

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Social Services

A New Tax System (Family Assistance) Act 1999

A New Tax System (Family Assistance) (Newborn Upfront Payment and Newborn Supplement – Entitlement Exclusion) Determination 2024

Purpose

The *A New Tax System (Family Assistance) (Newborn Upfront Payment and Newborn Supplement – Entitlement Exclusion) Determination 2024* (the Determination) prescribes additional rules that prevent duplication of the payment of the “newborn supplement” (NBS) and the “newborn upfront payment” (NBUP) in certain circumstances.

Background

The *A New Tax System (Family Assistance) Act 1999* (the Act) provides for the payment of Family Tax Benefit (FTB) Parts A and B. FTB Parts A and B are payments to eligible families to assist with the costs of raising children. More specifically, FTB Part A provides financial support to families in respect of each FTB child, and is calculated on the basis of the combined income of the family. FTB Part B provides extra assistance for single parent families and couple families where there is one main income earner.

NBS and NBUP are two supplementary payments to FTB Part A, which intend to strengthen the financial support provided through FTB Part A, including with the upfront costs of a child. This extends to circumstances where the child is a newborn child; where a child aged under one year becomes entrusted into an individual’s care; or where a child becomes entrusted into an individual’s care as part of an adoption process.

The Act provides rules for preventing duplication of these supplementary payments in specified circumstances. For example, subclauses 35A(8), (9) and (10) of Schedule 1 to the Act provide that an individual and an FTB child cannot be eligible for NBS in specified circumstances. Similarly, subsection 58AA(2) of the Act provides that an individual and an FTB child cannot be paid NBUP in specified circumstances.

In broad terms, duplication is prevented in the circumstances specified in the Act, which are the most common situations where duplication could occur. These situations include where an individual’s partner received parental leave pay (PLP) for a flexible paid parental leave day (PPL day) under the *Paid Parental Leave Act 2010* for the FTB child (see subclause 35A(9) of Schedule 1 to the Act).

Subclause 35A(12) of Schedule 1 to the Act authorises the Minister for Social Services to prescribe other circumstances in which the NBS or the NBUP is precluded from an individual’s rate of FTB. The purpose of this Determination is to prescribe additional rules that prevent payments of NBS and NBUP from being duplicated in less common

circumstances. This is achieved by the Determination prescribing circumstances for when an individual cannot be eligible for NBS or NBUP.

Commencement

The Determination will commence on 1 April 2024.

Consultation

Services Australia was consulted in remaking the Determination, as it has a role in administering the exclusion rules. No issues were identified in relation to administering the Determination.

Impact Analysis

The Office of Impact Analysis has assessed the regulatory impact of the Determination to be negligible and a detailed Impact Analysis is not required. The reference number for the assessment is OIA24-06801.

Explanation of the provisions

Section 1 states that the name of the Determination is the *A New Tax System (Family Assistance) (Newborn Upfront Payment and Newborn Supplement – Entitlement Exclusion) Determination 2024*.

Section 2 specifies that the Determination commences on 1 April 2024.

Section 3 provides that the Determination is made under subclause 35A(12) of Schedule 1 to the *A New Tax System (Family Assistance) Act 1999*.

Section 4 defines various terms that are used in the Determination.

Section 5 gives effect to the table in Schedule 1, providing that, for the purposes of subclause 35A(11) of Schedule 1 to the *A New Tax System (Family Assistance) Act 1999*, the circumstances set out in column 2 of the table, in relation to the days specified in column 3, are prescribed.

Section 6 gives effect to the table in Schedule 2, providing that, for the for the purposes of subsection 58AA(3) of the *A New Tax System (Family Assistance) Act 1999*, the circumstances set out in column 2 of the table are prescribed.

Schedule 1 – Entitlement exclusion rules for newborn supplement table

This Schedule sets out a table with 17 items prescribing different circumstances and days in which NBS is precluded from a person's rate of FTB. If each of the circumstances detailed in column 2 for an item apply in relation to an individual, NBS is not to be added to the individual's rate of FTB for the day or days specified in column 3 of that same item.

Item 1 provides NBS is not to be added to an individual's rate of FTB for an FTB child, where the individual and a second person are members of the same couple after the

second person and a third person were previously members of the same couple, while PLP was payable to the third person for a flexible PPL day for that same FTB child.

Item 2 – Item 7 specifies circumstances where NBS is not to be added to an individual's rate of FTB for an FTB child, where the individual and a second person are members of the same couple while the second person receives NBS for that same FTB child for up to 13 weeks.

Item 8 – Item 11 provides circumstances where NBS is not to be added to an individual's rate of FTB for an FTB child, where the individual and a second person are members of the same couple after the second person has previously received the NBS for that same FTB child.

Item 12 – Item 17 prescribes circumstances where NBS is not to be added to an individual's rate of FTB for an FTB child, where the individual and a second person are members of the same couple, after the second person and a third person were previously members of the same couple while the third person received the NBS for that same FTB child.

Example – Item 11: NBS Already Paid to Member of a Couple for the same FTB Child

Sophie has received 50 days of NBS for her daughter Amelia. On 1 January 2024, Sophie reunites with Amelia's father Ben and Ben claims FTB for Amelia. On 1 March 2024, Sophie and Ben separate.

Ben's eligibility for NBS is assessed to ensure that Sophie does not receive a duplicate benefit of NBS. The assessment recognises that Sophie has not received the full benefit of the maximum 13 weeks (91 days) NBS period.

