

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Social Services

A New Tax System (Family Assistance) Act 1999

Schoolkids Bonus Amendment Determination 2014 (No. 2)

General outline

The *Schoolkids Bonus Amendment Determination 2014 (No.2)* (the ‘Amendment Determination’) is made under sections 35UC and 35UF of the *A New Tax System (Family Assistance) Act 1999* (‘the Act’).

Background

Section 35UC provides that the Minister may, by legislative instrument, determine circumstances in which an individual is eligible for schoolkids bonus on a bonus test day in relation to a child (a school leaver).

Section 35UF provides that the Minister may, by legislative instrument, determine circumstances in which an individual (a school leaver) is eligible for schoolkids bonus on a bonus test day.

The *Schoolkids Bonus Determination 2012* (‘the 2012 Determination’) was made in part under these sections, providing for schoolkids bonus to be paid for certain ‘school leavers’ in prescribed circumstances.

From the 1 January 2015 bonus test day (and 3 further bonus test days), as a result of amendments effected by the *Minerals Resource Rent Tax and Other Measures Act 2014* (the ‘MRRT Act’), there will be an adjusted taxable income limit of \$100,000 on certain categories of eligibility for schoolkids bonus under the Act. However, the income limit of \$100,000 would not apply to those individuals eligible to receive schoolkids bonus under the 2012 Determination (namely, individuals in respect of a school leaver and school leavers).

Purpose

The purpose of the Amendment Determination is to amend the 2012 Determination to align the eligibility requirements for schoolkids bonus for a school leaver child with eligibility for schoolkids bonus under the Act.

Commencement

The Determination commences on the day after it is registered.

Consultation

Specific consultation in relation to the Amendment Determination was not undertaken with Commonwealth internal stakeholders because extensive consultation had already taken place regarding the new income means test as a result of amendments to the law made by the

MRRT Act. The consultation with DHS and DVA was part of a working group designed to analyse, among other issues, the implementation of the new income means test and its effect on schoolkids bonus recipients. Specific consultation was also not undertaken with external stakeholders as consultation occurred as part of the original measures relating to schoolkids bonus in the MRRT Act. The Amendment Determination extends the current arrangements for school leavers and persons receiving schoolkids bonus in respect of school leavers except for introducing an adjusted taxable income test. This represents a significant improvement to the position of schoolkids bonus recipients than what was originally considered under the MRRT Act – namely, abolishing the schoolkids bonus from 2015.

In addition, the Amendment Determination merely extends the means test to school leavers covered by the 2012 Determination – thus making the 2012 Determination consistent with the legislative provisions in the Act.

Regulatory Impact Statement (RIS)

The Amendment Determination is not regulatory in nature, will not impact on business activity and will have no, or minimal, compliance costs or competition impact.

Explanation of the provisions

Section 1

Section 1 states the name of the Amendment Determination.

Section 2

Section 2 provides that the Amendment Determination commences on the day after it is registered.

Section 3

Section 3 provides that Schedule 1 amends the 2012 Determination.

Section 4

Section 4 provides for the application of the amendments made by Schedule 1. The amendments will apply to eligibility for schoolkids bonus for bonus test days on or after 1 January 2015.

Schedule 1

Schedule 1 sets out the amendments.

Item 1 inserts a definition of *adjusted taxable income* into subsection 4(1) of the 2012 Determination as meaning the definition in subsection 3(1) of the Act. This amendment is consequential to the amendments made by items 3 and 7.

Item 2 omits the full stop and inserts the word ‘and’ at the end of paragraph 7(1)(g) of the 2012 Determination, to indicate that all paragraphs must be satisfied before an individual will be eligible under the subsection.

Item 3 inserts new paragraph (h) into subsection 7(1) of the 2012 Determination, imposing an adjusted taxable income limit of \$100,000 for an individual to be eligible for schoolkids bonus on a bonus test day in relation to a child (a school leaver) when the individual is in receipt of an ***eligible payment*** that is Family Tax Benefit Part A, youth allowance, disability support pension, carer payment or parenting payment.

