

## EXPLANATORY STATEMENT

### ***Family Assistance (Clean Energy Advances in Certain Circumstances) Determination 2012***

#### **Summary**

The *Family Assistance (Clean Energy Advances in Certain Circumstances) Determination 2012* is made under subsections 105(7), 108(1B) and 108(3) of the *A New Tax System (Family Assistance) Act 1999* (the Family Assistance Act).

It specifies:

- a) a method for working out the amount of clean energy advances for the purposes of subsection 105(6) of the Family Assistance Act; and
- b) the circumstances in which individuals are entitled to further payments of clean energy advances for the purposes of subsections 108(1A) and 108(2) of the Family Assistance Act; and
- c) a method for working out the amount of further clean energy advances for the purposes of subsections 108(1A) and 108(2) of the Family Assistance Act.

#### **Background**

Part 1 of Schedule 2 to the *Clean Energy (Household Assistance Amendments) Act 2011* amended the Family Assistance Act and the *A New Tax System (Family Assistance) (Administration) Act 1999* (the Family Assistance Administration Act) to provide for clean energy advances for individuals. The Determination will specify the circumstances for entitlement, and how to work out the amount, of a clean energy advance and a top-up payment of clean energy advance to an individual in certain circumstances.

Subsection 105(6) of the Family Assistance Act provides for a different method of calculation of the amount of clean energy advance, to be specified in a legislative instrument, where an individual is entitled to a clean energy advance under section 103 of that Act in relation to a child, but the individual's former partner was previously entitled to an advance in relation to that child when the individual and the former partner were a couple. Similarly, subsection 108(2) of the Family Assistance Act provides for the entitlement and amount of a top-up payment in these circumstances to also be worked out in accordance with a legislative instrument.

The entitlement and the methods of calculation provided for in the Determination will avoid duplication of payment for a child, subject to enabling a top-up amount for the child where new circumstances result in a higher rate of family tax benefit (FTB) for the child. An example is where a couple received the base rate of FTB Part A only for a child (paid to the child's

father), but after separation, the mother receives the maximum rate of FTB Part A and Part B for the child. The mother would be paid an amount of clean energy advance based on the amount for maximum FTB Part A and Part B less the amount for the base rate of FTB Part A.

Subsection 108(1A) provides that the amount of an individual's top-up payment of clean energy advance will be worked out in accordance with a legislative instrument if: the individual is a member of a couple on the decision day for the original advance; on a later day before 1 July 2013, the individual's circumstances change; and the individual is entitled to a top-up payment in accordance with a legislative instrument.

In broad terms, the legislative instrument relating to subsection 108(1A) will apply in the following circumstances:

- a member of a couple separates after being paid a clean energy advance for one or more children, and the care of the child(ren) after separation is shared or split with the former partner;
  - this will ensure that the method of calculating clean energy advance for both members of a separated couple will be consistent;
- each member of a couple was entitled to a clean energy advance under section 103 of the Family Assistance Act based on a particular percentage under the provisions relating to a blended family, but the same percentage no longer applies on the day their circumstances change;
- one member of a couple was entitled to a clean energy advance under section 103 of the Family Assistance Act due to being the member who was entitled to FTB, but on the day their circumstances change, the couple has swapped the member of the couple receiving FTB or each is now receiving a percentage of the FTB.

## **Consultation**

The Government established a working group of community sector leaders to help advise the Government on an assistance package for Australian households, under a carbon pricing mechanism. This Household Assistance Working Group, a sub-group advising the Multi Party Climate Change Committee, helped to inform the Government's policy-making process.

Members of the working group came from non-government organisations that represent those people the Government wanted to ensure received adequate assistance, especially people in low-income households. The Government also consulted with State and Territory Governments on aspects of household assistance to ensure it connects with and complements programs and activities already in place across the country.

## **Regulatory Impact Analysis**

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.

## **Statement of Compatibility with Human Rights**

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

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 Legislative Instrument will specify the circumstances for entitlement, and how to work out the amount, of a clean energy advance and a top-up payment of clean energy advance to an individual in certain circumstances.

