

EXPLANATORY STATEMENT

Schoolkids Bonus Determination 2012

Summary

The *Schoolkids Bonus Determination 2012* is made under sections 35UC and 35UF and subsections 35UA(6), 35UB(4), 35UE(6), 65B(7), 65D(3), 65E(4) and 65EB(2) of the *A New Tax System (Family Assistance) Act 1999* (the Family Assistance Act).

The Determination prescribes:

- eligible activities for the purposes of schoolkids bonus; and
- the circumstances in which payments can be made for individuals who complete secondary education and the payment amount for this group.

Background

From 1 January 2013, the schoolkids bonus replaces the Education Tax Refund that was previously paid through the tax system. Schoolkids bonus is paid in two instalments, in January and July each year, to assist eligible families and students with education expenses.

Schoolkids bonus is paid for individuals who undertake primary or secondary education or an eligible activity. The amount paid, whether the primary school rate or secondary school rate, depends on the individual's level of education.

Subsections 35UA(6), 35UB(4) and 35UE(6) of the Family Assistance Act allow eligible activities to be prescribed by legislative instrument for the purposes of schoolkids bonus eligibility. Subsections 65B(7) and 65E(4) of the Family Assistance Act allow eligible activities that attract the secondary school amount of schoolkids bonus to be prescribed by legislative instrument.

Sections 35UC and 35UF of the Family Assistance Act provide for schoolkids bonus to be paid for certain 'school leavers' in circumstances to be prescribed by legislative instrument. This is a transitional payment that is only available for individuals who were already in primary or secondary education in 2012. This transitional payment is made available in recognition of the fact that this group will not receive the full benefit of the schoolkids bonus as they commenced school before the schoolkids bonus started and missed out on one or both start-up amounts (payments made upfront at the start of primary and secondary school). The old Education Tax Refund was paid retrospectively.

Under subsections 65D(2) and 65EB(1) of the Family Assistance Act the amount applicable for persons eligible for schoolkids bonus under section

35UC or 35UF of that Act is the secondary school amount, unless varied by legislative instrument made under subsections 65D(3) and 65EB(2) of the Family Assistance Act.

The Determination prescribes:

- a) eligible activities for the purposes of subsections 35UA(6), 35UB(4), 35UE(6), 65B(7) and 65E(4) of the Family Assistance Act; and
- b) the circumstances in which an individual is eligible for schoolkids bonus for the purposes of sections 35UC and 35UF of the Family Assistance Act; and
- c) for the purposes of subsection 65D(3) and 65EB(2) of the Family Assistance Act—how the amount of schoolkids bonus worked out under subsection 65D(2) or 65EB(1) of that Act is to be varied.

Consultation

The Department of Families, Housing, Community Services and Indigenous Affairs has consulted with the following departments on the Determination:

- Department of Human Services;
- Department of Education, Employment and Workplace Relations;
- Department of Veterans' Affairs;
- Department of Industry, Innovation, Science, Research and Tertiary Education; and
- the Australian Taxation Office.

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

From 1 January 2013, the schoolkids bonus replaces the Education Tax Refund that was previously paid through the tax system. Schoolkids bonus is paid in two instalments, in January and July each year, to assist eligible families and students with education expenses.

Schoolkids bonus is paid for individuals who undertake primary or secondary education or an eligible activity.

While generally schoolkids bonus instalments are paid in respect of individuals undertaking study on a bonus test date or in a future period, transitional arrangements are in place to allow students who have completed secondary education to receive a school leaver payment. This is a transitional arrangement that is only available for individuals who were in primary or secondary education in 2012, to ensure that families do not miss out due to the replacement of the Education Tax Refund with schoolkids bonus.

The Legislative Instrument prescribes:

- eligible activities for the purposes of schoolkids bonus; and
- the circumstances in which payments can be made for individuals who complete secondary education and the payment amount for this group.

Human rights implications

The Legislative Instrument is likely to engage the right to education contained in article 13 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), which makes specific reference to primary and secondary education, as well as technical and vocational education. Under the article, countries have obligations to respect, protect and fulfil each of the essential features of the right to education, including economic accessibility. Article 28 of the *Convention on the Rights of the Child* (CRC) imposes similar obligations on a country in relation to a child.

Further to a child's right to education under article 28 of the CRC, article 29 outlines the aims of a child's education and specifies consideration should be given to the "development of the child's personality, talents and mental and physical abilities to their fullest potential". Under this article, there is

recognition that a range of experiences should contribute to a child's development and that education should be tailored to a child's needs.

Part 2 of the Legislative Instrument extends the type of activities a child can engage in to be eligible for schoolkids bonus, so as not to limit assistance where children are engaged in activities apart from mainstream primary and secondary education. This could include a child in special education who lacks capacity to learn in accordance with a primary school curriculum but who participates in activities to achieve better control of motor functions.

