

EXPLANATORY STATEMENT

A New Tax System (Family Assistance) (Family Tax Benefit—Order of Reduction) Determination 2023

Purpose

The A New Tax System (Family Assistance) (Family Tax Benefit—Order of Reduction) Determination 2023 (the determination) determines an aspect of the method for calculating the family tax benefit (FTB) Part B rate under the *A New Tax System (Family Assistance) Act 1999* (the Family Assistance Act).

Specifically, the method enables the Secretary to determine the extent to which FTB Part B rates worked out under subclause 29(2) of Schedule 1 to the Family Assistance Act are attributable to the amounts referred to in a particular step (Step 1) of the method statement in that subclause. This method applies to an individual who is a member of a couple.

The determination does not change the total amount of an individual's entitlement to FTB Part B, which will continue to be assessed under current eligibility and income testing rules.

The determination is made under subclause 29(2A) of Schedule 1 to the Family Assistance Act, and commences on 1 October 2023.

Background

FTB Part B is subject to an income reduction process. That is, the amount of FTB Part B that is payable to a person may be reduced according to the amount of adjusted taxable income the person earns above the income free area. The calculation is given effect through a rate calculation process set out in Schedule 1 to the Family Assistance Act.

The income reduction calculation is not applied to FTB Part B as a whole, but to the different components of the payment in an order specified by legislative instrument for the purposes of subclause 29(2) of Division 1 of Part 4 of Schedule 1 to the Family Assistance Act. The instrument-making power is contained in subclause 29(2A) of Schedule 1 to the Family Assistance Act. This instrument determines the method for attributing the reduction in the FTB Part B rate to the various components of the payment for the purposes of subclause 29(2).

FTB Part B has 3 components:

- FTB Part B standard rate (under Division 2 of Part 4 of Schedule 1 to the Family Assistance Act)
- FTB Part B supplement (under Division 2A of Part 4 of Schedule 1 to the Family Assistance Act)

- energy supplement (Part B) (under Division 2B of Part 4 of Schedule 1 to the Family Assistance Act).

Under the determination, the income reduction calculation is applied to the above components in the following way. First, the FTB Part B rate reduction is applied to the standard rate. If further reduction is required after the standard rate has been reduced to nil, the reduction is applied to the individual's energy supplement (Part B) followed by the individual's FTB Part B supplement (if required).

Example:

Vivek is married and has 2 FTB children under the age of 10, the youngest being 4 years old. Vivek is the secondary income earner and has an annual adjusted taxable income of \$30,000. The income free area is \$6,497 annually.

Family tax benefit Part B is paid per family, based on the age of the youngest child. As Vivek's youngest child is under 5, Vivek's family can receive up to \$5,234.10 per year for the 2023-24 financial year. This includes the FTB Part B standard rate (\$4,730.40), energy supplement (Part B) (\$73 per year) and FTB Part B supplement (\$430.70 per year, upon reconciliation).

Under the method statement contained in clause 32 of Schedule 1 to the Family Assistance Act, Vivek has an annual income reduction of \$4,700.60.

Applying the method statement, Vivek will receive \$533.50 of FTB Part B for the 2023-24 financial year. His FTB Part B rate will be calculated as follows:

- *standard rate: \$29.80 per year
(reduction is fully attributed to this component)*
- *energy supplement (Part B): \$73 per year
(no reduction applied to this component)*
- *FTB Part B supplement: \$430.70 per year
(no reduction applied to this component, payable upon reconciliation)*

Note: The above example is for illustrative purposes and may not reflect actual amounts applying under the Family Assistance Act. Current rates of payment can be found in the Guide to Australian Government Payments published on the Services Australia website at [servicesaustralia.gov.au](https://www.servicesaustralia.gov.au).

The current determination, the *Family Tax Benefit (Order of Reduction) Determination 2013*, is due to sunset on 1 October 2023. The Minister for Social Services has remade the determination in largely the same form. The

determination reflects the renaming of the ‘clean energy supplement’ to the ‘energy supplement’ made by the *Social Services and Other Legislation Amendment (2014 Budget Measures No. 6) Act 2014*. Minor changes have been made to improve user readability.

Consultation

The Department of Social Services has consulted with Services Australia on the determination. Broader consultation was not undertaken due to the technical nature of the determination and because the determination does not change current policy settings.

Regulatory Impact Analysis

The Department consulted with the Office of Impact Analysis who confirmed an Impact Analysis is not required (OIA23-05164). 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 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 the provisions

Section 1 provides that the name of the instrument is the A New Tax System (Family Assistance) (Family Tax Benefit—Order of Reduction) Determination 2023.

Section 2 provides that the determination commences on 1 October 2023.

