

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Social Services

A New Tax System (Family Assistance) Act 1999

*Family Assistance (Immunisation Principles and Vaccination Schedules) (DSS)
Determination 2018*

Purpose

The purpose of this Determination is:

1. to provide new vaccination schedules for the purposes of the immunisation requirements for Family Tax Benefit (FTB); and
2. 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 for FTB.

Background

Under section 61B of the Act an individual's FTB child rate in relation to an FTB child is reduced if the child is an FTB child of the individual or the individual's partner; and the child does not meet the immunisation requirements set out in section 6 of the Act.

Vaccination Schedules

Section 6 of the Act provides the immunisation requirements that an FTB child must meet for the full entitlement of FTB to be paid to an individual in respect of that child. One of the ways in which a child meets the immunisation requirements is if the child has been immunised.

Immunised is defined in subsection 3(1) of the Act as meaning immunised in accordance with a standard or catch up vaccination schedule determined under section 4 of the Act. Under section 4 of the Act, the Minister must, by legislative instrument, determine one or more of each of those schedules. The *Family Assistance (Immunisation Principles and Vaccination Schedules) (DSS) Determination 2018* determines new standard vaccination schedules and catch up vaccination schedules for the purposes of section 4 of the Act.

This Determination applies for the purposes of working out a person's rate of FTB. Under the Administrative Arrangements Order, the Minister for Education and Training is responsible for administering the Act insofar as it relates to child care payments. As such, the Minister for Education and Training is responsible for determining vaccination schedules for those payments.

Schedule 4 to this Determination reflects changes to the National Immunisation Program Schedule. These changes require the fourth *Haemophilus influenzae* type b (Hib) dose to occur at the 18-month schedule point instead of the 12-month schedule point and the third Pneumococcal dose to occur at the 12-month schedule point instead of the 6-month schedule point for children born on or after 1 January 2017.

Meeting the Immunisation Requirements Principles

As noted above, section 6 of the Act provides for immunisation requirements that an FTB child must meet for the full entitlement of FTB to be paid to an individual in respect of that child.

Subsection 6(6) of the Act 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) of the Act, the Secretary must comply with any decision-making principles made by the Minister for the purposes of subsection 6(7) of the Act. This Determination sets 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 payments. As such, the Minister for Education and Training is responsible for determining the decision-making principles for those payments.

Repeal of 2015 Vaccination Schedules and Immunisation Principles

This Determination repeals and replaces the *Family Assistance (Vaccination Schedules) (DSS) Determination 2015* (the 2015 Determination) and the *Family Assistance (Meeting the Immunisation Requirements) Principles 2015* (the 2015 Principles).

Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make any instrument of a legislative or administrative character, the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to revoke such instrument.

Commencement

The Determination commences on 1 July 2018.

Consultation

The Department of Education and Training, the Department of Human Services and the Department of Health were consulted in the preparation of this Determination.

Regulation Impact Statement (RIS)

The 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 minor or no compliance costs or competition impact.

Explanation of the provisions

Part 1 - Preliminary

Section 1

This section provides how the Determination is to be cited, that is, as the *Family Assistance (Immunisation Principles and Vaccination Schedules) (DSS) Determination 2018*.

Section 2

This section provides that the Determination commences on 1 July 2018.

Section 3

This section provides that the Determination is made under section 4 and subsection 6(7) of the *A New Tax System (Family Assistance) Act 1999*.

Section 4

This section provides that the *Family Assistance (Vaccination Schedules) (DSS) Determination 2015* (the 2015 Determination) and the *Family Assistance (Meeting the Immunisation Requirements) Principles 2015* (the 2015 Principles) are revoked. This Determination contains both the new vaccination schedules and the new immunisation principles.

Section 5

This section provides that despite the revocation of the 2015 Principles, the 2015 Principles continue to apply in relation to working out whether an individual, or an approved child care service, is eligible for child care benefit or child care rebate on, but not after, 1 July 2018. This saves the effect of the 2015 Determination for this limited purpose relating to child care benefit or child care rebate on 1 July 2018 only. The purpose of this is to provide for the gap between the commencement of this Determination on 1 July 2018 and the commencement of the new child care subsidy laws on 2 July 2018, which will replace child care benefit and child care rebate. This savings provision applies without limiting the effect of item 8 of Schedule 4 to the *Family Assistance Legislation Amendment (Jobs for Families Child Care Package) Act 2017*.