Part 3 of the Legislative Instrument specifies the situation in which payments can be made in respect of individuals who have completed secondary education. This payment will act as a further incentive for individuals to complete secondary education or an equivalent level of education. However, there is also provision to make the payment where an individual is unable to complete secondary education due to sickness or disability or special circumstances.

The Legislative Instrument would also engage the right to social security contained in article 9 of the ICESCR, as well as article 26 of the 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 schoolkids bonus for individuals who cease secondary education. The Legislative Instrument also extends schoolkids bonus eligibility to students outside the mainstream primary and secondary education system. These policy settings will allow a greater number of families to receive assistance towards the costs of education.

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.

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

Part 2 Eligible Activities

Section 5 Eligible activities for the purposes of schoolkids bonus eligibility

One way that an individual could meet study requirements for payment of schoolkids bonus is by undertaking an eligible activity.

Subsections 35UA(6), 35UB(4) and 35UE(6) of the Family Assistance Act allow eligible activities to be prescribed by legislative instrument for the purposes of schoolkids bonus eligibility. Section 5 of the Determination prescribes eligible activities for this purpose.

The eligible activities prescribed differ depending on the age of an individual. Activities prescribed for individuals aged 16 or over are only relevant where eligibility for schoolkids bonus is based on receipt of a payment other than Family Tax Benefit Part A. This is because for Family Tax Benefit Part A to be paid for a child aged 16 or over, the child must be a senior secondary school child (which is defined in section 22B of the Family Assistance Act). Therefore, this Determination is not relevant for the purpose of determining whether a child is a 'senior secondary school child'.

The eligible activities prescribed in section 5 of the Determination can be grouped into three categories: home education, overseas study and special education.

Home education

For individuals aged under 16 at the time they are undertaking the activity, paragraph 5(1)(a) prescribes home education at the primary or secondary level. Home education is defined in subsection 4(1). That definition requires that:

- the individual receives education at their home or another individual's home;
- the education wholly or substantially replaces the education the individual would otherwise receive by attending school; and
- the individual is enrolled or registered in the State or Territory in which they reside as a home schooled student.

For individuals aged 16 or over at the time they are undertaking the activity, paragraph 5(2)(a) prescribes full-time home education that is accredited towards a formal secondary qualification. This requires the individual to satisfy the requirements of the definition of home education in subsection 4(1) described above and also satisfy the following:

- the home education must be full-time; and
- the home education must be accredited towards a formal secondary qualification.

These additional requirements for individuals aged 16 or over reflect activity requirements for FTB children aged 16 or over.

Overseas study

For individuals aged under 16 at the time they are undertaking the activity, paragraph 5(1)(b) prescribes studying the equivalent of primary or secondary education at a foreign educational institution. This activity is relevant for individuals who are overseas. Foreign educational institution is defined in subsection 4(1) in the same terms as in the *Family Tax Benefit (Studying Overseas Full-time) Determination 2011*.

For individuals aged 16 or over at the time they are undertaking the activity, paragraph 5(2)(b) prescribes studying overseas full-time in a way that would, in the Secretary's opinion, assist or allow the individual to complete the final year of secondary school or an equivalent level of education. The definition of studying overseas full-time in subsection 5(3) refers to the definition in subsection 3(1) of the Family Assistance Act. The requirement for the study to assist or allow the individual to complete the final year of secondary school or an equivalent level of education reflects activity requirements for FTB children aged 16 or over.

Special education

Paragraphs 5(1)(c) and 5(2)(c) prescribe special education. Special education is defined in section 4(1) as education that is not primary or secondary education and is primarily for individuals with a disability, specialised to the needs and capacity of those individuals and designed to assist those individuals to function better in society. The minimum age specified for special education in paragraph 5(1)(c) aligns with the earliest age for entry into mainstream primary education across states and territories.

Section 6 Eligible activities for payment of secondary school amount

Subsections 65B(7) and 65E(4) of the Family Assistance Act allow eligible activities to be prescribed by legislative instrument for the purpose of determining the amount of schoolkids bonus payable. The eligible activities prescribed under subsections 65B(7) and 65E(4) are those that attract the secondary school amount of schoolkids bonus.

The activities prescribed include home education at the secondary level and studying the equivalent of secondary education at a foreign educational institution.

As special education cannot always be readily classified as being at a primary or secondary level, the level of education for schoolkids bonus purposes for individuals undertaking special education is based on age. Where an individual is aged at least 11 years and 5 months at the end of a calendar year, special education after the end of that calendar year is prescribed as an eligible activity that attracts the secondary school amount.

