



Economic Security Strategy Payments Administrative Scheme (FaHCSIA) Determination 2009¹

*Social Security and Other Legislation Amendment (Economic
Security Strategy) Act 2008*

I, JENNY MACKLIN, Minister for Families, Housing, Community Services and Indigenous Affairs, make this Determination under subitem 1 (1) of Schedule 4 to the *Social Security and Other Legislation Amendment (Economic Security Strategy) Act 2008*.

Dated 26 November 2009

JENNY MACKLIN

Minister for Families, Housing, Community Services and Indigenous Affairs

Contents

Part 1	Preliminary	
	1 Name of Determination	3
	2 Commencement	3
	3 Purpose	3
	4 Interpretation	3
Part 2	ESS payment circumstances	
	5 Entitlement to an ESS payment to families	5
	6 Qualification for an ESS payment to carers	6
Part 3	Amount of ESS payment	
	7 Amount payable to a person entitled to FTB Part A	8
	8 Amount payable to a person receiving carer payment	8
	9 Amount payable to a person receiving carer allowance	8
Part 4	Claiming and paying an ESS payment	
	10 How to claim an ESS payment	10
	11 Payment of ESS payment	10
Part 5	Debt recovery	
	12 ESS payment made because of false or misleading statement	11
	13 Debt arising in relation to an ESS payment to families	11
	14 Debts arising in relation to ESS payments to carers	12
	15 Person other than payee obtaining payment of cheque	13
	16 Provisions for debt recovery	13
Part 6	Miscellaneous	
	17 Internal review of decisions	14
	18 Review by the Administrative Appeals Tribunal	14
	19 Delegation	14
	20 Decisions to be in writing	14
	21 Secretary may arrange for use of computer programs for decision making	15

Part 1 Preliminary

1 Name of Determination

This Determination is the *Economic Security Strategy Payments Administrative Scheme (FaHCSIA) Determination 2009*.

2 Commencement

This Determination commences on the day after it is registered.

3 Purpose

This Determination provides for economic security strategy payments to be made to persons who, in the financial year starting on 1 July 2008, were in particular circumstances for which the Minister considers Part 6 of the *A New Tax System (Family Assistance) Act 1999* or Part 2.17 of the *Social Security Act 1991* does not produce appropriate results.

4 Interpretation

(1) In this Determination:

Centrelink means the Commonwealth Services Delivery Agency.

ESS payment means 1 of the following payments:

- (a) an ESS payment to carers;
- (b) an ESS payment to families.

ESS payment to carers means an economic security strategy payment that is made under this Determination to a person qualified under section 6.

ESS payment to families means an economic security strategy payment that is made under this Determination to a person entitled under section 5.

FaHCSIA means the Department of Families, Housing, Community Services and Indigenous Affairs.

Family Assistance Act means the *A New Tax System (Family Assistance) Act 1999*.

Family Assistance Administration Act means the *A New Tax System (Family Assistance) (Administration) Act 1999*.

family assistance law has the same meaning as in section 3 of the *A New Tax System (Family Assistance) (Administration) Act 1999*.

formal foster care arrangement means an arrangement that is made:

- (a) for the foster care of a child; and
- (b) by a State or Territory child protection authority; and
- (c) under State or Territory child protection legislation.

Section 4

FTB means family tax benefit.

FTB child has the same meaning as in Subdivision A of Division 1 of Part 3 of the Family Assistance Act.

FTB claim means a claim for family tax benefit made in accordance with Subdivision A of Division 1 of Part 3 of the Family Assistance Administration Act.

ongoing care, for a child, means care for the child that continues, or is likely to continue, for at least 26 weeks.

Secretary means the Secretary of the Department responsible for the administration of this Determination.

Social Security Act means the *Social Security Act 1991*.

Social Security Administration Act means the *Social Security (Administration) Act 1999*.

social security law has the same meaning as in section 3 of the Social Security (Administration) Act.

- (2) A term used in this Determination in relation to payment of family tax benefit or economic security strategy payment to families has the same meaning as in the Family Assistance Act.
- (3) A term used in this Determination in relation to payments or allowances for carers has the same meaning as in the Social Security Act.

