

## **EXPLANATORY STATEMENT**

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

*Child Support (Assessment) Act 1989*

Child Support (Assessment) (MTAWE amount) Determination 2020

### **Purpose**

The Child Support (Assessment) (MTAWE amount) Determination 2020 (the instrument) determines an amount under subsection 5A(6) 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 MTAWE trend figure for the June 2020 quarter in accordance with subsection 5A(7) of the Child Support Assessment Act.

Determination of an amount to be taken to be the MTAWE 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, has been 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 – Males – All Employees Total Earnings figure for the June 2020 quarter by the end of 30 September 2020.

### **Background**

The MTAWE trend figure is annualised to be used to determine the costs of children which underpin administrative child support assessments for periods commencing in the subsequent calendar year. It is also used to generate various other elements used in child support formula assessments.

The Australian Statistician has temporarily suspended publication of the MTAWE trend figure from June 2020 as a result of the impact of the COVID-19 pandemic, although various other wage statistics, including seasonally adjusted figures, continue to be published. This is the first time in history that this figure has been suspended. In consultation with the Australian Statistician, an alternative amount has been selected to be used for the purposes of making new child support assessments from January 2021. The amount determined is an appropriate amount 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.

Should a parent disagree with the assessment of their capacity to provide financial support based upon the costs of children based on the determined amount, they remain able to seek a departure from administrative assessment under Part 6A of the Child Support Assessment Act.

This will enable a more individualised assessment of their obligations to their child or children to be made, if grounds are identified. Departure decisions, or refusal to make a departure decision, are subject to full merits review both internally (under the *Child Support (Registration and Collection) Act 1988* Part VII) and externally by the Administrative Appeals Tribunal (Part VIIA).

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 amount that approximated the MTAWWE 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 43252).

## **Explanation of the provisions**

### Section 1

This section provides that the name of the instrument is the *Child Support (Assessment) (MTAWWE amount) Determination 2020*.

### 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 5A(6) 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 expression “relevant June quarter” is defined in subsection 5A(2) of the Child Support Assessment Act.

Section 5A(2) provides that “relevant June quarter”, in relation to a child support period, means the quarter ending on 30 June of the last calendar year ending before the child support period begins.

## Section 5

This section determines the amount of \$1,518.40 for the relevant June quarter ending on 30 June 2020, based on an extrapolation of trend MTAWWE data provided by the Australian Statistician. The amount of \$1,518.40 will be used to calculate child support assessments made from 1 January 2021.

## **Statement of Compatibility with Human Rights**

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

### ***Child Support (Assessment) (MTAWE amount) Determination 2020***

The Child Support (Assessment) (MTAWE) Determination 2020 (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 Child Support (Assessment) (MTAWE amount) Determination 2020 (the instrument) determines an amount under subsection 5A(6) 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 MTAWE trend figure for the June 2020 quarter in accordance with subsection 5A(7) of the Child Support Assessment Act.

Determination of an amount that is taken to be the MTAWE amount is necessary for child support assessment purposes because the publication of trend estimates for Average Weekly Earnings series, ordinarily published by the Australian Statistician, has been 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 ICCPR, and
- Right of every child to an adequate standard of living – Article 27 of the 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 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, the instrument will allow for Australia to meet its obligations under the CRC.

### **Conclusion**

The instrument is compatible with human rights because they advance the protection of human rights.

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