**EXPLANATORY STATEMENT**

Issued by the authority of the Minister for Social Services

*A New Tax System (Family Assistance) Act 1999*

*Family Assistance (Meeting the Immunisation Requirements) Principles 2015*

**Purpose**

The purpose of these Principles is to set out decision-making principles that the Secretary must comply with when making a determination under subsection 6(6) of the A New Tax System (Family Assistance) Act 1999 (the Act) that a child meets the immunisation requirements.

**Background**

Following the commencement of the Social Services Legislation Amendment
(No Jab, No Pay) Act 2015 (No Jab, No Pay Act) the general effect of section 61B of the Act is that FTB Part A supplement is not to be paid for a relevant income year unless the child meets the immunisation requirements. Section 6 of the Act provides for the immunisation requirements.

The No Jab, No Pay Act inserts a new subsection 6(6) into the Act and that subsection provides that a child meets the immunisation requirements if the Secretary determines in writing that the child meets the immunisation requirements. In making a determination under subsection 6(6), the Secretary must comply with any decision-making principles made by the Minister for the purposes of subsection 6(7). These Principles set out those decision-making principles.

Under the Administrative Arrangements Order, the Minister for Education and Training is responsible for administering the Act insofar as it relates to child care benefit (CCB). The Minister for Education and Training has however authorised the Minister for Social Services under section 34AAB of the *Acts Interpretation Act 1901* to make these Principles on behalf of the Minister for Education and Training.

**Commencement**

With the exception of section 3, these Principles commence immediately after Schedule 1 to the No Jab, No Pay Act. Schedule 1 to that Act commences on 1 January 2016. Section 3 (in relation to revocation of previous determinations) commences immediately before Schedule 1 to the No Jab, No Pay Act.

**Consultation**

The Department of Human Services, the Department of Education and Training, and the Department of Health were consulted in the preparation of this Determination. The Department of Human Services provided insight from a service delivery perspective. The Department of Education and Training provided input to ensure the decision-making principles are aligned between family assistance payments. The Department of Health provided advice on clinical aspects of medical exemptions.

**Regulation Impact Statement (RIS)**

This Determination does not require a Regulation Impact Statement because the 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

This section provides how the Determination is to be cited, that is, as the Family Assistance (Meeting the Immunisation Requirements) Principles 2015.

Section 2

This section provides that with the exception of section 3, these Principles commence immediately after Schedule 1 to the No Jab, No Pay Act. Schedule 1 to that Act commences on 1 January 2016.

Section 3 (in relation to revocation of previous determinations) commences immediately before Schedule 1 to the No Jab, No Pay Act. This will ensure that previous determinations in relation to meeting the immunisation requirements are revoked before these Principles come into effect.

Section 3

Section 3 revokes the *Family Assistance (Exemption from the Immunisation Requirements (FaHCSIA) Determination 2012*, the *Family Assistance (Meeting the Immunisation Requirements (FaHCSIA) Determination 2012* and the *Child Care Benefit (Immunisation Requirements) (DEEWR) Determination 2013*.

The revoked determinations were made under section 7 of the Act which is repealed by the No Jab, No Pay Act.

Section 4

Section 4 defines terms that are used in these Principles.

Section 5

Section 5 provides that the Principles apply:

* in relation to working out whether FTB Part A supplement is to be added to the rate of an individual’s Part A rate for a day on or after 1 January 2016; and
* in relation to working out whether an individual, or an approved child care service, is eligible for CCB for care provided to a child on a day on or after 1 January 2016.

Section 6

This section provides for the purpose of the Principles. The purpose is to set out decision-making principles that the Secretary must comply with when making a determination under subsection 6(6) of the Act that a child meets the immunisation requirements.

Section 7

Subsection 7(1) provides that the Secretary may make a determination under subsection 6(6) of the Act that a child meets the immunisation requirements only if the requirements in one of section 8, 9, 10, 11 or 12 of these Principles are met. This means that sections 8, 9, 10, 11 and 12 are an exhaustive statement of the circumstances in which the Secretary may make a determination under subsection 6(6) of the Act. To avoid doubt, it will not be possible for the Secretary to make a determination under subsection 6(6) of the Act on the basis that an individual has a conscientious objection to a child being immunised.

Subsection 7(2) provides that any determination the Secretary makes under subsection 6(6) of the Act because the Secretary is satisfied that the requirements in section 10 of these Principles (in relation to a permanent humanitarian visa holder) are met, must be made for no longer than 6 months after the child’s first entry into Australia.