Part 2 ESS payment circumstances

5 Entitlement to an ESS payment to families

- (1) A person is entitled to an ESS payment to families if:
 - (a) the person is or was entitled to FTB Part A for an FTB child, aged under 16, who entered or re-entered the person's ongoing care during the period starting on 15 October 2008 and ending on 31 December 2008; and
 - (b) 1 of the following subparagraphs applies to the person:
 - (i) the person was:
 - (A) entitled to FTB Part A for the child at any time during the period starting on 1 July 2008 and ending on 13 October 2008; and
 - (B) not entitled to FTB Part A for the child for 14 October 2008 because there were special circumstances preventing the child from being in the person's care on that day;
 - (ii) the person is not a parent of the child and has, or had, the ongoing care of the child under a formal foster care arrangement;
 - (iii) the person is not a parent of the child and has, or had, the ongoing care of the child because of an inability or failure of the child's parents to provide care of the child; and
 - (c) the person claims the payment under section 10.
- (2) However, a person is not entitled to an ESS payment to families for an FTB child if the person:
 - (a) has been paid an economic security strategy payment to families under Division 4B of Part 3 of the Family Assistance Administration Act for the same FTB child; or
 - (b) was a member of a couple on the relevant day and the partner of the person has been paid an economic security strategy payment to families for the same child under Division 4B of Part 3 of the Family Assistance Administration Act; or
 - (c) was a member of a couple on the relevant day, and the partner of the person was paid an ESS payment to families for the same child, the amount of which was not reduced because of a determination under subsection 28 (1) or section 29 of the Family Assistance Act; or
 - (d) is entitled to FTB Part A for the child because of an FTB claim made after the end of the 2008–09 income year but does not satisfy the FTB reconciliation conditions for the 2008–09 income year under section 32B of the Family Assistance Administration Act for all of the same-rate benefit periods in that income year; or

Section 6

- (e) is entitled to FTB Part A for the child because of an FTB claim made after 29 January 2010; or
- (f) is entitled to FTB Part A for the child because the Secretary became aware after 29 January 2010 that the child had entered the person's care.

- (3) In paragraphs (2) (b) and (c):

relevant day means the first day the person is, or was, entitled to FTB Part A for the FTB child during the period starting on 15 October 2008 and ending on 31 December 2008.

Note More than 1 ESS payment may be made for the same FTB child to different people. Also, a person may be entitled to an ESS payment to families for a child, and another person entitled to an economic security strategy payment to families under the Family Assistance Act for the same child. This might occur, for example, if a person has gained care of a child after 14 October 2008 from a person who previously had care of the child on 14 October 2008, and both people are entitled to FTB Part A.

6 Qualification for an ESS payment to carers

- (1) A person is qualified for an ESS payment to carers if:
- (a) the person is, or was, receiving a carer allowance, or carer payment, for a care receiver, aged under 16, who entered or re-entered the person's ongoing care during the period starting on 15 October 2008 and ending on 31 December 2008; and
 - (b) 1 of the following subparagraphs applies to the person:
 - (i) the person was:
 - (A) receiving carer allowance or carer payment for the care receiver at any time during the period starting on 1 July 2008 and ending on 13 October 2008; and
 - (B) not receiving carer allowance or carer payment for 14 October 2008 because there were special circumstances preventing the child from being in the person's care on that day;
 - (ii) the person is not a parent of the child and has, or had, the ongoing care of the care receiver under a formal foster care arrangement;
 - (iii) the person is not a parent of the child and has or had the ongoing care of the care receiver because of an inability or failure of the parents of the care receiver to provide the care receiver with care; and
 - (c) the person claims the payment under section 10.

Section 6

- (2) However, a person is not qualified under subsection (1) for an ESS payment to carers if the person has been paid an economic security strategy payment under Division 4 of Part 3 of the Social Security Administration Act for the same care receiver.

Note 1 More than 1 ESS payment may be made for the same care receiver to different people. Also, a person may be entitled to an ESS payment to carers for a child, and another person entitled to an economic security strategy payment under Part 2.17 of the Social Security Act for the same child. This might occur, for example, if a person has gained care of a child after 14 October 2008 from a person who previously had care of the child on 14 October 2008. Both people may qualify for a payment for that child.

Note 2 Two ESS payments to carers may be made to the same person for the same child if the person is qualified under section 6 for both carer allowance and carer payment for the child. Another ESS payment could be made to the same person under section 5 if the person is also entitled to FTB Part A for the child.

Section 7

Part 3 Amount of ESS payment

7 Amount payable to a person entitled to FTB Part A

- (1) The amount of an ESS payment to families for a person entitled to FTB Part A is \$1 000 for each relevant child, unless subsection (2) applies to reduce the amount.
- (2) The amount of a person's ESS payment to families for a relevant child is to be worked out in accordance with subsections 91 (3), (4) and (5) of the Family Assistance Act:
 - (a) as if those subsections apply to the amount of an ESS payment to families for a relevant child; and
 - (b) in the same way as they apply to the amount of an economic security strategy payment to families for an eligible child under Part 6 of the Family Assistance Act, except that they apply as if the circumstances on 14 October 2008 are the circumstances on the first day the person is or was entitled to FTB Part A for the relevant child during the period starting on 15 October 2008 and ending on 31 December 2008.

