FTB are assessed. As Chris was partnered with Emily during her NBS period he is not entitled to receive the newborn upfront payment of FTB.

Statement of Compatibility with Human Rights

This Determination 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 Determination

On 1 March 2014 the baby bonus will be replaced with an increased rate of family tax benefit (FTB) Part A.

The increased rate of FTB Part A will be \$2,000 for the first child (and each child in a multiple birth or entrustment to care) and \$1,000 for subsequent children. It will be paid as an initial instalment of \$500 (the newborn upfront payment of family tax benefit), with the remainder rolled into fortnightly payments over a 13 week period (the newborn supplement).

The Act provides rules for preventing duplication of payments for the most common situations. The Determination provides additional rules for preventing duplication of payment for the less common situations. It does so by prescribing:

- the circumstances for when an individual cannot be eligible for newborn supplement, or is eligible for newborn supplement for less than 13 weeks; and
- the circumstances for when an individual cannot be entitled to be paid a newborn upfront payment of FTB.

Human rights implications

This Determination is likely to engage the following human rights:

Right to social security

Article 9 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) recognises 'the right of everyone to social security'. Article 26 of the *Convention on the Rights of the Child* (CRC) ensures that right to 'every child', and requires that 'the benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child'.

From 1 March 2014, an individual will be entitled to receive the new higher rate of family tax benefit for up to 91 days, except where they have already benefitted from newborn assistance for that child (for example, they or their partner have received PPL for that child).

This Determination engages the right to social security to the extent that it ensures an individual (or their partner) does not receive a duplicate benefit of Government assistance for a newborn child. It achieves this by outlining circumstances where an individual (or the individual's household) is considered to have fully benefitted from assistance for a new child, and should not be eligible for a rate of newborn supplement on a day, or for the newborn upfront payment.

This Determination also outlines the circumstances where an individual (or their partner) is recognised as having received a part benefit of newborn supplement and allows the individual to receive newborn supplement for a reduced period of time until they have fully benefitted from this payment.

Rights of children deprived of their family environment

Article 20 (1) of the CRC provides that 'a child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State'.

This Determination engages the rights of children deprived of their family environment to the extent that it ensures an individual (or their partner) who undertakes the care of a non-biological child, does not receive a duplicate benefit of Government assistance for that child.

Conclusion

This Determination is compatible with human rights. To the extent that this Determination limits access to family assistance, these limitations are reasonable and proportionate.