In broad terms, the legislative instrument will apply in the following circumstances:

- an individual is entitled to a clean energy advance under section 103 of the Family Assistance Act in relation to a child, but the individual's former partner was previously entitled to an advance in relation to that child when the individual and the former partner were a couple;
- a member of a couple separates after being paid a clean energy advance for one or more children, and the care of the child(ren) after separation is shared or split with the former partner;
- each member of a couple was entitled to a clean energy advance under section 103 of the Family Assistance Act based on a particular percentage under the provisions relating to a blended family, but the same percentage no longer applies on the day their circumstances change;
- one member of a couple was entitled to a clean energy advance under section 103 of the Family Assistance Act due to being the member who was entitled to family tax benefit (FTB), but on the day their circumstances change, the couple has swapped the member of the couple receiving FTB or each is now receiving a percentage of the FTB.

### *Human rights implications*

The payment of clean energy advances in the context of FTB is likely to engage 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 Legislative Instrument advances these rights by specifying the circumstances for entitlement, and how to work out the amount, of a clean energy advance and a top-up payment of clean energy advance to an individual in certain circumstances.

### *Conclusion*

The Legislative Instrument is compatible with human rights because it advances the protection of human rights.

## **Explanation of the Provisions**

### **Part 1 Preliminary**

#### **Section 1 Name of Determination**

Section 1 states the name of the Determination.

#### **Section 2 Commencement**

Section 2 provides for the commencement of the Determination.

#### **Section 3 Purpose**

Section 3 states the purpose of the Determination.

#### **Section 4 Interpretation**

Subsection 4(1) contains definitions of key terms used in the Determination. Some of these terms are defined more fully in the context in which they occur.

Subsection 4(2) provides that a term used in this Determination in relation to payment of FTB to an individual has the same meaning as in the *A New Tax System (Family Assistance) Act 1999* (the Family Assistance Act) and the *A New Tax System (Family Assistance) (Administration) Act 1999*.

## **Part 2        Amount of clean energy advance**

### **Section 5    Amount of clean energy advance under subsection 105(6) of Family Assistance Act**

Section 5 sets out how to determine the amount of the clean energy advance for the purposes of paragraph 105(6)(e) of the Family Assistance Act.

This section applies if the Secretary is required to work out an individual's clean energy advance under subsection 105(6) of the Family Assistance Act. Subsection 105(6) applies if an individual is entitled to a clean energy advance for an FTB child, in circumstances where a former partner was entitled to an advance in relation to that FTB child when the former partner and the individual were a couple.

Subsection 5(1) requires the individual's clean energy advance to be worked out using the method set out in section 105 of the Family Assistance Act that would have applied if subsection 105(6) of that Act did not apply and using the CEA determination daily rate calculated under subsection 5(2) of this Determination, instead of the clean energy daily rate calculated under section 106 of the Family Assistance Act.

Subsection 5(2) sets out the method statement for working out the CEA determination daily rate.

Step 1 is to work out what would have been the individual's clean energy daily rate for a day under section 106 of the Family Assistance Act.

Step 2 is to work out the former partner's clean energy daily rate for the latest day (the ***previous decision day***) that they were entitled to a clean energy advance under section 103 of the Family Assistance Act or a further payment of a clean energy advance under section 108 of the Family Assistance Act while still partnered with the individual.

Under step 3, for each child that was an FTB child of the former partner (***previous FTB child***) on the previous decision day, the percentage of care that the former partner had for that child on the previous decision day needs to be worked out. If the former partner had full care of the child the percentage is 100%. If the former partner shared the care of the child then the percentage is the former partner's shared care percentage.

In step 4 the percentages in step 3 are added together. The end result is the ***total previous child percentage***.

Step 5 provides that for each FTB child of the former partner the ***previous daily amount*** is worked out by multiplying the former partner's rate determined at step 2 by the percentage for that child determined under step 3 and dividing by the total previous child percentage worked out under step 4.