- (3) In this section:

relevant child means a child because of whom the person is entitled to an ESS payment to families.

Note The amount of an ESS payment to families for a relevant child will be worked out based upon the family circumstances on the first day in the period 15 October 2008 to 31 December 2008 (inclusive), that the person claiming the payment is, or was, entitled to FTB Part A for the child. For example, if, for that day, the claimant has a shared care percentage of FTB Part A for the child of 40%, the amount of the claimant's ESS payment to families will be 40% of \$1 000, even if the percentage is different for a later day in that period.

8 Amount payable to a person receiving carer payment

The amount of an ESS payment to carers for a person who is receiving carer payment is as follows:

- (a) for a single person — \$1 400;
- (b) for a partnered person — \$1 050;
- (c) for a member of an illness separated couple — \$1 400;
- (d) for a member of a respite care couple — \$1 400;
- (e) for a partnered person (partner in gaol) — \$1 400.

9 Amount payable to a person receiving carer allowance

- (1) The amount of an ESS payment to carers for a person who is receiving carer allowance is \$1 000 for each care receiver, unless subsection (2) or (3) applies.

Section 9

- (2) If a person is receiving carer allowance because the person is qualified for carer allowance for 2 disabled children under subsection 953 (2) of the Social Security Act, the amount of an ESS payment to carers for the person is to be calculated as if the 2 disabled children are a single care receiver.
- (3) If a person is receiving a share of carer allowance because of a declaration specifying the share of carer allowance for a care receiver under subsection 981 (1) of the Social Security Act, the amount of an ESS payment to carers for the person is that share of \$1 000.

Section 10

Part 4 Claiming and paying an ESS payment

10 How to claim an ESS payment

- (1) A claim for an ESS payment must:
 - (a) be made to Centrelink not later than 29 January 2010; and
 - (b) comply with any requirements of the Secretary.
- (2) For subsection (1), requirements may include that the claim:
 - (a) is in a certain form; or
 - (b) contains certain information; or
 - (c) has certain documents attached.

11 Payment of ESS payment

- (1) If a person is entitled to an ESS payment, the Secretary must make the payment to the person or the person's payment nominee:
 - (a) in a lump sum; and
 - (b) on the day that the Secretary considers to be the earliest day on which it is reasonably practicable for the payment to be made; and
 - (c) in a way the Secretary considers appropriate.
- (2) In subsection (1), *payment nominee* means:
 - (a) for an ESS payment to families — a person appointed by the Secretary under section 219TB of the Family Assistance Administration Act; and
 - (b) for an ESS payment to carers — a person appointed by the Secretary under section 123B of the Social Security Administration Act.

Note Deductions from an ESS payment to a person who is subject to the income management regime in Part 3B of the Social Security Administration Act are provided for in that Act.

Part 5 Debt recovery

12 ESS payment made because of false or misleading statement

An amount of an ESS payment paid to a person is a debt the person owes the Commonwealth if the amount was paid for the reason, or for reasons including the reason, that the person:

- (a) knowingly made a false or misleading statement to the Commonwealth in relation to the person's claim under this Determination; or
- (b) knowingly gave false information to the Commonwealth in relation to the person's claim under this Determination.

Note Sometimes only part of an ESS payment will be a debt the person owes the Commonwealth.

13 Debt arising in relation to an ESS payment to families

- (1) An ESS payment to families made to a person is a debt the person owes the Commonwealth if:
 - (a) the person knowingly made a false or misleading statement, or knowingly gave false information; and
 - (b) the making of the statement, or the giving of the information, as set out in paragraph (a), is the reason, or 1 of the reasons, why a decision is made under the Family Assistance Administration Act so that, for the period starting on 15 October 2008 and ending on 31 December 2008:
 - (i) the person is not entitled to FTB Part A; or
 - (ii) the person's entitlement to FTB Part A is varied; and
 - (c) had the decision mentioned in paragraph (b) been made before the ESS payment was made to the person, the payment would not have been made.
- (2) An ESS payment to families made to a person is a debt the person owes the Commonwealth if:
 - (a) the person had received the payment because it had been decided that the person met the requirements of subparagraph 5 (1) (b) (i); and
 - (b) a decision is made under the Family Assistance Administration Act, for the reason, or for reasons including the reason, that the person knowingly made a false or misleading statement, or knowingly gave false information, so that, for the period starting on 1 July 2008 and ending on 13 October 2008:
 - (i) the person is not entitled to FTB Part A; or
 - (ii) the person's entitlement to FTB Part A is varied; and
 - (c) had the decision mentioned in paragraph (b) been made before the ESS payment was made to the person, the payment would not have been made.

