

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Health and Ageing

Health Insurance Act 1973

Health Insurance (FTB(A) Family) Amendment Determination 2009 (No. 1)

Subsection 8A (1) of the *Health Insurance Act 1973* (the Act) provides that the Minister for Health and Ageing may, in writing, determine that a registered family is a Family Tax Benefit Part A (FTB(A)) family for the purposes of paragraph (c) of the definition of a FTB(A) family in subsection 8 (1A) of the Act.

The definition of a FTB(A) family is used to assess eligibility for access to the lower threshold of the extended Medicare safety net (EMSN). The *Health Insurance (FTB(A) Family) Amendment Determination 2009 (No. 1)* (the Determination) amends the *Health Insurance (FTB(A) Family) Determination 2004* (the 2004 Determination), made under subsection 8A (1) of the Act. The amendments allow two new groups of registered families to be FTB(A) families for the purposes of the Act, providing them with access to the lower threshold of the EMSN. These groups of registered families are:

- families with a member who no longer receives FTB(A) fortnightly payments because the Secretary of the Department of Families, Housing, Community Services and Indigenous Affairs (the Secretary) has reduced the member's daily rate of FTB to nil following a calculation of a notional overpayment of FTB based on a revised estimate of income; and
- families with a member who no longer receives FTB(A) fortnightly payments based on estimated income because the member or their partner has not submitted an income tax return when required.

The Determination ensures that certain families who are prevented from receiving FTB(A) by instalment by the operation of new provisions of the *A New Tax System (Family Assistance) (Administration) Act 1999* (the Family Assistance Administration Act), but who will still be entitled to FTB(A) under that Act, may be classed as FTB(A) families for the purposes of the Act.

Background

The EMSN provides an additional rebate for Australian families and singles who have out-of-pocket costs for Medicare eligible out-of-hospital services once an annual threshold of out-of-pocket costs has been met. In 2009, the annual threshold for concession cardholders and people who are eligible for FTB(A) is \$555.70. For all other singles and families the annual threshold is \$1,111.60.

Out-of-hospital services include general practitioner and specialist attendances and services provided in private clinics. Once the relevant annual threshold has been met, Medicare will pay for 80%, or up to the EMSN benefit cap amount if applicable, of any future out-of-pocket costs for Medicare eligible out-of-hospital services for the remainder of the calendar year.

The Commonwealth, through FaHCSIA has implemented two measures: continuous adjustment of FTB to reduce overpayments; and non-payment of FTB for non-lodgement of tax returns. The *Family Assistance Amendment (Further 2008 Budget Measures) Act 2009*, enacted on

24 June 2009, amends the Family Assistance Administration Act to implement these measures. The continuous adjustment measure allows for the reduction in a recipient's ongoing rate of FTB where there is an increased income or maintenance income estimate, to assist in preventing an FTB overpayment following reconciliation. The non-payment of FTB for non-lodgement of tax returns measure prohibits fortnightly payment of FTB based on an estimate where the claimant or their relevant partner has not submitted the required income tax returns within the required timeframe.

The purpose of this Determination is to ensure that the families of people affected by the continuous adjustment of FTB measure and the non-payment of FTB for non-lodgement of tax returns measure may access the lower threshold of the EMSN, as they will still be entitled to FTB(A) even though they will not be in receipt of FTB(A).

Effect of the Health Insurance (FTB (A) Family) Amendment Determination 2009 (No.1)

Continuous Adjustment of FTB

The Determination will add to the current categories of registered families for the purposes of paragraph (c) of the definition of an FTB(A) family in subsection 8(1A) of the Act. The new category will be families with a member who would otherwise receive payments of FTB(A) by instalment in a safety-net year, but who has had their fortnightly instalments of FTB(A) automatically reduced to nil under section 31E of the Family Assistance Administration Act because of a notional overpayment. This will give these families access to the lower threshold of the EMSN.

Non-payment of FTB for non-lodgement of tax returns

The Determination will add to the current categories of registered families for the purposes of paragraph (c) of the definition of an FTB(A) family in subsection 8(1A) of the Act. The new category will be families of a person who would otherwise receive a payment of FTB(A) by instalment in a safety-net year, except that the person or their partner (or both) has not submitted a tax return within the required timeframe, resulting in the person being prohibited from being paid FTB(A) by instalment under section 32AA or section 32AD of the Family Assistance Administration Act. This will give these families access to the lower threshold of the EMSN.

This Determination will not have an impact on business. These changes will be of benefit to certain persons who would otherwise not be able to access the EMSN as a result of changes to the Family Assistance Administration Act.

Details of the amendments to the 2004 Determination are set out in the Attachment. A determination under subsection 8A (1) of the Act is a legislative instrument.

Commencement

This Determination will commence on 1 January 2010.

Consultation

The Department of Health and Ageing has held consultations with FaHCSIA regarding the technical aspects of the Continuous Adjustment of FTB measure and the non-payment of FTB for non-lodgement of tax returns measure.