For the period that Ben and Sophie are members of a couple (day 1 to day 59 of Ben's NBS period), Ben is eligible for NBS for the following number of days:

91 – the number of days Sophie received NBS

= 91-50

= 41 days

While Ben is a member of a couple with Sophie, he can receive NBS for 41 days. NBS is not added to Ben's rate of FTB Part A from day 42 to day 59 of Ben's NBS period. This ensures that Sophie does not receive (through payment to Ben) more than 13 weeks (91 days) of NBS.

For the period that Ben and Sophie are not members of the same couple (day 60 to day 91 of Ben's NBS period), no exclusions apply to Ben and NBS is added to Ben's rate of FTB.

Schedule 2 – Entitlement exclusion rules for NBUP table

This Schedule sets out a table with three items prescribing different circumstances in which NBUP is precluded from a person's rate of FTB. If each of the circumstances detailed in column 2 for an item apply in relation to an individual, NBUP is not to be added to the individual's rate of FTB.

Item 1 and Item 2 set out circumstances where NBUP is not to be added to an individual's rate of FTB for an FTB child if they are a member of a couple with another person who previously received NBUP for that FTB child.

Item 3 provides NBUP is not to be added to an individual's rate of FTB for an FTB child, where the individual and a second person are members of the same couple, after the second person and a third person were previously members of the same couple while the third person received NBUP for that FTB child.

Example – Item 1: NBUP Already Paid to Member of a Couple for the same FTB Child

Emily receives NBS and NBUP for her FTB child Noah. Before the end of her NBS period, Emily partners with Noah's father Chris.

Emily and Chris later separate and both have shared care of Noah. Chris claims FTB for Noah and his eligibility for NBS and NBUP is assessed. Given Chris was partnered with Emily during her NBS period, he is not entitled to receive NBUP as a result of the operation of item 1.

Statement of Compatibility with Human Rights

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

A New Tax System (Family Assistance) (Newborn Upfront Payment and Newborn Supplement – Entitlement Exclusion) Determination 2024

The *A New Tax System (Family Assistance) (Newborn Upfront Payment and Newborn Supplement – Entitlement Exclusion) Determination 2024* (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

Newborn supplement may be paid fortnightly as part of a family's regular family tax benefit (FTB) Part A payment for a period of up to 13 weeks (91 days), or as part of a lump sum claim after the end of the financial year, once relevant reconciliation conditions are met. If paid fortnightly, the first instalment of newborn supplement includes newborn upfront payment. Otherwise, newborn upfront payment is paid as part of a lump sum claim. As at 1 July 2023, in total, eligible families may receive up to \$2,565.65 for the family's first child (and each child in a multiple birth) and \$1,283.46 for subsequent children.

The *A New Tax System (Family Assistance) Act 1999* (the Act) provides rules for preventing duplication of newborn supplement and newborn upfront payment in common circumstances, including when parental leave pay is payable to an individual or their partner under clause 35A of Schedule 1 to the Act. Subclause 35A(12) provides instrument-making powers to prescribe additional rules for preventing duplication of the payments in less common situations.

These additional rules were previously determined by the *Family Tax Benefit (Entitlement Exclusion – Newborn Upfront Payment and Newborn Supplement) Determination 2014* (No. 1).

The determination has been remade to reflect changes to the Paid Parental Leave (PPL) Scheme introduced by the *Paid Parental Leave Amendment (Improvements for Families and Gender Equality) Act 2023* (2023 PPL amendments). This includes removing or consolidating rules in Schedule 1 of the determination pertaining to the individual or their partner's parental leave pay entitlement, which were made redundant under the 2023 PPL amendments. Similarly, this determination has been changed throughout to align with the wording of current legislation.

Elsewhere, the determination largely retains the prescribed rules included in the earlier determination. Further, the determination does not change the total amount of an individual's entitlement to newborn supplement and newborn upfront payment, which will continue to be determined under current eligibility and income testing rules.

Human rights implications

The Determination engages the following rights:

- Right to Social Security – Article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESR) and Article 26 of the Convention on the Rights of the Child (CRC).
- Rights of children deprived of their family environment – Article 20(1) of the CRC.

Right to Social Security

Article 9 of the ICESR states that every person has the right to social security, including social insurance. Article 26 of the CRC ensures that every child has the right to benefit from social security, and necessary measures should be taken to achieve full realisation of this right. Further, Article 26 of the CRC states that benefits should, where appropriate, take into account the resources and the child, as well as any other considerations relevant to an application for benefits made by or on behalf of the child.

The Determination engages the right to social security to the extent that it ensures an individual (or their partner) receives the correct amount of social assistance for a newborn child, while avoiding duplication of benefits. It does this by outlining circumstances where the family is considered to have fully benefited from assistance for a new child and is not eligible for a rate of newborn supplement, or for newborn upfront payment.

The Determination also outlines circumstances where a family is recognised as having received a part benefit of newborn supplement and allows the individual to receive newborn supplement for a reduced period of time until they have fully benefitted from the payment.

Rights of children deprived of their family environment

Article 20(1) of the CRC provides that a child shall be entitled to special protection and Government assistance where they have been permanently or temporarily deprived of their family environment, or cannot be allowed to remain in that environment in their best interests.

The Determination engages Article 20(1) of the CRC to the extent it ensures an individual (or their partner) who undertakes the care of a non-biological child, does not receive a duplicate benefit of family assistance for that child.

Conclusion

The Determination is compatible with and promotes human rights because it advances the protection of a child's human rights.

The Hon Amanda Rishworth, Minister for Social Services