**EXPLANATORY STATEMENT**

Issued by the authority of the Minister for Families and Social Services

*Child Support (Assessment) Act 1989*

Child Support (Assessment) (AWE amount) Determination 2021

**Purpose**

The Child Support (Assessment) (AWE amount) Determination 2021 (the instrument) determines an amount under subsection 58AA(4) of the Child Support (Assessment) Act 1989 (the Child Support Assessment Act).

The amount determined in the instrument on the advice of the Australian Statistician, will be taken to be the trend Average Weekly Earnings (AWE) amount for the December quarter 2020, in accordance with subsection 58AA(5) of the Child Support Assessment Act.

Determination of an AWE amount is necessary for child support assessment purposes because the publication of trend estimates for the AWE series, ordinarily published by the Australian Statistician, was suspended in 2020 due to the impact of the COVID-19 pandemic on the labour market. The Minister is able to make the instrument because the Australian Statistician did not publish the ‘Average Weekly Earnings – Trend – Persons – All employees total earnings’ figure for the December 2020 quarter by the end of 31 March 2021.

**Background**

The AWE amount can be used to determine a parent’s Adjusted Taxable Income (ATI) for the last relevant year of income where the taxable income from the last relevant year of income has not been assessed, but the taxable income from the previous year of income, or from an earlier year of income, has been assessed. The AWE amount is used to apply the ATI indexation factor to account for the growth in earnings between the year the parent lodged their last tax return and the last relevant year of income.

The Australian Statistician has temporarily suspended publication of the trend estimates for the AWE series as a result of the impact of the COVID-19 pandemic, although various other wage statistics, including seasonally adjusted figures, continue to be published. Without an AWE amount the Child Support Registrar would not have a basis to determine some provisional incomes for the last relevant year of income, for possible use in assessments beginning from 1 July 2021. In consultation with the Australian Statistician, an approximate amount has been determined to ensure children of separated parents continue to share appropriately in the standards of living of their parents in line with the intent of the child support policy, notwithstanding the extraordinary circumstances that have arisen due to the COVID-19 pandemic.

Where parents are concerned that their income for the last relevant year of income is not accurately reflected in their child support assessment, they can update their income details by lodging their tax return for that year of income, or by providing updated income details to Services Australia so their child support assessment can be updated. Late lodgement of tax returns may affect the date from which the new income details can be reflected in the child support assessment.

The instrument is a legislative instrument subject to disallowance.

**Commencement**

The instrument will commence the day after it is registered on the Federal Register of Legislation.

**Consultation**

Consultation was undertaken with the Australian Statistician and the Australian Bureau of Statistics to derive an AWE amount that approximated the AWE trend figure. Consultation was also undertaken with Services Australia, who will implement the determined figure.

**Regulation Impact Statement (RIS)**

Following consultation with the Office of Best Practice Regulation, a RIS is not required for the instrument (OBPR ID 43961).

**Availability of merits review**

Should a parent disagree with the income details in their child support assessment, they remain able to seek merits review internally under Part VII of the *Child Support (Registration and Collection) Act 1988* (Registration and Collection Act), and externally by the Administrative Appeals Tribunal, under Part VIIA of the Registration and Collection Act.

**Explanation of the provisions**

Section 1

This section provides that the name of the instrument is the Child Support (Assessment) (AWE amount) Determination 2021.

Section 2

This section provides that the instrument commences on the day after it is registered on the Federal Register of Legislation.

Section 3

This section provides that the instrument is made under subsection 58AA(4) of the Child Support Assessment Act.

Section 4

This is the definition section of the instrument. In the instrument, “Act” is defined as the Child Support Assessment Act.

There is a note that the term “December quarter” is defined in subsection 58AA(1) of the Child Support Assessment Act. Subsection 58AA(1) provides that the “December quarter” of a year of income means the quarter ending on 31 December of that year.

Section 5

This section determines the amount of $1,291.30 as the AWE amount for the December quarter of the year of income ending on 31 December 2020, based on an extrapolation of trend AWE data provided by the Australian Statistician.

**Statement of Compatibility with Human Rights**

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

***Child Support (Assessment) (AWE amount) Determination 2021***

The *Child Support (Assessment) (AWE amount) Determination 2021* (the 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 instrument determines an amount under subsection 58AA(4) of the *Child Support (Assessment) Act 1989* (the Child Support Assessment Act).

The amount determined in the instrument, as advised by the Australian Statistician, will be taken to be the AWE amount for the December quarter ending on 31 December 2020, in accordance with subsection 58AA(5) of the Child Support Assessment Act.

Determination of an amount that is taken to be the AWE amount is necessary for child support assessment purposes because the publication of trend estimates for the Average Weekly Earnings series, ordinarily published by the Australian Statistician, was suspended due to the impact of the COVID-19 pandemic on the labour market.

**Human rights implications**

The instrument engages the following rights:

* Right to respect for family – Article 23(4) of the International Covenant on Civil and Political Rights (ICCPR), and
* Right of every child to an adequate standard of living – Article 27 of the Convention on the Rights of the Child (CRC).

*Right to respect for family*

The instrument engages Article 23(4) of the ICCPR, which states that appropriate steps should be taken to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. Further, the article states that ‘in the case of dissolution [of marriage], provision shall be made for the necessary protection of any children’. The Child Support Scheme ensures that both parents take financial responsibility for their children. The Child Support formula takes into consideration the costs of raising a child and each parent’s capacity to contribute. The instrument engages this right, as it will provide a mechanism for child support assessments to continue to be determined using the most up to date income information available, while the publication of trend estimates for all Average Weekly Earnings series are suspended.

*Right of every child to an adequate standard of living*

The instrument engages Article 27 of the CRC, which states at Article 27(1) that every child has the right to a “standard of living adequate for the child’s physical, mental, spiritual, moral and social development.” Further, Article 27(2) states that “The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the condition of living necessary for the child’s development.” In relation to parents who are separated, whether or not they have ever been married or partnered, Article 27(4) is of particular relevance, and it states that “States parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad.” By providing a mechanism for child support assessments to continue to be determined using the most up to date income information available, the instrument will allow Australia to meet its obligations under the CRC.

**Conclusion**

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

**Anne Ruston, Minister for Families and Social Services**