Part 3 School leaver payment

Section 7 Eligibility

Subsection 7(1)

Subsection 7(1) prescribes the circumstances in which an individual is eligible for a 'school leaver' payment of schoolkids bonus under section 35UC of the Family Assistance Act. It requires the individual to meet certain payment requirements and requires the child in respect of whom the individual is eligible to meet certain age and study requirements.

The payment requirement that the individual must meet is set out in paragraphs 7(1)(b) and (c). This requires the individual to be the last person to have been paid an eligible payment in respect of the child (and there is no subsequent loss of entitlement) in the previous education period for the bonus test day. Eligible payment is defined in subsection 4(1). The terms bonus test day and previous education period are also defined in subsection 4(1)—those definitions refer to definitions in subsection 3(1) of the Family Assistance Act.

The age requirement the child must meet on the bonus test day is set out in section 8 and the study requirements are in paragraphs 7(1)(d), (f) and (g):

- the child must have completed his or her secondary education in the previous education period for the bonus test day;
- the child must complete secondary education before 1 January 2025; and
- the child must have been undertaking primary or secondary education on at least one day in 2012 (a child in primary or secondary education in 2012 would complete secondary education before 1 January 2025 in accordance with standard schooling progression).

Section 9 sets out when an individual has completed secondary education for the purposes of the Determination.

Additionally, the notification requirement in paragraph 7(1)(e) must be satisfied. This requires the Secretary to be notified, or otherwise become aware, that the child has completed secondary education. Notification must occur within two years after the financial year in which the bonus test day occurs if schoolkids bonus eligibility is based on receipt of Family Tax Benefit Part A, consistent with the Family Tax Benefit claim period. In other cases, notification must occur within 13 weeks of the bonus test day.

Subsection 7(2)

Subsection 7(2) prescribes the circumstances in which an individual is eligible for a 'school leaver' payment of schoolkids bonus under section 35UF of the Family Assistance Act on a bonus test day. It applies where a student is eligible for schoolkids bonus in their own right.

Subsection 7(2) requires the individual to satisfy certain age, study, payment and notification requirements. Those requirements are similar to the requirements in subsection 7(1) described above.

Section 8 Age requirement

Section 8 sets out the age requirement that the child or individual must satisfy on the bonus test day for schoolkids bonus eligibility under section 35UC or 35UF of the Family Assistance Act.

The child or individual satisfies the age requirement on a bonus test day that is 1 January if they are aged under 20 on the bonus test day or turned 20 on the bonus test day.

The child or individual satisfies the age requirement on a bonus test day that is 30 June if they are aged under 19 on the bonus test day or turned 19 during the calendar year in which the bonus test day occurs.

Section 9 Completion of secondary education

Section 9 defines what is meant by completion of secondary education for the purposes of the Determination.

Paragraph 9(1)(a) provides that an individual completes his or her secondary education if the individual completes the final year of secondary school or an equivalent level of education. Subsection 9(2) refers to subsection 22B(4) of the Family Assistance Act for working out the day an individual completes the final year of secondary school or an equivalent level of education. This ensures that the completion date is consistent for schoolkids bonus and family tax benefit purposes.

Paragraph 9(1)(b) provides for an individual to be taken as having completed secondary education if they cease special education.

Paragraphs 9(1)(c) and 9(1)(d) provide for an individual to be taken as having completed secondary education if they cease secondary education due to sickness or disability or special circumstances and are unable to complete the final year of secondary school or an equivalent level of education.

Section 10 Rate of payment

Section 10 provides for variation of the amount of schoolkids bonus for individuals eligible under section 35UC or 35UF of the Family Assistance Act.

If none of subsections 10(2) to (5) apply, the amount of schoolkids bonus remains as the secondary school amount provided for in subsections 65D(2) and 65EB(1) of the Family Assistance Act.

Subsection 10(2) applies if an individual is eligible under section 35UC or 35UF of the Family Assistance Act for schoolkids bonus on a bonus test day

in the period commencing on 1 January 2019 and ending on 1 January 2025 and none of subsections 10(3) to (5) apply.

The amount of schoolkids bonus under subsection 10(2) is the school leaver amount, which is defined in subsection 10(6) for the period 1 January 2019 to 1 January 2025 to be the difference between the secondary school amount and the primary school amount. As these children would have commenced secondary study after the schoolkids bonus came into effect, they would have received the start-up amount for secondary study and the amount of school leaver payment has been reduced accordingly. For the period before 1 January 2019, the school leaver amount is defined as the secondary school amount. The terms primary school amount and secondary school amount have the same meaning as in section 65A of the Family Assistance Act.

Subsections 10(3) and (5) provide for a percentage or part of the school leaver amount to be paid where the individual receiving the eligible payment shares care of the child in respect of whom the payment is made. Subsection 10(4) provides for the school leaver amount to be split in certain other cases—for example, in the case of blended families.