

EXPLANATORY STATEMENT

Family Tax Benefit (Meeting the Health Check Requirement) Amendment Determination 2014

The *Family Tax Benefit (Meeting the Health Check Requirement) Amendment Determination 2014* ('the Amendment Determination') is made under subsections 61A(5) and (7) of the *A New Tax System (Family Assistance) Act 1999* ('the Act').

Background

Section 61A of the Act requires children to satisfy a health check requirement for payment of the Family Tax Benefit Part A Supplement ('the Supplement'). The health check requirement applies to an individual's eligibility for the Supplement in an income year where an individual's FTB child turned 4 years and the individual, or the individual's partner is receiving a social security pension, benefit, a service pension or income support supplement.

Subsection 61A(5) of the Act enables the Minister to specify, by legislative instrument, the requirements that a child must meet to satisfy the health check requirement. Subsection 61A(7) enables the Minister to determine, by legislative instrument, the classes of children taken to meet the health check requirement. The *Family Tax Benefit (Meeting the Health Check Requirement) Determination 2011* ('the 2011 Determination') has been made under these subsections.

The 2011 Determination provides a timeframe within which the child must undergo certain specified health checks, or satisfy other criteria, in order to meet the health check requirement or be taken to meet the health check requirement. Currently this timeframe ends at the end of the second income year after the income year in which the child turns 4 years. At the time the 2011 Determination was made this aligned with the timeframe under the Act within which the Secretary was required to be satisfied that the health check requirement was met.

From 28 June 2013, the timeframe under the Act was amended, so that where a child turned 4 years in the 2012-13 income year or a later income year, the Secretary must generally be satisfied that the health check requirement is satisfied within the first income year after the income year in which the child turned 4 years. In special circumstances, the Secretary has discretion to allow a further period, but such period is required to end no later than the end of the second income year after the income year in which the child turned 4 years.

Purpose

The purpose of the Amendment Determination is to amend the 2011 Determination to align the timeframes for meeting the health check

requirement under the 2011 Determination with the timeframes that apply under the Act for the Secretary to be satisfied that the health check requirement has been met.

Explanation of the Provisions

Section 1 states the name of the Determination.

Section 2 provides that the Determination commences on the day after it is registered.

Section 3 provides that Schedule 1 amends the *Family Tax Benefit (Meeting the Health Check Requirement) Determination 2011*.

Section 4 provides for the application of the amendments made by Schedule 1. The Amendment Determination applies in respect of a child where the income year in which the child turned 4 years is the 2012-13 income year or a later income year. This aligns with the application of the changes to timeframes under the Act.

Schedule 1 sets out the amendments.

Item 1 inserts a definition of Family Assistance Administration Act into the 2011 determination. This amendment is consequential to the amendment made by Item 3.

Items 2 and 4 substitute words in section 4 and paragraphs 7(a) and (b) of the 2011 Determination to reduce the timeframe within which the child must undergo certain specified health checks, or satisfy other criteria, in order to meet the health check requirement or be taken to meet the health check requirement. Consistent with timeframes under the Act, the health check must be completed or other criteria satisfied before the end of the first income year after the income year in which the child turned 4 years, or such further period (if any) as the Secretary allows.

Item 3 inserts new section 4A into the 2011 Determination. This provides the circumstances in which the Secretary may allow a further period for the purposes of section 4 and paragraphs 7(a) and (b). The Secretary can only allow a further period if there are special circumstances and the Secretary has allowed the individual a further period in which to lodge a past period claim for family tax benefit in respect of the child for the income year in which the child turned 4 years. The further period must end no later than the end of the second income year after the income year in which the child turned 4 years.

Consultation

Consultation on the Amendment Determination was undertaken with the Department of Human Services

Regulatory Impact Analysis

The Amendment 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

Overview

Human rights implications

The amending instrument is likely to engage the following human right:

Right to social security

The amending instrument engages 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.

Right to Health

Article 12 of ICESCR recognises the right of everyone to ‘the enjoyment of the highest attainable standard of physical and mental health’. It also requires parties to take specific steps to improve the health of their citizens, including improving child health.

Article 24 of CRC recognises the right of the child to the enjoyment of the highest attainable standard of health. The CRC requires that parties shall take appropriate measures to ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care.

The changes within the amending instrument ensure the timeframes within the 2011 Determination align with the timeframes specified in the Act. The vast majority of FTB customers who receive income support receive FTB by fortnightly instalment. These customers are notified of the requirement for their child to undertake a health check during the entitlement year, but must meet the requirement by the end of the first income year after the income year their child turns 4 years. Given the purpose of the health assessment is to ensure that four year olds in low income households have a basic health check to identify any health issues before they start school, it is reasonable to expect families to meet this requirement within this timeframe.

Where families lodge a past period claim for FTB and are subject to the health check requirement, the amending instrument will specify that families need to meet the health check requirement within the first income year after the income year the child turns 4 years. This is the same timeframe that applies to lodging a past period claim for FTB. However, where special circumstances apply, the individual may lodge their FTB claim and meet the health check requirement no later than the second income year after the income year in which the child turns 4 years.

The changes still allow a generous amount of time for payment recipients to notify that they have met the health check requirement in order to access the FTB Part A supplement.

Conclusion

The amending instrument is compatible with human rights because it advances the protection of human rights, and to the extent that the changes limit access to FTB, these limitations are reasonable and proportionate.

The Hon Kevin Andrews MP, Minister for Social Services