Section 6

This section provides that the Determination applies in relation to working out an individual's rate of FTB.

Section 7

This section provides that the purpose of Part 2 of the Determination is to set out the 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. This section also provides that the purpose of Part 3 of the Determination is to set out the vaccination schedules for the immunisation of children.

Section 8

This section defines terms that are used in the Determination.

Of particular note are the definitions of ***Australian Immunisation Handbook*** and ***permanent humanitarian visa***.

Section 8 of the Determination defines ***Australian Immunisation Handbook*** as ‘the Australian Immunisation Handbook, published by the National Health and Medical Research Council, and as in force from time to time’. It is worth noting that subsection 4(2) of the Act provides that despite subsection 14(2) of the *Legislation Act 2003*, a determination made for the purposes of subsection 4(1) of the Act may make provision in relation to a matter by applying, adopting or incorporating any matter contained in an instrument or other writing as in force or existing from time to time.

Section 8 of the Determination also defines ***permanent humanitarian visa*** as having ‘the same meaning as in regulation 1.03 of the *Migration Regulations 1994*, as in force from time to time’. Under section 14 of the *Legislation Act 2003*, a legislative instrument can make provision in relation to a matter (in this case the definition of ‘permanent humanitarian visa’) by applying, adopting or incorporating, with or without modification, the provisions of a Commonwealth disallowable instrument (such as the *Migration Regulations 1994*), as in force at a particular time or as in force from time to time.

Note 1 to this section refers to certain terms used in the Determination that are defined in subsection 3(1) of the Act.

Note 2 to this section provides a link to the 10th edition of the Australian Immunisation Handbook.

This section also provides that a reference in this Determination to a child meeting the usual immunisation requirements is a reference to the child meeting the immunisation requirements mentioned in subsections 6(2), (3), (4) or (5) of the Act.

Part 2 – Immunisation requirements

Section 9

Subsection 9(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 10, 11, 12, 13 or 14 of this Determination are met. This means that sections 10, 11, 12, 13 and 14 of this Determination 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 would 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 9(2) provides that if the Secretary, when making a determination under subsection 6(6) of the Act, is satisfied that the child is likely to meet the usual immunisation requirements (see subsection 8(2) of the Determination) within a particular time, then the Secretary's determination must not apply for longer than that time period.

This requirement reflects the current policy that determinations under subsection 6(6) should be for the minimum reasonable period, and the reasons for their issue should be reviewed reasonably regularly. The note to subsection 9(2) clarifies that when a time-limited determination expires, the Secretary is able to issue another determination if the circumstances still justify the issue of a determination.

Subsection 9(3) provides that any determination the Secretary makes under subsection 6(6) of the Act because the Secretary is satisfied that the requirements in section 12 of this Determination (in relation to a permanent humanitarian visa holder) are met, must not be made for any longer than 6 months after the child's first entry into Australia.

Subsection 9(4) 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 requirements mentioned in subsection 6(2), (3), (4) and (5) of the Act (see subsection 8(2) of the Determination).

Section 10

Subsection 10 sets out where the Secretary may make a determination that a child meets the immunisation requirements in cases where the child is in the care of an individual under a State or Territory child welfare law, but the individual does not have legal authority to make decisions about the medical treatment of the child.

In these circumstances, the Secretary may make a determination where:

- if the child is aged under 14 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 14 years – the child refuses to consent to being immunised, or does not provide consent to being immunised within a reasonable period of time.

Section 11

Section 11 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:

- an individual who has care of the child; 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 8 to mean a partner, child, parent, grandparent, grandchild or sibling of the person.

Family violence is defined in section 8 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 12

Section 12 provides that the Secretary may make a determination that a child meets the immunisation requirements if the individual who has care of a child, where the child must meet the immunisation requirements for FTB, is the holder of a permanent humanitarian visa, and no more than 6 months have passed since the child’s first entry to Australia.

Permanent humanitarian visa is defined in section 8 to have the same meaning as in regulation 1.03 of the *Migration Regulations 1994*, as in force from time to time. As at 4 June 2018, **permanent humanitarian visa** is defined in regulation 1.03 of the *Migration Regulations 1994* as:

- 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 12 can only be in force for a maximum of 6 months after the child first enters Australia (see subsection 9(3) of the Determination).