Centrelink and Medicare Australia have also been consulted regarding the administration and implementation of this change.

Centrelink and Medicare Australia have made the necessary changes to their systems to support the making of the Determination.

DETAILS OF THE *Health Insurance (FTB(A) Family) Amendment Determination 2009 (No.1)*

1. Name of Determination

Section 1 provides that the title of the Determination is the *Health Insurance (FTB(A) Family) Amendment Determination 2009 (No.1)*.

2. Commencement

Section 2 provides that the Determination will commence on 1 January 2010.

3. Amendment of *Health Insurance (FTB(A) Family) Determination 2004*

Section 3 provides that Schedule 1 to the Determination amends the *Health Insurance (FTB(A) Family) Determination 2004*.

Schedule 1 – Amendments

[1] Section 5A, after Section 5

New section 5A of the Determination enables those families with a member who has their fortnightly instalment payments of FTB(A) automatically reduced to nil because they have a notional overpayment of FTB due to a revised estimate of income or maintenance income, to be recognised as an FTB(A) family for the purposes of the Act.

Subsection 5A(1) provides that a registered family is an FTB(A) family in relation to a safety-net year if:

- a member of the family makes a claim for payment of family tax benefit by instalment under paragraph 7(1)(a) of the Family Assistance Administration Act (paragraph 5A(1)(a));
- the Secretary determines that the member is entitled to be paid family tax benefit by instalment with a Part A rate that is greater than nil under section 16 of the Family Assistance Administration Act (paragraph 5A(1)(b)); and
- before the first time in the safety-net year the member is to receive an FTB(A) instalment under section 23 of the Family Assistance Administration Act, the Secretary reduces the member's daily rate of family tax benefit to nil under section 31E of the Family Assistance Administration Act because of a daily overpayment rate. That is, the family member would have received a fortnightly instalment of FTB(A), except that the Secretary reduced their daily rate of family tax benefit to nil because of a notional overpayment (paragraph 5A(1)(c)).

Subsection 5A(2) specifies that the registered family is an FTB(A) family from the first time in the safety-net year when the member would have received an instalment payment of FTB(A) greater than nil under section 23 of the Family Assistance Administration Act, but for the Secretary reducing their fortnightly instalment to nil under section 31E of the Family Assistance Administration Act.

New section 5B of the Determination enables those families with a member who is prohibited from receiving a payment of FTB(A) by instalment because the member, or the member's partner, has not submitted a tax return, to be recognised as an FTB(A) family for the purposes of the Act, and so have access to the lower threshold of the EMSN.

Subsection 5B(1) provides that a registered family is an FTB(A) family in relation to a safety-net year if:

- a member of the family makes a claim for payment of family tax benefit by instalment under paragraph 7(1)(a) of the Family Assistance Administration Act (paragraph 5B(1)(a));
- the Secretary determines that the member is entitled to be paid family tax benefit by instalment that has a Part A rate that is greater than nil under section 16 of the Family Assistance Administration Act (paragraph 5B(1)(b)); and
- before the first time in the safety-net year the family the member is to receive an FTB(A) instalment under section 23 of the Family Assistance Administration Act, under sections 32AA or 32AD of the Family Assistance Administration Act the Secretary does not make an FTB(A) payment to the member. That is, the member would have received a fortnightly instalment of FTB(A), except that the member or the member's partner has not submitted a tax return for the income year concerned (paragraph 5B(1)(c)).

Subsection 5B(2) specifies that the registered family is an FTB(A) family for the first time in a safety-net year when the member would have received an instalment payment of FTB(A) greater than nil under section 23 of the Family Assistance Administration Act, but for non-payment of FTB(A) mentioned in paragraph 5B(1)(c).

[2] Subsection 6 (2)

Section 6 of the Determination enables those families with a member who does not receive a payment of FTB(A) by instalment in the year ending before the safety-net year and in respect of the last income year, but is found upon review to be entitled to a single payment of FTB(A) in respect of the last income year, to be FTB(A) families from the time the member receives the single payment of FTB(A). This item deletes current subsection 6 (2) and substitutes new subsections 6 (2) and 6 (3).

New subsection 6 (2) provides that subsection 6 (1) does not apply if the member does not receive a payment of family tax benefit by instalment with a Part A rate greater than nil in respect of the last income year because of sections 31E, 32AA or 32AD of the Family Assistance Administration Act. This exclusion prevents families which have been determined to be FTB(A) families in respect of a particular year because of new sections 5A or 5B of the Determination from being FTB(A) families in a later year because of section 6, following receipt of a single payment of FTB(A) in respect of the particular year.

New subsection 6 (3), which is the same as the previous subsection 6 (2), specifies that the registered family is an FTB(A) family from the date when the member receives the single payment of a family tax benefit mentioned in subparagraph (1) (c) (ii) that is greater than nil and that is in respect of the last income year ending before the start of the safety-net year.