

## **EXPLANATORY STATEMENT**

### *Social Security Act 1991 Disability Care Load Assessment (Child) Amendment (Age Adjustment Table) Determination 2020*

#### **Purpose**

Section 38E of the *Social Security Act 1991* (the Act) provides for the Secretary to devise a test for assessing the functional ability, behaviour and special care needs of a child by legislative instrument. The Secretary has delegated this power to senior officials within the Department of Social Services.

The Disability Care Load Assessment (Child) Determination 2020 (the DCLAD) sets out the method for a treating health professional to assess the disability, emotional state, behaviour and special care needs of a person under the age of 16 (child).

The DCLAD provides a method for rating the special care needs of a child. This instrument also provides a method for assigning a qualifying rating to a person (the carer) who is caring for the child by taking into account the care provided for the child by the carer, and the assessment completed by the treating health professional.

The purpose of the Disability Care Load Assessment (Child) Amendment (Age Adjustment Table) Determination 2020 (this instrument) is to amend the DCLAD to correct a drafting error. The instrument replaces the Age Adjustment Table, contained in Schedule 2, as the fully populated table was inadvertently omitted from the signed DCLAD.

#### **Authority**

This instrument is made under sections 38E of the Act.

Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power is construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

This instrument is a legislative instrument for the purposes of the *Legislation Act 2003*. This instrument is disallowable.

#### **Commencement**

This instrument commences immediately after the commencement of the DCLAD.

As provided for in subsection 12(1A) of the *Legislation Act 2003* a legislative instrument may provide that the instrument commences before it is registered. Retrospective commencement cannot operate insofar as it adversely impacts a person's rights. However, as a result of the inclusion of an incomplete Age adjustment table in the DCLAD, the instrument was not practically operational for some recipients and as a result this instrument does not adversely impact the rights of any individuals.

## Consultation

Prior to the DCLAD being remade, commencing on 17 August 2020, the Department consulted on the technical remake with the following organisations:

- Australian Medical Association
- Carers Australia
- Children and Young People with Disability Australia
- Inclusion Australia
- Australian Federation of Disability Organisations
- People with Disability Australia
- Allied Health Professionals Australia
- Australian College of Nursing
- Mental Health Australia
- Occupational Therapy Australia

As this instrument corrects a drafting error and does not change the intended effect of the DCLAD further consultation was not considered necessary.

## Regulation Impact Statement (RIS)

This instrument does not require a Regulatory Impact Statement (OBPR Reference ID: 26463).

## Explanation of the provisions

### **Part 1—Preliminary**

**Section 1** provides that the name of this instrument is the *Disability Care Load Assessment (Child) Amendment (Age Adjustment Table) Determination 2020*.

**Section 2** provides that this instrument commences on the day after this instrument is registered on the Federal Register of Legislation.

**Section 3** provides that this instrument is made under section 38E of the Act.

**Section 4** sets out that each instrument specified in a Schedule to this instrument is amended or repealed as set out in the instrument, and any other item in a Schedule to this instrument has effect according to its terms.

### **Schedule 1—Amendments**

**Section 1** amends step 13 of Part 1 of Schedule 2 to the DCLAD to repeal and replace the Age Adjustment Table (the table). This corrects a drafting error in which some columns of the table were missing values.

The values contained in the replacement table replicate those that existed in the *Disability Care Load Assessment (Child) Determination 2010* and were intended to be included in the DCLAD.

**Section 2** provides for the application of the amendment contained in section 1. Section 2 provides that the amendment of the DCLAD will apply to assessments made from the commencement of that instrument, being on and after 18 August 2020.

**Andrew Whitecross, Group Manager, Pensions and Family Payments,  
the Department of Social Services**

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

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

*Disability Care Load Assessment (Child) Amendment (Age Adjustment Table) Determination 2020*

*The Disability Care Load Assessment (Child) Amendment (Age Adjustment Table) Determination 2020* (this 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**

This instrument amends the Disability Care Load Assessment (Child) Determination 2020 (the DCLAD) to correct a drafting error in the content of the Age Adjustment Table (the table), contained in Schedule 2 of that instrument.

The table provides age adjustment values for the purposes the scoring to be used in the assessment of care load questionnaire contained in Schedule 2 of the DCLAD.

### **Human rights implications**

#### *Right to social security*

This instrument engages the right to social security under Article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). The right to social security requires that a system be established under domestic law, and that public authorities must take responsibility for the effective administration of the system. The social security scheme must provide a minimum essential level of benefits to all individuals and families that will enable them to acquire at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education.

This instrument amends the DCLAD which operates to enable eligible carers to claim carer payment and/or carer allowance subject to residency, income and assets, which are considered separately in the assessment process. This instrument is therefore compatible with the right to social security

### **Conclusion**

This instrument is compatible with human rights as it enables a person to access social security in the form of carer payment and/or carer allowance and provides the appropriate protection to a person's privacy with the collection of information.

**Andrew Whitecross, Group Manager, Pensions and Family Payments,  
the Department of Social Services**