Section 13

Section 13 allows the Secretary to make a determination under subsection 6(6) of the Act that a child who has not been immunised meets the immunisation requirements if:

- a listed medical practitioner has certified in a form and manner determined by the Secretary that, for the reasons set out in the certificate, immunisation of the child would result in an unacceptable risk of physical harm to the child or a person administering a vaccination to the child; and
- the Commonwealth Chief Medical Officer has certified in writing that he or she agrees with the listed medical practitioner.

Listed medical practitioner is defined in section 8 to mean a medical practitioner whose name has been given to the Commonwealth Chief Medical Officer by the Chief Health Officer of a State or Territory for the purpose of giving certificates under section 13 of this Determination.

The provision sets out an example of where this might occur – a child with a disruptive behavioural disorder or developmental disorder who reacts with aggression or defiant behaviour when faced with a medical procedure.

Clinical authorities have advised that there are a small number of individuals who do not meet the criteria for medical exemptions set out in the *Australian Immunisation Handbook*, but for whom the risks of vaccinating are greater than the benefits. To address this unintended consequence and to respond to the clinical needs of this small group of individuals, section 13 has included this additional circumstance of unacceptable physical harm to the child under which the Secretary can determine that an individual meets the immunisation requirements.

Listed medical practitioners are expected to be clinicians with specialist expertise in immunisation, for example those working in specialist immunisation clinics. It is intended that there would only be a very limited and highly qualified group of medical practitioners nominated.

The note to section 13 highlights that subsection 6(3) of the Act already provides that a child meets the immunisation requirements if immunisation would be medically contraindicated, the child has developed a natural immunity, or the child is participating in a vaccine study.

Section 14

Section 14 allows the Secretary to make a determination under subsection 6(6) of the Act that a child born on or after 1 January 2017 and before 1 February 2018, who has not been immunised, meets the immunisation requirements if the child has received the vaccinations, including for Pneumococcal and Hib, in accordance with Schedule 3 to the Determination instead of Schedule 4 to the Determination.

This section highlights that a child who has already received the Pneumococcal and Hib vaccinations in accordance with Schedule 4 to the 2015 Determination, prior to this Determination coming into force on 1 July 2018, is not required to receive the Pneumococcal and Hib vaccinations again in accordance with Schedule 4 to this Determination.

The reference to '1 February 2018' in section 14 provides for the additional month within which a child born on or after 1 January 2017 would have to receive the

relevant vaccination pursuant to paragraph 15(2)(a) of the Determination to comply with the vaccination requirements.

Part 3 – Vaccination schedules

Section 15

Subsection 15(1) determines standard vaccination schedules for the purposes of paragraph (a) of the definition of **immunised** in subsection 3(1) of the Act. The standard vaccination schedules are set out in Schedules 1 to 4 to the Determination.

The child's date of birth determines which schedule applies to a particular child, as follows:

- Schedule 1 applies if the child was born on or after 1 May 1998 and before 1 July 2012;
- Schedule 2 applies if the child was born on or after 1 July 2012 and before 1 October 2014;
- Schedule 3 applies if the child was born on or after 1 October 2014 and before 1 January 2017; and
- Schedule 4 applies if the child was born on or after 1 January 2017.

Subsection 15(2) provides that a child will not be overdue for a vaccination under the standard vaccination schedule for the child until 1 month after the vaccination was due. It also provides that, if the child is vaccinated in Australia, a vaccine used to vaccinate a child in accordance with the vaccination schedule for the child must be registered as a vaccine on the Australian Register of Therapeutic Goods and that the vaccine must be administered by a recognised immunisation provider.

Section 16

Section 16 sets out the catch up vaccination schedule. The catch up vaccination schedule is determined in accordance with section 2.1.5 of the 10th edition of the Australian Immunisation Handbook, in relation to the antigens and diseases mentioned in the standard vaccination schedule that would otherwise apply to the child. This section also defines 'relevant antigens and diseases' as the antigens and diseases mentioned in column 3 of Schedules 1 to 4 to the Determination.

Catch up vaccination schedules apply where a child has missed the vaccinations required in the standard vaccination schedule for the child. For example, this might apply to a child who has been adopted from overseas.

Schedule 1

Schedule 1 sets out the standard vaccination schedule for a child born on or after 1 May 1998 and before 1 July 2012. Following amendments made by the *Social Services Legislation Amendment (No Jab, No Pay) Act 2015*, an FTB child will need to meet the immunisation requirements in the income year in which the child turns one, and in each income year after that. Schedule 1 provides that the Hepatitis B vaccination in this Schedule is required only for a child born on or after 1 May 2000. This Schedule contains the same antigens and diseases as are in Schedule 2 to the 2015 Determination.