Section 3 provides that the authority for making the determination is subclause 29(2A) of Schedule 1 to the Family Assistance Act.

Section 4 provides the definitions of key terms used in the determination.

A note to the reader provides that, unless the contrary intention appears, any words or expressions used in the determination have the same meaning as in the Family Assistance Act as in force from time to time. This is consistent with the position stated in subsection 13(1) of the *Legislation Act 2003*.

Section 5 provides the method for attributing a reduction in FTB Part B rate to the various components of the FTB Part B rate in circumstances where an individual’s FTB Part B rate is reduced due to income. This method applies to an individual who is a member of a couple.

Subsection 5(1) states that section 5 applies in relation to the method statement in subclause 29(2) of Schedule 1.

Subsection 5(2) provides that an individual's reduction for adjusted taxable income is to be attributed to the following amounts in descending order:

- (a) the individual's standard rate;
- (b) the individual's energy supplement (Part B) (if any);
- (c) the individual's FTB Part B supplement (if any).

That is, the reduction is first applied to the individual's standard rate that is calculated under Division 2 of Part 4 of Schedule 1 to the Family Assistance Act. If further reduction is required after the individual's standard rate has been reduced to nil, the individual's energy supplement (Part B) and then the individual's FTB Part B supplement are reduced.

A note to the reader explains that the amounts in paragraphs 5(2)(a) to (c) above are the same amounts mentioned in Step 1 of the method statement in subclause 29(2) of Schedule 1. This note is included to confirm that this determination relates specifically to the amounts mentioned in the applicable method statement (including the applicable step) and to avoid any confusion where the terms are used elsewhere in the Family Assistance Act.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

A New Tax System (Family Assistance) (Family Tax Benefit—Order of Reduction) Determination 2023

The A New Tax System (Family Assistance) (Family Tax Benefit—Order of Reduction) Determination 2023 (the 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 Legislative Instrument

Prior to 1 July 2013, family tax benefit (FTB) Part B had two components: the standard rate and the FTB Part B supplement. Where the Part B rate was to be reduced based on an individual's adjusted taxable income, the method statement in subclause 29(2) of Schedule 1 to the Family Assistance Act provided for the reduction to be effected by taking away so much of the individual's standard rate, and then so much (if any) of the individual's FTB Part B supplement, as equals the reduction.

Part 2 of Schedule 2 to the *Clean Energy (Household Assistance Amendments) Act 2011*, which applied from 1 July 2013, introduced a third component to FTB Part B: the clean energy supplement (Part B). Those amendments also removed the wording in subclause 29(2) of Schedule 1 to the Family Assistance Act, which provided for the order in which components are reduced, and instead introduced an instrument-making power to determine a method for attributing the reduction in the FTB Part B rate to the various components. The instrument-making power is contained in subclause 29(2A) of Schedule 1 to the Family Assistance Act. This instrument determines the method for the purposes of subclause 29(2).

This was previously determined under the *Family Tax Benefit (Order of Reduction) Determination 2013*. However, that determination is due to sunset on 1 October 2023 and is now remade as the A New Tax System (Family Assistance) (Family Tax Benefit—Order of Reduction) Determination 2023. Minor changes have been made to improve user readability.

The *Social Services and Other Legislation Amendment (2014 Budget Measures No. 6) Act 2014* renamed the 'clean energy supplement' the 'energy supplement' in accordance with Budget Measure 1. Consequently, the Family Assistance Act was amended to omit references to 'clean energy supplement' and substituted it with 'energy supplement'. This determination has been changed throughout to align with the wording of current legislation.

The determination does not change the total amount of an individual's entitlement to FTB Part B, which will continue to be determined under current eligibility and income testing rules.

Human Rights Implications

The determination engages the following rights:

- Right to social security – Article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESR)
- Right to benefit from social security – Article 26 of the Convention on the Rights of the Child (CRC).

Right to social security

The determination engages Article 9 of the ICESR, which states that every person has the right to social security, including social insurance.

The determination engages Article 9 as it provides a method of calculation to ensure that parents receiving FTB still receive adequate social assistance to cover expenses incurred in raising children. By providing a mechanism for attributing the reduced FTB Part B rate to the various components, this determination will allow for Australia to meet its obligations under the ICESR.

Right to benefit from social security

Article 26 of the CRC states that every child has the right to benefit from social security and necessary measures should be taken to achieve full realisation of this right. Further, the article states that benefits should, where appropriate, be granted, and take into account the resources and the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

Conclusion

This Legislative Instrument is compatible with human rights because it advances the protection of a child's human rights.

The Hon Amanda Rishworth MP, Minister for Social Services