Subsection 7(3) provides that if, while a determination under subsection 6(6) of the Act is in force, the Secretary is satisfied that the child meets the usual immunisation requirements, the Secretary must revoke the determination. The usual immunisation requirements are the immunisation requirements mentioned in subsection 6(2), (3), (4) and (5) of the Act (see subsection 4(2) of these Principles).

Section 8

Section 8 provides that the Secretary may make a determination that a child meets the immunisation requirements if, in certain circumstances, the child is in the care of an individual who does not have legal authority to make decisions about the medical treatment of the child. The circumstances are where:

* if the child is aged under 15 years - a person (other than the child) with legal authority to make decisions about medical treatment of the child either refuses to consent to the child being immunised, or does not provide consent to the child being immunised within a reasonable period of time;
* if the child is aged at least 15 years – the child refuses to consent to being immunised, or does not provide consent to being immunised within a reasonable period of time.

If the child must meet the immunisation requirements for FTB Part A supplement, section 8 will only apply if the individual has care of the child under child welfare law mentioned in subparagraph 49(1)(a)(i) or (ii) of the Act. A person may have care of a child under a child welfare law if a court or tribunal has made an order that the person is to have care of the child.

Section 8 will enable the Secretary to determine that a child meets the immunisation requirements where the child is in the care of a person who does not have the authority to consent to the child being immunised but where the person with that authority has refused to consent to immunisation, or has failed to provide consent within a reasonable period.

Section 9

Section 9 provides that the Secretary may make a determination that a child meets the immunisation requirements if there is a risk that certain persons would be subject to family violence if actions were taken to enable the child to meet the usual immunisation requirements. The persons are:

* the individual whose eligibility for CCB is being assessed, or the individual who has care of a child where the child must meet the immunisation requirements for FTB Part A supplement; or
* the child; or
* a member of the immediate family of the individual or the child.

**Member of the immediate family** is defined in section 4 to mean a partner, child, parent, grandparent, grandchild or sibling of the individual or FTB child.

**Family violence** is defined in section 4 to have the same meaning as in section 4AB of the Family Law Act 1975 (FL Act). Section 4AB of the FL Act provides that **family violence** means ‘violent, threatening or other behaviour by a person that coerces or controls a member of the person’s family (the family member), or causes the family member to be fearful’. Examples of behaviour that may constitute family violence are also set out in section 4AB of the FL Act.

Section 10

Section 10 provides that the Secretary may make a determination that a child meets the immunisation requirements if the individual, whose eligibility for CCB is being assessed, or who has care of a child where the child must meet the immunisation requirements for FTB Part A supplement, is the holder of a permanent humanitarian visa where no more than 6 months have passed since the child’s first entry to Australia.

**Permanent humanitarian visa** is defined in section 4 to have the same meaning as in regulation 1.03 of the Migration Regulations 1994. Under that regulation, **permanent humanitarian visa** means:

* a Subclass 200, 201, 202, 203, 204, 209, 210, 211, 212, 213, 215, 216, 217 or 866 visa; or
* a Resolution of Status (Class CD) visa; or
* a Group 1.3 or Group 1.5 (Permanent resident (refugee and humanitarian)) visa or entry permit within the meaning of the *Migration (1993) Regulations*; or
* a humanitarian visa, or equivalent entry permit, within the meaning of the *Migration (1989) Regulations*; or
* certain transitional (permanent) visas, within the meaning of the *Migration Reform (Transitional Provisions) Regulations*.

A determination made for the reasons mentioned in section 10 can only be in force for a maximum of 6 months after the child first enters Australia (see subsection 7(2) of these Principles).

Section 11

Section 11 provides that the Secretary may make a determination that a child meets the immunisation requirements if, in certain circumstances, the child was vaccinated outside Australia. Section 11 applies only if an individual has care of a child where the child must meet the immunisation requirements for FTB Part A supplement. Section 11 does not apply to an individual whose eligibility for CCB is being assessed.

The circumstances in which section 11 applies are where:

* the child is outside Australia;
* the child received one or more vaccinations while outside Australia;
* an overseas medical practitioner has certified in writing that those vaccinations have provided the same level of immunisation the child would have acquired if the child had been vaccinated in accordance with a standard vaccination schedule or a catch up vaccination schedule; and
* it is not possible for a recognised immunisation provider to certify that the vaccinations have provided the child with that same level of immunisation.

