

## EXPLANATORY STATEMENT

### Disability Care Load Assessment (Child) Amendment Determination 2014

#### Summary

The *Disability Care Load Assessment (Child) Amendment Determination 2014* (the Amending Determination) is made by the Secretary of the Department of Social Services under section 38E of the *Social Security Act 1991* (the Act).

The Amending Determination amends Schedule 3, Part 2, clauses 9 and 10 of the *Disability Care Load Assessment (Child) Determination 2010* (the Determination). Schedule 3, Part 1 of the Determination declares for the purposes of section 953 of the Act recognised disabilities; this Schedule is known as the List of Recognised Disabilities (the List). If a child's medical condition is on the List, their carer qualifies automatically for carer allowance (child). Where a child's condition is not on the List, their carer may still qualify for carer allowance (child) using the Disability Care Load Assessment (DCLA). A child is defined as someone aged less than 16 years.

Schedule 3, Part 1, clause 9 of the Determination provides that a young person will qualify his or her carer for carer allowance under section 953 of the Act if the young person has Autistic Disorder or Asperger's Disorder (not including Pervasive Developmental Disorder not otherwise specified) when diagnosed by a psychiatrist, developmental paediatrician, or a psychologist experienced in the assessment of Pervasive Developmental Disorders and using the current Diagnostic and Statistical Manual of Mental Disorders (DSM).

The Amending Determination amends clause 9 to refer to diagnosis of Autistic Disorder or Asperger's Disorder using the fourth edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM-IV) and adds to the List the diagnosis of Autism Spectrum Disorder when diagnosed by a psychiatrist, developmental paediatrician, or a psychologist experienced in the assessment of Pervasive Developmental Disorders and using the fifth edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM-5).

Schedule 3, Part 1, clause 10 of the Determination provides that a young person will qualify his or her carer for carer allowance under section 953 of the Act if the young person has one of the following conditions diagnosed by a psychiatrist using the current DSM:

- (a) Child Disintegrative Disorder;
- (b) Major depression of childhood;
- (c) Childhood schizophrenia.

The Amending Determination amends clause 10 to refer to the condition Childhood Disintegrative Disorder at subclause 10(a) and provide for diagnosis of this condition by a psychiatrist using DSM-IV only. The Amending Determination also provides for diagnosis by a psychiatrist of Major depression of childhood and Childhood schizophrenia using either DSM-IV or DSM-5.

## **Explanation of the provisions**

**Section 1** states the name of the Amending Determination.

**Section 2** states that the Amending Determination is taken to have commenced on 18 May 2013. This is a retrospective commencement date, but given the beneficial nature of the amendments, no carer with a child who has a condition under clause 9 or 10 of the Amending Determination will be disadvantaged by the retrospective commencement date.

**Section 3** provides that Schedule 1 of the Amending Determination amends the *Disability Care Load Assessment (Child) Determination 2010*.

**Schedule 1, clause 1** amends Schedule 3, Part 1, clause 9 of the *Disability Care Load Assessment (Child) Determination 2010*. This provision recognises the introduction of DSM-5 by adding the condition Autism Spectrum Disorder to the List and ensures the conditions Autistic Disorder and Asperger's Disorder, which are included in DSM-IV only, remain on the List.

The result of the Amending Determination is that a child diagnosed, by a psychiatrist, developmental paediatrician, or a psychologist experienced in the assessment of Pervasive Developmental Disorders, with Autism Spectrum Disorder using DSM-5 or alternatively with Autistic Disorder or Asperger's Disorder using DSM-IV will qualify his or her carer for carer allowance under section 953 of the Act.

**Schedule 1, clause 2** amends Schedule 3, Part 1, clause 10 of the *Disability Care Load Assessment (Child) Determination 2010*. This provision replaces the reference at subclause 10(a) to 'Child Disintegrative Disorder' with the correct name of this condition under DSM-IV, 'Childhood Disintegrative Disorder' and ensures that this condition, which is included in DSM-IV only, remains on the List following the introduction of DSM-5. This provision also amends subclauses 10(b) and (c) to provide that the conditions Major depression of childhood and Childhood schizophrenia may be diagnosed using either DSM-IV or DSM-5.

The result of the Amending Determination is that a child diagnosed, by a psychiatrist, with Childhood Disintegrative Disorder using DSM-IV or Major depression of childhood or Childhood schizophrenia using either DSM-IV or DSM-5 will qualify his or her carer for carer allowance under section 953 of the Act.

## **Consultation**

DSS conducted a consultation process with academics, health professionals, peak body representatives, and state and territory government department representatives on the adoption of the DSM-5 in Australia for the Helping Children with Autism package. The views obtained informed the changes to the List.

## **Regulatory Impact Analysis**

The Amending Determination does not require a Regulation Impact Statement as it is not regulatory in nature and will not impact on business or the not-for-profit sector.

## **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 Determination 2014 (the Determination)**

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 Determination is a legislative instrument that amends the List of Recognised Disabilities to ensure consistency with the recently released Diagnostic and Statistical Manual of Mental Disorders – Version 5.

#### **Human rights implications**

This legislative instrument does not engage any of the applicable rights or freedoms.

#### **Conclusion**

This legislative instrument is compatible with human rights as it does not raise any human rights issues.

**Department of Social Services.**