Section 14

- (3) If an ESS payment to families would have been reduced had the recipient of the payment not knowingly made a false or misleading statement, or not knowingly given false information, the amount of the reduction is a debt the recipient owes the Commonwealth.

14 Debts arising in relation to ESS payments to carers

- (1) An ESS payment to carers made to a person is a debt the person owes the Commonwealth if:
- (a) the person knowingly made a false or misleading statement, or knowingly gave false information; and
 - (b) the making of the statement, or the giving of the information, as set out in paragraph (a) is the reason, or 1 of the reasons, why a decision is made under the Social Security Act so that, for the period starting on 15 October 2008 and ending on 31 December 2008:
 - (i) the person is not qualified for carer allowance or carer payment; or
 - (ii) the person's carer allowance or carer payment is not payable; or
 - (iii) the number of care receivers for whom the person qualifies for carer allowance is reduced; and
 - (c) had the decision mentioned in paragraph (b) been made before the ESS payment was made to the person, the payment would not have been made.
- (2) An ESS payment to carers made to a person is a debt the person owes the Commonwealth if:
- (a) the person had received the payment because it had been decided that the person met the requirements of subparagraph 6 (1) (b) (i); and
 - (b) a decision is made under the Social Security Act, for the reason, or reasons including the reason, that the person knowingly made a false or misleading statement, or knowingly gave false information, so that, for the period starting on 1 July 2008 and ending on 13 October 2008:
 - (i) the person is not qualified for carer allowance or carer payment; or
 - (ii) the person's carer allowance or carer payment is not payable; or
 - (iii) the number of care receivers for whom the person qualifies for carer allowance is reduced; and
 - (c) had the decision mentioned in paragraph (b) been made before the ESS payment was made to the person, the payment would not have been made.
- (3) If an ESS payment to carers would have been reduced had the recipient of the payment not knowingly made a false or misleading statement, or not knowingly given false information, the amount of the reduction is a debt the recipient owes the Commonwealth.

Section 16

15 Person other than payee obtaining payment of cheque

The amount of a cheque is a debt the person owes the Commonwealth if:

- (a) an ESS payment is made by the cheque; and
- (b) the person is not the payee and obtains possession of the cheque from the payee; and
- (c) the cheque is not endorsed by the payee to the person; and
- (d) the person obtains value for the cheque.

16 Provisions for debt recovery

- (1) A debt as a result of an overpayment, or incorrect payment, of an ESS payment to families is to be recovered in accordance with Divisions 3 and 4 of Part 4 of the Family Assistance Administration Act as if those Divisions applied to a debt as a result of an overpayment, or incorrect payment, under this Determination.
- (2) A debt as a result of an overpayment, or incorrect payment, of an ESS payment to carers is to be recovered in accordance with Parts 5.3 and 5.4 of the Social Security Act as if those Parts applied to a debt as a result of an overpayment, or incorrect payment, under this Determination.

Section 17

Part 6 Miscellaneous**17 Internal review of decisions**

- (1) The Secretary may review a decision under this Determination in relation to an ESS payment to families:
 - (a) as if the decision is a decision of an officer under the family assistance law; and
 - (b) as if Division 1 of Part 5 of the Family Assistance Administration Act applies to the decision; and
 - (c) in accordance with Division 1 of Part 5 of the Family Assistance Administration Act.
- (2) The Secretary may review a decision under this Determination in relation to an ESS payment to carers:
 - (a) as if the decision is a decision of an officer under the social security law; and
 - (b) as if Division 2 of Part 4 of the Social Security Administration Act applies to the decision; and
 - (c) in accordance with Division 2 of Part 4 of the Social Security Administration Act.

18 Review by Administrative Appeals Tribunal

A person may apply to the Administrative Appeals Tribunal for review of a decision made under this Determination as affirmed or varied after internal review under section 17, or if it has been set aside and another decision substituted after internal review under section 17, the substituted decision.

19 Delegation

- (1) The Secretary may delegate his or her powers under this Determination to an officer.
- (2) However, the Secretary may only delegate a power to an officer of an agency other than the Department, if the head of the agency has agreed to the delegation.

20 Decisions to be in writing

A decision of an officer under this Determination:

- (a) must be in writing; and
- (b) is taken to be in writing if it is made, or recorded, by operation of a computer.

Section 21

21 Secretary may arrange for use of computer programs for decision making

- (1) The Secretary may arrange for the use, under the Secretary's control, of computer programs for any purposes for which the Secretary may make decisions under this Determination.
- (2) A decision made by the operation of a computer program under an arrangement made under subsection (1) is taken to be a decision made by the Secretary.

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See <http://www.frli.gov.au>.