This section will ensure there is capacity for the Secretary to determine that a child vaccinated outside Australia meets the immunisation requirements where, in certain circumstances, it is not possible for a recognised immunisation provider to make the relevant certification. This may be the case where the child is residing outside Australia for a long period.

Section 12

Section 12 provides that the Secretary may make a determination that a child meets the immunisation requirements if the child is at risk of serious abuse or neglect. This exemption applies where there is no conditionally eligible individual in respect of the child and a delay in accessing child care would put the child at risk of serious abuse or neglect as determined by the Secretary of the Department of Education and Training. This exemption replaces the automatic exemption which was in place for all children at risk of serious abuse or neglect in respect of whom there is no conditionally eligible individual. This provision has been amended to now require that those children meet immunisation requirements except where they are exempted under this section.

**Statement of Compatibility with Human Rights**

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

**Family Assistance (Meeting the Immunisation Requirements) Principles 2015**

These Principles are 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 Principles**

The purpose of these Principles is to set out decision-making principles that the Secretary must comply with when making a determination under subsection 6(6) of the *A New Tax System (Family Assistance) Act 1999* (the Act) that a child meets the immunisation requirements.

Following the commencement of the *Social Services Legislation Amendment (No Jab, No Pay) Act 2015* (No Jab, No Pay Act), the general effect of section 61B of the Act is that the FTB Part A supplement is not to be paid for a relevant income year unless the child meets the immunisation requirements. Section 6 of the Act provides for the immunisation requirements.

The No Jab, No Pay Act inserts a new subsection 6(6) into the Act and that subsection provides that a child meets the immunisation requirements if the Secretary determines in writing that the child meets the immunisation requirements. In making a determination under subsection 6(6), the Secretary must comply with any decision-making principles made by the Minister for the purposes of subsection 6(7). These Principles set out those decision-making principles for the purposes of FTB Part A supplement and child care benefit.

Under the Administrative Arrangements Order, the Minister for Education and Training is responsible for administering the Act insofar as it relates to child care benefit (CCB). However, the Minister for Education and Training has authorised the Minister for Social Services under section 34AAB of the *Acts Interpretation Act 1901* to make these Principles on behalf of the Minister for Education and Training.

These Principles provide that the Secretary may make a determination that a child meets the immunisation requirements if:

* in certain circumstances, the child is in the care of a non-parent carer;
* there is a risk that certain persons would be subject to family violence if the child were immunised;
* the individual in relation to whom the child is an FTB child is the holder of a permanent humanitarian visa where no more than 6 months have passed since the child’s first entry to Australia;
* in certain circumstances, the child was vaccinated outside Australia; and
* the child is at risk of serious abuse or neglect (applicable for CCB only).

**Human rights implications**

These Principles engage the following human rights:

* the right to health recognised in Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and Article 24 of the Convention on the Rights of the Child (CRC);
* the right to social security in Article 9 of the ICESCR; and
* the right to protection against violence in Article 19(1) of the Convention on the Rights of the Child, the elimination of violence against women Commission of Human Rights resolution 2003/45, the United Nations Declaration on the Elimination of Violence against Women (1993), and the Committee on the Elimination of All Forms of Discrimination Against Women in its General Recommendation No. 19.

The right to health in Article 12 of the ICESCR requires the recognition of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. In particular, countries should make provision for the healthy development of the child and the prevention, treatment and control of epidemic, endemic, occupational and other diseases. Article 24 of the CRC also contains specific obligations to ensure that children enjoy the highest attainable standard of health.

The Act imposes immunisation requirements as a condition of eligibility for receipt of family payments for the purpose of protecting the health of the public through increasing national immunisation rates and protecting both children and those in the community more broadly from the spread of disease. These Principles provide that the Secretary may determine that certain children meet the immunisation requirements for the purposes of subsection 6(6) of the Act even though they are not immunised (within the meaning of ‘immunised’ as defined in subsection 3(1) of the Act).

These Principles provide that the Secretary may determine a child meets the immunisation requirements if the child has the same level of immunisation as a child vaccinated in accordance with the standard vaccination schedule or catch up schedule applicable to the child (children vaccinated overseas who satisfy the requirements in section 10 of the Principles), albeit achieved by alternative means.

These Principles provide that the Secretary may determine that other children meet the immunisation requirements (in certain circumstances, the child is in the care of a non-parent carer; there is a risk that certain persons would be subject to family violence if the child was immunised; the individual in relation to whom the child is an FTB child is the holder of a permanent humanitarian visa where no more than 6 months have passed since the child’s first entry to Australia; a child is at risk of serious abuse and neglect) even if the children have not been immunised. Making a determination that a child meets the immunisation requirements where the child has not been immunised could constitute limitations on the right to health, by excluding the application of a scheme of vaccination of children, which is intended, overall, to protect public health. However, these exemptions are reasonable, necessary and proportionate to achieving a legitimate objective.

