

EXPLANATORY STATEMENT

Schoolkids Bonus Amendment Determination 2014

The *Schoolkids Bonus Amendment Determination 2014* ('the Amendment Determination') is made under section 35UC of the *A New Tax System (Family Assistance) Act 1999* ('the Act').

Background

Section 35UC provides that the Minister may, by legislative instrument, determine circumstances in which an individual is eligible for schoolkids bonus on a bonus test day in relation to a child (a school leaver). The *Schoolkids Bonus Determination 2012* ('the 2012 Determination') was made in part under this section, providing for schoolkids bonus to be paid for certain 'school leavers' in prescribed circumstances.

In part, section 7 of the 2012 Determination establishes a requirement that the Secretary be notified or become aware that the school leaver child has completed his or her secondary education, and prescribes a timeframe within which the Secretary must be notified or become aware. This timeframe matched the period then allowed under sections 35UB and 35UD for payment of schoolkids bonus under the Act (i.e. until 30 June 2015 for the 2012-13 entitlement year).

From 28 June 2013, the timeframe required under the Act was amended, starting from the 2012-13 entitlement year, generally meaning that families have 12 months from the end of that year (until 30 June 2014) in which to take action about their entitlements. The amended timeframe requires that the Secretary is notified of a school leaver child's completion of secondary education before the end of the first income year after the income year in which the bonus test day occurs. For bonus test days within the 2012-13 entitlement year, this will require notification by 30 June 2014. Discretion is also given for the Secretary 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 bonus test day occurs (or 30 June 2015 for bonus test days in the 2012-13 entitlement year).

Purpose

The purpose of the Amendment Determination is to amend the 2012 Determination to align the timeframes for notification to the Secretary that a school leaver child has completed his or her secondary education with the timeframes applying to eligibility for schoolkids bonus under the Act.

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 *Schoolkids Bonus Determination 2012*.

Section 4 provides for the application of the amendments made by Schedule 1. The amendments will apply to eligibility for bonus test days on or after 1 January 2013. For eligibility relating to bonus test days of 1 January 2013 and 30 June 2013, this will mean that individuals would generally have until 30 June 2014 to notify that their child has completed secondary education. This aligns with the application of the changes to the timeframes under the Act.

Schedule 1 sets out the amendments.

Item 1 inserts a definition of Family Assistance Administration Act into the 2012 determination. This amendment is consequential to the amendment made by Item 3.

Item 2 substitutes words in subparagraph 7(1)(e)(i) of the 2012 Determination to reduce the timeframe for notification to within the first income year in which the bonus test day occurs, or such further period (if any) as the Secretary allows.

Item 3 inserts new subsection (1A) into section 7 of the 2012 Determination, setting out the requirements for any further period allowed under amended subparagraph 7(1)(e)(i). 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 bonus test day occurs. The further period must end no later than the end of the second income year after the income year in which the bonus test day occurs.

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*

Schoolkids Bonus Amendment Determination 2014

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 *Schoolkids Bonus Amendment Determination 2014* amends the *Schoolkids Bonus Determination 2012* to align the timeframe that a school leaver child must notify that they have completed his or her secondary education with the timeframes applying to eligibility for schoolkids bonus under the *A New Tax System (Family Assistance) Act 1999*.

Schoolkids bonus is paid for individuals who undertake primary or secondary education or an eligible activity.

While generally schoolkids bonus instalments are paid in respect of individuals undertaking study on a bonus test date or in a future period, transitional arrangements are in place to allow students who have completed secondary education to receive a school leaver payment. This is a transitional arrangement that is only available for individuals who were in primary or secondary education in 2012, to ensure that families do not miss out due to the replacement of the Education Tax Refund with schoolkids bonus.

The amending instrument prescribes: the timeframe in which individuals must notify that a school leaver child has completed secondary school in order for schoolkids bonus to be paid.

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.

The changes within the amending instrument ensure the timeframes within the 2012 Determination align with the timeframes specified in the Act.

Where an individual is eligible for the School Leavers Payment for an FTB child, they will need to notify the Secretary that the FTB child completed their secondary education in the previous education period, by the end of the first income year after the income year.

Where families lodge a past period claim for FTB, the amending instrument specifies that families need to notify the Secretary 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 notify the Secretary 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 of school completion and receive the School Leavers Payment.

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 schoolkids bonus payments, these limitations are reasonable and proportionate.

The Hon Kevin Andrews MP, Minister for Social Services