

EXPLANATORY STATEMENT

National Health Act 1953

National Health (Immunisation Program – Designated Vaccines) Amendment Determination (No. 1) 2021

Authority

Subsection 9B(1) of the *National Health Act 1953* (the Act) states that the Minister may provide, or arrange for the provision of, designated vaccines and goods or services that are associated with, or incidental to, the provision or administration of designated vaccines. Subsection 9B(2) provides that the Minister may, by legislative instrument, determine that a specified vaccine is a designated vaccine for the purposes of this Act. Subsection 9B(5) provides that in addition to specifying a vaccine, a determination under subsection (2) may specify the circumstances in which the vaccine may be provided.

In addition to the power to make this instrument under section 9B of the Act, subsection 33(3) of the *Acts Interpretation Act 1901* provides that 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 shall be 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.

Background

The National Immunisation Program (NIP) is a joint initiative of the Commonwealth and state and territory governments and is funded through a National Partnership on Essential Vaccines. The NIP provides free vaccines to eligible people to protect against 18 disease groups, including children, adolescents, the elderly, pregnant women and Aboriginal and Torres Strait Islander people.

Purpose

The purpose of the *National Health (Immunisation Program – Designated Vaccines) Amendment Determination (No. 1) 2021* (the Amendment Determination) is to make the following amendment to the *National Health (Immunisation Program - Designated Vaccines) Determination 2014 (No.1)* (the Determination) to extend the catch up program for herpes zoster vaccine (Zostavax) for immunocompetent individuals aged 71-79 years by two years.

Uptake of the catch-up program has fallen, largely due to the coronavirus (COVID-19) pandemic. Potential (COVID-19). Extending the catch-up program will enable those who are in the 71 to 79 year old age group who wish to receive the free vaccine, a greater time period to do so.

Consultation

The Supplier of Zostavax has confirmed that supply will be available for the extension of the catch-up program for two years.

Subsection 9B(7) of the Act relevantly provides that a vaccine must not be specified in a determination under subsection 9B(2) unless the Pharmaceutical Benefits Advisory Committee (PBAC) has recommended to the Minister that the vaccine be a designated vaccine.

In November 2014, the PBAC recommended that Zostavax be listed on the National Immunisation Program (NIP) for immunocompetent individuals aged 70 years, and a catch-up program for individuals aged 71 to 79 years.

The amendment reflects PBAC's recommendation for a catch-up program for individuals aged 71 to 79 years.

This instrument commences on the day after it is registered.

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

Details of this instrument are set out in the Attachment.

Statement of Compatibility with Human Rights

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

National Health (Immunisation Program – Designated Vaccines) Amendment Determination (No. 1) 2021.

This Legislative 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 *National Health (Immunisation Program – Designated Vaccines) Amendment Determination (No. 1) 2021* (the Amendment Determination) varies the *National Health (Immunisation Program – Designated Vaccines) Determination 2014 (No.1)* (the Determination), which determines, under subsection 9B(2) of the *National Health Act 1953* (the Act), that a specified vaccine in the instrument is a designated vaccine for the purposes of the Act.

A free Shingles vaccine program (the herpes zoster vaccine (Zostavax)) has been funded under the National Immunisation Program for 70 year olds, with a time-limited catch-up program for people aged 71 to 79 years old. The catch-up component of the program is due to expire on 1 November 2021. Over the last 12 months, uptake of the program has fallen due to the coronavirus (COVID-19) pandemic. The Amendment Determination extends the current catch-up program for Zostavax for individuals aged 71-79 years for a further two years, until 1 November 2023. This will enable people to access the free vaccine. A two-year extension will provide those who are in the 71 to 79 year old age group who wish to receive the vaccine a greater time period to do so.

Human rights implications

This Amendment Determination engages the right to health as set out in Article 12 of the International Covenant on Economic, Social and Cultural Rights by assisting with the progressive realisation by all appropriate means of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

The Amendment Determination supports the right to the attainment of the highest standard of health, by providing free access for eligible people to a designated vaccine and protecting individuals and the community against vaccine preventable disease.

Conclusion

The Amendment Determination is compatible with human rights because it promotes the protection of human rights.

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National Health (Immunisation Program – Designated Vaccines) Amendment Determination (No. 1) 2021

Section 1 Name

This section provides that the name of the instrument is the *National Health (Immunisation Program – Designated Vaccines) Amendment Determination (No. 1) 2021*.

Section 2 Commencement

This section provides that the instrument commences on the day after it is registered.

Section 3 Authority

This section provides that the instrument is made under subsections 9B (2) and (5) of the *National Health Act 1953*.

Section 4 Schedules

This section provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1 Amendments

1 – Part 2 of Schedule 1 (item 217A)

The effect of item 1 of Schedule 1 is to extend the herpes zoster vaccine (Zostavax) for immunocompetent catch-up program for individuals aged 71-79 years for two years from 1 November 2021 to 1 November 2023.