Step 6 requires adding together relevant percentages for each **same FTB child** i.e. each FTB child of the individual who was also a previous FTB child under step 3. Step 6(a) provides that if the individual does not have a shared care percentage for the child then the percentage for the child is 100%. Step 6(b) provides that if the individual does have a shared care percentage for the child, the percentage is their shared care percentage for that child. Step 6(c) provides that if the former partner has a shared care percentage for the child the percentage is their shared care percentage. The percentages that apply to the child under steps 6(a), 6(b) and 6(c) are added together to determine the **same child percentage**.

Step 7 provides for working out the **child adjustment amount** in respect of each same FTB child. The child adjustment amount is worked out by multiplying the previous daily amount under step 5 by the individual's percentage for the child determined under step 6(a) or 6(b) and dividing by the same child percentage.

Step 8 requires a determination of the **daily adjustment amount** by adding all of the child adjustment amounts determined under step 7 for each of the individual's same FTB children.

Step 9 provides that the individual's CEA determination daily rate is the amount at step 1 less the amount in step 8.

### **Part 3 Top-up payments of clean energy advance**

#### **Section 6 Top-up payments of clean energy advance under subsection 108(2) of Family Assistance Act**

This section sets out how to work out an individual's top-up payment of clean energy advance for the purposes of subsection 108(2) of the Family Assistance Act. This applies where the individual was previously entitled to a clean energy advance under section 5 of this Determination because of the application of subsection 105(6) of the Family Assistance Act.

To be entitled to a further top-up payment, subsection 6(1) requires that the original clean energy advance paid to the individual be less than the amount that would have been paid if the decision day for the original advance had been on or after 1 July 2013. Subsection 6(2) provides that the amount of the further payment in these circumstances is equal to the difference between the amount that the individual was paid and the amount they would have been paid if the decision day had been on or after 1 July 2013.

#### **Section 7 Top-up payments of clean energy advance under subsection 108(1A) of Family Assistance Act**

This section sets out the circumstances where an individual is entitled to a top-up payment of clean energy advance and the method of calculating that further payment for the purposes of subsection 108(1A) of the Family Assistance Act.

### *Entitlement to top-up payment – first circumstance*

Subsection 7(1) applies where a member of a couple separates after being paid clean energy advance for one or more children and the care of the children is shared or split with the former partner.

Paragraph 7(1)(a) requires that the criteria in paragraphs 108(1A)(a), (b), (c) and (d) of the Family Assistance Act apply to the individual. Paragraph 108(1A)(a) requires the individual to have previously been paid an amount of clean energy advance under section 103 that was not worked out by applying subsection 105(6) (i.e. section 5 of this Determination has not been previously applied to the individual). Paragraph 108(1A)(b) requires the decision day for the previous payment of clean energy advance to be before 1 July 2013. Paragraph 108(1A)(c) provides that the individual must have been partnered on the decision day and paragraph 108(1A)(d) requires the individual's circumstances to change after the decision day and before 1 July 2013—the day on which the circumstances change is the **trigger day**.

Paragraph 7(1)(b) provides that on the trigger day the individual must not be partnered with the same person they were partnered to on the decision day.

Paragraph 7(1)(c) requires that an FTB child of the individual on the decision day is an FTB child of the former partner on the trigger day.

### *Amount of top-up payment – first circumstance*

Subsections 7(2) and (3) set out the method for working out the amount of the top-up payment where the individual satisfies the criteria in subsection 7(1).

Under subsection 7(2) the individual's top-up payment is the difference between what they would have been entitled to if the decision day had been on or after 1 July 2013 and the adjusted previous amount of clean energy advance paid to the individual (**adjusted CEA amount**). For the purposes of this calculation, the adjusted CEA amount is the previous CEA amount less the **total adjustment amount** calculated in subsection 7(3).

Subsection 7(3) sets out the method statement for calculating the total adjustment amount.



