

## **EXPLANATORY STATEMENT**

### **A New Tax System (Family Assistance)(Child Care Benefit –Circumstances in which activity requirements do not apply) Amendment Determination 2008 (No.1)**

#### **Summary**

This Determination is made under subsection 14(1B) of the *A New Tax System (Family Assistance) Act 1999* (the Family Assistance Act).

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

The purpose of this Determination is to amend the *A New Tax System (Family Assistance)(Child Care Benefit – Circumstances in which activity requirements do not apply) Determination 2006* (the Circumstances in which activity requirements do not apply Determination).

The Circumstances in which activity requirements do not apply Determination specifies the circumstances in which an individual is not required to meet the activity requirements under section 17A of the Family Assistance Act to be eligible for child care benefit (CCB) for up to 50 hours of care provided to an FTB child in a week. The basic weekly limit of hours of care for which an individual is eligible for CCB is 24.

The Circumstances in which activity requirements do not apply Determination is amended as a consequence of the introduction of a ‘regular care child’ concept into the family assistance law by the *Child Support Legislation Amendment (Reform of the Child Support Scheme – New Formula and Other Measures) Act 2006* (the Amending Act) with effect from 1 July 2008. ‘Family assistance law’ is defined in section 3 of the *A New Tax System (Family Assistance)(Administration) Act 1999* as including, among others, that Act and the *A New Tax System (Family Assistance) Act 1999* (Family Assistance Act).

As a consequence of the amendments, the same exemption from the activity test applies to CCB eligibility for care provided to regular care children. The amendments made by this Determination commence on 1 July 2008.

#### **Background**

Currently, to be eligible for CCB for a child, the child must be an ‘FTB child’ of the individual or the individual’s partner.

The ‘FTB child’ is currently defined in sections 22 to 29 of the Family Assistance Act. If a child is in the care of more than one individual, the child is not an FTB child of an individual if the child is in the individual’s care for less than 10% of the time.

Amendments that were made to the family assistance law by the Amending Act have altered, from 1 July 2008, the concept of an 'FTB child' relevant to eligibility for family assistance including for family tax benefit (FTB) and CCB.

As a result of the changes made by the Amending Act, a child in respect of whom an individual has at least 35% of care is an FTB child of that individual (subsection 22(7) of the Family Assistance Act, as amended refers) and a child in respect of whom an individual has 14% to 34% of care is a 'regular care child' of the individual (subsection 3(1) of the Family Assistance Act, as amended refers).

Amendments were made by the Amending Act to the CCB eligibility provisions so that, from 1 July 2008, eligibility for CCB arises for both categories of children, FTB children and regular care children.

The exemptions from the activity requirements for CCB purposes specified in the Circumstances in which activity requirements do not apply Determination are relevant to sessions of care provided to an FTB child. As a consequence of the changes to the CCB eligibility provisions, amendments to the Circumstances in which activity requirements do not apply Determination are made to ensure that a 'regular care child' is afforded the same treatment as an 'FTB child under that Determination.

### **Consultation**

The amendments made by this Determination were not consulted given that they are consequential on the amendments made by the Amending Act (as announced in the 2006-2007 Budget) and which commenced on 1 July 2008.

### **Regulatory Impact Analysis**

This instrument does not require a Regulation Impact Statement (RIS) and /or a Business Cost Calculator Figure. This instrument is not regulatory in nature, will not impact on business activity, and will have no, or minimal, compliance costs or competition impact. It is not expected that any compliance costs will be incurred by business as a result of this instrument.

### **Explanation of Amendments**

#### *Name of the Determination*

Section 1 states the name of this Determination.

#### *Commencement*

Section 2 states that this Determination commences on 1 July 2008.

This determination does not disadvantage the rights and liabilities of persons for the purposes of subsection 12(2) of the *Legislative Instruments Act 2003*. The delay in making this determination was due to an administrative oversight by the Department.

*Amendment of the A New Tax System (Family Assistance)(Child Care Benefit – Circumstances in which activity requirements do not apply) Determination 2006*

Section 3 states that Schedule 1 amends the Circumstances in which activity requirements do not apply Determination.

**Explanation of the items in Schedule 1**

*Item 1 – Sections 5 and 6*

Section 5 specifies the circumstances in which individuals who have been offered paid work are not required to meet the activity requirements under section 17A of the Family Assistance Act. The exemption applies if the individual is due to start work within 14 days after the last session of care provided for the relevant week to the FTB child of the individual or the individual's partner.

Section 6 specifies the circumstances in which individuals who have enrolled in a training course or a course of education are not required to meet the activity requirements under section 17A of the Family Assistance Act. The exemption applies if the individual is due to start that training course or the course of education within 14 days after the last session of care provided for the relevant week to the FTB child of the individual or the individual's partner for the relevant week.

Item 1 substitutes new sections 5 and 6 which provide that the exemption from the activity test in circumstances referred to in these sections also applies to a 'regular care child.'