The legitimate objective of these Principles is to ensure that the Secretary has the capacity in appropriate circumstances to determine that a child meets the immunisation requirement even if the child is not immunised. The limitation is rationally connected to the objective to be achieved as these Principles will be effective in ensuring children in the circumstances detailed above are taken to meet the immunisation requirements despite not being immunised. Therefore, these children will still have the right to social security and the right to protection against violence.

In addition, if the Secretary makes a determination that a child meets the immunisation requirements after having regard to these Principles, then a parent or carer of the child is not prevented from obtaining access to relevant social security entitlements (FTB Part A supplement and CCB) where there are valid reasons for the child not being immunised in accordance with the standard vaccination schedule or catch up vaccination schedule. In this way, specifying circumstances where the Secretary can make a determination that a child meets the immunisation requirements without being immunised, these Principles promote the right to social security in Article 9 of the ICESCR.

These Principles also provide that the Secretary may determine a child meets the immunisation requirements for the purposes of subsection 6(6) of the Act if the child has been vaccinated overseas other than in accordance with the standard vaccination schedule or catch up vaccination schedule for the child, but has acquired the same level of immunisation that the child would have received if the child had been vaccinated with the relevant vaccines from the standard vaccination schedule or the catch up vaccination schedule applicable to the child. For example, a child might receive vaccination in a country where the immunisation schedule does not correspond precisely to the standard vaccination schedule or the catch up vaccination schedule applicable to the child. This is a reasonable and proportionate measure which recognises that alternative immunisation schedules may exist in other countries and provide the same level of immunisation as would be obtained if a child were immunised in Australia. Providing that these children meet the immunisation requirements ensures the rights of parents and carers to social security in Article 9 of the ICESCR are maintained through their continued eligibility for FTB Part A supplement, as well as promoting these children’s rights to health in Article 12 of the ICESCR.

These Principles also promote the right to protection against violence in Article 19(1) of the Convention on the Rights of the Child, the elimination of violence against women Commission of Human Rights resolution 2003/45, and the United Nations Declaration on the Elimination of Violence against Women (1993). Article 19(1) of the Convention on the Rights of the Child states parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child. Section 8 of these Principles promotes these rights as when a partner or ex-partner disagrees to immunise the child and threatens family violence, the risk of violence may be lessened if the Secretary determines that the child meets the immunisation requirements despite not being immunised. Section 12 of these Principles also promotes these rights as when a child is at risk of serious abuse or neglect and the Secretary determines that the child meets the immunisation requirements despite not being immunised, the child’s safety is improved by being allowed to stay in child care.

The elimination of violence against women Commission of Human Rights resolution 2003/45 stresses that states have a duty to promote and protect the human rights of women and must exercise due diligence to prevent all forms of violence against women and girls. The United Nations Declaration on the Elimination of Violence against Women (1993) highlights that states need to work to ensure, to the maximum extent feasible in the light of their available resources, that women subjected to violence and, where appropriate, their children have specialized assistance, such as assistance in child care and maintenance, counselling, and health and social services, as well as support structures, and should take all other appropriate measures to promote their safety and physical and psychological rehabilitation.

Domestic violence against women in particular has also been considered by the Committee on the Elimination of All Forms of Discrimination Against Women in its General Recommendation No.19. This is a source of guidance on the interpretation of the Convention on the Elimination of All Forms of Discrimination Against Women. The Convention in Article 1 defines discrimination against women which includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. Gender-based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence. Gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, is discrimination within the meaning of Article 1 of the Convention.

While it is noted that men can also be victims of family violence, women and girls are the majority of victims of family violence. Section 8 of these Principles promotes these rights as stated above, for women, girls and men, as when a partner or ex-partner disagrees to immunise the child and threatens family violence, the risk of violence may be lessened if the Secretary determines that the child meets the immunisation requirements despite not being immunised.

**Conclusion**

These Principles are compatible with human rights as they promote rights and, to the extent that they may limit rights, these limitations are reasonable, necessary and proportionate to achieving a legitimate aim. This Determination advances the human right to health, the right to social security, and the right to protection from violence.

**Minister for Social Services, the Honourable Christian Porter MP**