Step 1 requires the individual's clean energy daily rate to be worked out for the latest day (the **previous decision day**) that the individual was entitled to a clean energy advance under section 103 of the Family Assistance Act or a further payment of a clean energy advance under section 108 of the Family Assistance Act while still partnered with the former partner. The previous decision day is the day that the individual was determined to be entitled to clean energy advance under section 103 of the Family Assistance Act if the individual has not received any further payments under section 108 of that Act. If the individual has received a further payment under section 108 of the Family Assistance Act, the previous decision day is the trigger day for that further payment.

Step 2 requires the individual's percentage of care on the previous decision day to be worked out for each FTB child (**previous FTB child**) of the individual.

Step 3 requires the percentages worked out in step 2 to be added to determine the **total previous child percentage**.

Step 4 requires that for each previous FTB child, the rate calculated at step 1 be multiplied by the percentage for that child determined under step 2 and divided by the total previous child percentage calculated at step 3. This gives the portion (**previous daily amount**) of the daily rate paid on the previous decision day that is attributable to each child.

Step 5 applies to days between the trigger day and 30 June 2013, each of which is an **adjustment day** and applies to each FTB child of the former partner (**same FTB child**) who was also an FTB child of the individual on the previous decision day. For each adjustment day, Step 5 requires adding together relevant percentages for each same FTB child. Step 5(a) provides that if the former partner does not have a shared care percentage for the child then the percentage is 100%. Step 5(b) provides that if the former partner has a shared care percentage for the child, the percentage is the former partner's shared care percentage for that child. Step 5(c) provides that if the individual has a shared care percentage for the child the percentage is their shared care percentage. The percentages that apply to the child under steps 5(a), 5(b) and 5(c) are added together to determine the **same child percentage**.

Step 6 requires a calculation of the **child adjustment amount** for each adjustment day for each same FTB child. The calculation requires the previous daily amount at step 4 that relates to the child to be multiplied by the former partner's percentage for the child on the adjustment day and divided by the same child percentage on the adjustment day.

Steps 7 and 8 require the child adjustment amount calculated in step 6 to be added for each same FTB child for each adjustment day.

### *Entitlement to top-up payment – second circumstance*

Subsection 7(4) applies to certain blended families. To be entitled under subsection 7(4) the individual must satisfy the criteria set out in paragraphs 7(4)(a) to (e). In broad terms, these paragraphs apply where each member of a couple was entitled to a clean energy advance under section 103 of the Family Assistance Act based on a particular percentage under the provisions relating to a blended family, but the same percentage no longer applies on the day their circumstances change.

Subsection 7(6) clarifies that the individual and their partner cannot both be entitled to a further payment of clean energy advance. In cases where either could be entitled, the Secretary has discretion to decide who is entitled.

### *Entitlement to top-up payment – third circumstance*

Subsection 7(5) applies in circumstances where the member of the couple receiving FTB payments changes or where the couple begins to split FTB payments. To be entitled under subsection 7(5) the individual must satisfy the criteria set out in paragraphs 7(5)(a) to (e). In broad terms, these paragraphs apply where one member of a couple was entitled to a clean energy advance under section 103 of the Family Assistance Act due to being the member who was entitled to FTB, but on the day their circumstances change, the couple has swapped the member of the couple receiving FTB or each is now receiving a percentage of the FTB.

Subsection 7(6) clarifies that the individual and their partner cannot both be entitled to a further payment of clean energy advance. In cases where either could be entitled, the Secretary has discretion to decide who is entitled.

### *Amount of top-up payment – second or third circumstance*

For individuals who satisfy the criteria in subsections 7(4) or (5) the amount of top-up payment is to be calculated using the method statement set out in subsection 7(7).

In steps 1 and 2, the amount of clean energy advance that the individual and their partner would have been paid if the decision day had been on or after 1 July 2013 is worked out. The amounts worked out in steps 1 and 2 are added together in step 3 to determine the **combined notional CEA amount**.

In steps 4 and 5, the previous amounts of clean energy advance paid to the individual and their partner are worked out. The amounts worked out in steps 4 and 5 are added together in step 6 to determine the **combined previous CEA amount**.

In step 7, the combined notional CEA amount worked out in step 3 is reduced by the combined previous CEA amount worked out in step 6. The result is the amount of the individual's further clean energy advance.