Item 4 inserts new subsection (1B) into section 7 of the 2012 Determination, setting out the definition of ***affected parent*** for the purposes of eligibility based upon payment of youth allowance so that it is consistent with the definition in the Act.

Item 5 inserts new subsection (1C) into section 7 of the 2012 Determination, setting out an exception to the application of ***adjusted taxable income*** to eligibility for schoolkids bonus if the individual is receiving an instalment of disability support pension in respect of a child and the child is permanently blind, so that it is consistent with the exception in the Act.

Item 6 omits the full stop and inserts the word ‘and’ at the end of paragraph 7(2)(i) of the 2012 Determination, to indicate that all paragraphs must be satisfied before an individual will be eligible under the subsection.

Item 7 inserts new paragraph (j) into subsection 7(2) of the 2012 Determination, imposing an adjusted taxable income limit of \$100,000 for an individual (a school leaver) to be eligible for schoolkids bonus on a bonus test day when the individual is in receipt of an ***eligible payment*** that is youth allowance, ABSTUDY, disability support pension, carer payment, parenting payment or special benefit.

Item 8 inserts new subsection (2A) into section 7 of the 2012 Determination, setting out an exception to the application of ***adjusted taxable income*** to eligibility for schoolkids bonus if the individual is receiving an instalment of disability support pension and is permanently blind, so that it is consistent with the exception in the Act.

Statement of Compatibility with Human Rights

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

Schoolkids Bonus Amendment Determination 2014 (No. 2)

The Determination 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 *Schoolkids Bonus Amendment Determination 2014 (No. 2)* (the ‘Amendment Determination’) amends the *Schoolkids Bonus Determination 2012* (‘the 2012 Determination’) to align the schoolkids bonus (SKB) eligibility criteria for a school leaver and individuals eligible in respect of a school leaver to the criteria which is currently in place for recipients of SKB under the *A New Tax System (Family Assistance) Act 1999* (‘the Act’) until 31 December 2016 (when SKB is repealed).

Subject to certain exemptions, in order to be eligible for SKB under the Act, an individual’s adjusted taxable income for the income year in which the bonus test day occurs must be \$100,000 or less.

Human rights implications

In limiting school leavers and individuals eligible for SKB in respect of school leavers to those who have an adjusted taxable income of \$100,000 or less, the Amendment Determination interacts with the right to social security as recognised in Article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and Article 26 of the Convention on the Rights of the Child (CRC). The Amendment Determination also interacts with the right to an adequate standard of living in Article 11 of the ICESCR, and Article 27 of the CRC.

Article 9 of the ICESCR requires a social security system to be established and states 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 11 of ICESCR recognises the right to an adequate standard of living. Article 27 of CRC recognises the right for every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development.

The rights to social security and an adequate standard of living are not absolute and may be subject to permissible limitations. Article 4 of the ICESCR provides that the rights in the Covenant may be subject to limitations that are determined by law which are compatible with the nature of these rights and are solely for the purpose of promoting the general welfare in a democratic society.

Any removals in entitlement must be justified in line with Article 4 in the context of the full use of the maximum available resource of the State party.

In aligning the Amendment Determination with the provisions of the Act, the limiting of SKB to those recipients who have an adjusted taxable income of \$100,000 or less in an income year is reasonable, necessary and proportionate. The SKB is a supplementary payment designed to provide additional assistance for educational expenses. It is assumed that those recipients who have an adjusted taxable income of over \$100,000 are able to meet the additional expenses associated with study – as opposed to those recipients who have an adjusted taxable income of \$100,000 or less. The Amendment Determination also upholds exemptions that are contained in the FA Act to ensure that certain groups of people are still provided for (for example, those receiving SKB as a result of receiving DSP blind).

By limiting who can receive SKB, this ensures that the payment is targeted to those who are most in need.

The Government considers that recipients of SKB who have an adjusted taxable income of over \$100,000 are able to realise their right to the minimum essential level of benefits listed in Article 9 of the ICESCR and an adequate standard of living as required by Article 11 of the ICESCR and Article 27 of the CRC.

Conclusion

The Amendment Determination is compatible with human rights because to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.

The Hon Kevin Andrews, Minister for Social Services