EXPLANATORY STATEMENT

Child Care Benefit (Absence From Care – Permitted Circumstances) Amendment Determination 2009 (No. 1)

Summary

The Child Care Benefit (Absence From Care – Permitted Circumstances) Amendment Determination 2009 (No. 1) (the Amendment Determination) is made by the Minister for Education and Minister for Employment and Workplace Relations under section 11 of the A New Tax System (Family Assistance) Act 1999 (the Family Assistance Act).

The purpose of the Amendment Determination is to amend the Child Care Benefit (Absence From Care – Permitted Circumstances) Determination 2000 (the Principal Determination) to give greater clarity to the meaning of ‘brother or sister’ and to recognise that there are a number of different types of brother and sister relationships eg step-brother, half-brother.

Background

The Family Assistance Legislation Amendment (Child Care Management System and Other Measures) Act 2007 (the CCMS Act) amended the family assistance law for the purposes of the introduction of the CCMS. In particular, the CCMS Act amended section 10 of the Family Assistance Act dealing with the effect of absence of a child from care.

Under the family assistance law, eligibility for Child Care Benefit (CCB) arises in respect of a session of care provided to a child. Section 10 of the Family Assistance Act specifies when an absence from care is treated as a session of care that has been provided.

Generally, section 10, as amended, operates to the effect that the first 42 days of absence of a child from care is taken to have been provided, for CCB purposes, regardless of the reason for the absence.

Section 10 also permits additional absences, after the initial 42 absence days, if an absence has occurred in any of the circumstances set out in subparagraphs 10 (3) (c) (i) to (iv) (subject to other conditions of subsection 10 (3) being met).

The Minster has made the Principal Determination to deal with permitted circumstances for the purposes of section 11 as in force before the amendments made by the CCMS Act. One of the circumstances prescribed in the Principal Determination is where the absence is due to the school attended by the child, or the child’s brother or sister, being closed (other than because of a public holiday or school holidays). The words ‘brother’ and ‘sister’ are not defined and do not clearly pick up the possible brother and sister relationships that may exist, such as half-brother or
sister, or step-brother or sister etc. Accordingly, the Amendment Determination amends the Principal Determination to address this issue.

**Explanation of provisions**

*Amendment Determination*

**Section 1** provides that the name of the Amendment Determination is the *Child Care Benefit (Absence From Care – Permitted Circumstances) Amendment Determination 2009 (No.1)*.

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

**Section 3** provides that the Principal Determination is amended as set out in Schedule 1 to the Amendment Determination.

*Schedule 1 to the Amendment Determination*

**Item 1** inserts a definition of ‘child’s sibling’ to include a half-brother, half-sister, adoptive brother, adoptive sister, stepbrother, stepsister, or foster-brother or foster-sister of the child.

**Item 2** omits the words ‘brother or sister’ from paragraph 5 (1) (c) of the Principal Determination and inserts the word ‘sibling’. As indicated in Item 1 above, the concept of ‘child’s sibling’ has then been inserted into the Principal Determination to give greater clarity to its meaning and to recognise that there are different sorts of brother and sister relationships.

**Formal matters**

*Consultation*

The Amendment Determination is simply aimed at providing greater clarity to the meaning of the words ‘brother’ and ‘sister’. The definition of sibling inserted by the Amendment Determination is consistent with the meaning of sibling, as set out in the social security law. No public consultation was considered necessary.

*Regulatory Impact Statement*

The Amendment Determination does not require a Regulatory Impact Statement (RIS) nor a Business Cost Calculator Figure. The Amendment Determination is not regulatory in nature, will not impact on business activity and will have no compliance costs or competition impact.

*Authority*

Section 11 of the *A New Tax System (Family Assistance) Act 1999*. No preconditions need to be satisfied for the making of this instrument.