Schedule 2

Schedule 2 sets out the standard vaccination schedule for a child born on or after 1 July 2012 and before 1 October 2014. This Schedule contains the same antigens and diseases as are in Schedule 3 to the 2015 Determination.

Schedule 3

Schedule 3 sets out the standard vaccination schedule for a child born on or after 1 October 2014 and before 1 January 2017. This Schedule contains the same antigens and diseases as are in Schedule 4 to the 2015 Determination.

Schedule 4

Schedule 4 sets out the standard vaccination schedule for a child born on or after 1 January 2017. This is a new schedule that sets out the new requirement that the fourth Hib dose should occur at the 18-month schedule point instead of the 12-month schedule point and that the third Pneumococcal dose to occur at the 12-month schedule point instead of the 6-month schedule point for children born on or after 1 January 2017.

Statement of Compatibility with Human Rights

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

Family Assistance (Immunisation Principles and Vaccination Schedules) (DSS) Determination 2018

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

The purpose of this Determination is:

1. to provide new vaccination schedules for the purposes of the immunisation requirements for Family Tax Benefit (FTB); and
2. 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 for FTB.

Section 6 of the Act provides the immunisation requirements that an FTB child must meet for the full entitlement of FTB to be paid to an individual in respect of that child. One of the ways in which a child meets the immunisation requirements is if the child has been immunised.

Immunised is defined in subsection 3(1) of the Act as meaning immunised in accordance with a standard or catch up vaccination schedule determined under section 4 of the Act. Under section 4 of the Act, the Minister must, by legislative instrument, determine one or more of each of those schedules. The *Determination* determines new standard vaccination schedules and catch up vaccination schedules for the purposes of section 4 of the Act.

Schedule 4 to this Determination reflects the changes to the *National Health (Immunisation Program – Designated Vaccines) Determination 2014 (No. 1)* made by the *National Health (Immunisation Program – Designated Vaccines) Variation Determination (No. 1) 2018*. These changes were to require the fourth Haemophilus influenzae type b (Hib) dose to occur at the 18-month schedule point instead of the 12-month schedule point and to require the third Pneumococcal dose to occur at the 12-month schedule point instead of the 6-month schedule point for children born on or after 1 January 2017.

Subsection 6(6) of the Act 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) of the Act, the Secretary must comply with any decision-making principles made by the Minister for the purposes of subsection 6(7) of the Act. This Determination sets out those decision-making principles.

Human rights implications

The Determination engages 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 and right for every child to benefit from social security in Article 9 of the ICESCR and Article 26 of the CRC; and
- the right to freedom of thought, conscience and religion in Article 18 of the International Covenant on Civil and Political Rights.

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 the full entitlement to FTB Part A 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. In doing so, the Act, in conjunction with this Determination, supports the rights to health set out in Article 12 of the ICESCR and Article 24 of the CRC. This Determination also supports Article 12 by providing evidence-based vaccination schedules designed to protect children from harmful diseases.

Article 9 of the ICESCR recognises the right of everyone to social security, and Article 26 of the CRC recognises the right of every child to benefit from social security. This Act engages these rights by removing eligibility to receive the full entitlement to FTB Part A. If the Secretary makes a determination that a child meets the immunisation requirements after having regard to this Determination, then a parent or carer of the child is not prevented from obtaining access to relevant family assistance entitlements where there are valid reasons for the child not being immunised in accordance with the standard or catch-up vaccination schedules. In this way, by specifying circumstances where the Secretary can make a determination that a child meets the immunisation requirements without being immunised, this Determination promotes the right to social security in Article 9 of the ICESCR.

Article 18 of the International Covenant on Civil and Political Rights provides that everyone shall have the right to freedom of thought, conscience and religion. This

right may be engaged through immunisation requirements, as families are not eligible for their full entitlement to FTB Part A where they object to immunisation based on conscientious or religious belief.

However, this limitation is necessary and proportionate to the legitimate aim of promoting the right to physical and mental health. Additionally, families affected are still eligible to receive most of their fortnightly payments of family tax benefit to assist with the costs of raising children.

Conclusion

The Determination is compatible with human rights because it advances the protection of human rights to the extent that they may limit human rights, those limitations are reasonable, necessary and proportionate.