

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Social Services

A New Tax System (Family Assistance) Act 1999

Family Assistance (Vaccination Schedules) (DSS) Determination 2015

Purpose

The purpose of this Determination is to provide new vaccination schedules for the purposes of the immunisation requirements for Family Tax Benefit (FTB) Part A supplement.

Background

Currently, the general effect of section 61B of the *A New Tax System (Family Assistance) Act 1999* (the Act) is that FTB Part A supplement is not to be paid for income years in which an FTB child turns one, two and five, unless the child meets the immunisation requirements. Section 6 of the Act provides for the immunisation requirements. 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 (Vaccination Schedules) (FaHCSIA) Determination 2008* (2008 Determination) and *Family Assistance (Vaccination Schedules) (FaHCSIA) Determination 2012* (2012 Determination) are determined for the purposes of section 4. This Determination revokes the 2008 Determination and the 2012 Determination and determines new standard vaccination schedules and catch up vaccination schedules for the purposes of section 4 of the Act.

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.

The *Social Services Legislation Amendment (No Jab, No Pay) Act 2015* (No Jab, No Pay Act) amends, from 1 January 2016, the immunisation requirements for FTB Part A supplement. Following those amendments, an FTB child will need to meet the immunisation requirements in the income year in which the child turns one, and also in each income year after that. This Determination clarifies which vaccination schedule applies for children born from 1997 onwards.

This Determination applies for the purposes of FTB Part A supplement. 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).

As such, the Minister for Education and Training is responsible for determining vaccination schedules for the purposes of CCB.

Commencement

This Determination commences on 1 January 2016.

Consultation

The Department of Health, the Department of Human Services and the Department of Education and Training were consulted in the preparation of this Determination. The Department of Health provided advice on the National Immunisation Programme early childhood schedule and the Australian Immunisation Handbook in relation to catch up schedules. The Department of Human Services provided advice in relation to the Australian Childhood Immunisation Register and historical vaccination schedules for the purposes of receiving Maternity Immunisation Allowance and the FTB Part A supplement. The Department of Education and Training provided input to ensure the definition of **immunised** is aligned between family assistance payments.

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

Part 1 - Preliminary

Section 1

This section provides how the Determination is to be cited, that is, as the *Family Assistance (Vaccination Schedules) (DSS) Determination 2015*.

Section 2

This section provides that the Determination commences on 1 January 2016. This is the same day on which the amendments made by the No Jab, No Pay Act commence.

Section 3

Section 3 provides that the 2008 Determination and the 2012 Determination are revoked. The vaccination schedules will now be provided for under this Determination.

Section 4

This section defines **National Health and Medical Research Council, Australian Immunisation Handbook** and **Hib** for the purpose of the Determination. **Australian Immunisation Handbook** is now defined by reference to the 10th edition published by the National Health and Medical Research Council (the 2012 Determination

defined the term by reference to the 9th edition). The other two terms defined in section 4 are defined in the same way as they were defined in the 2012 Determination.

Section 5

Subsection 5(1) provides that the Determination applies to FTB Part A supplement. Under the Administrative Arrangements Order, the Minister for Education and Training is responsible for administering the Act insofar as it relates to CCB. As such, the Minister for Education and Training is responsible for determining vaccination schedules for the purposes of CCB.

Subsection 5(2) provides that the Determination applies only 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.

Part 2 – Vaccination schedules

Section 6

Subsection 6(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. Which one of the schedules applies to a particular child depends on the child's date of birth. Schedule 1 applies if the child was born before 1 May 1998, Schedule 2 applies if the child was born on or after 1 May 1998 and before 1 July 2012, Schedule 3 applies if the child was born on or after 1 July 2012 and before 1 October 2014, and Schedule 4 applies if the child was born on or after 1 October 2014.

Subsection 6(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 7

Section 7 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.

Subsection 14(2) of the *Legislative Instruments Act 2003* generally provides that a legislative instrument may not apply, adopt or incorporate any matter contained in an instrument or other writing as in force or existing from time to time. This means that it is not possible to adopt the relevant section of the edition of the Australian Immunisation Handbook that is amended after this Determination is made. Rather, it is only possible to adopt the relevant section of the edition of the Australian Immunisation Handbook that is in effect when this Determination is made.

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 before 1 May 1998. Following the amendments made by the No Jab, No Pay Act, an FTB child will need to meet the immunisation requirements in the income year in which the child turns 1, and also in each income year after that.

Schedule 1 contains the same antigens and diseases as are in Schedule 1 to the 2008 Determination, with the exception of Hepatitis B, which was included in Schedule 1 to the 2008 Determination, but is not in Schedule 1 to this Determination.

Schedule 2

Schedule 2 sets out the standard vaccination schedule for a child born on or after 1 May 1998 and before 1 July 2012. This Schedule contains the same antigens and diseases as are in Schedule 1 to the 2008 Determination and consolidates Schedules 1, 2 and 3 to the 2012 Determination. Hepatitis B is required only for a child born on or after 1 May 2000.

Schedule 3

Schedule 3 sets out the standard vaccination schedule for a child born on or after 1 July 2012 and before 1 October 2014. This schedule consolidates Schedules 4 and 5 to the 2012 Determination, but it does not include a vaccine for Pneumococcal at 18 months.

Schedule 4

Schedule 4 sets out the standard vaccination schedule for a child born on or after 1 October 2014. This is a new schedule; it is different to Schedule 3 to this Determination as a vaccine for Hepatitis B is given at six months rather than at six or 12 months, and vaccines for Diphtheria, Tetanus and Pertussis are added at 18 months.

Statement of Compatibility with Human Rights

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

Family Assistance (Vaccination Schedules) (DSS) Determination 2015

This 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 Determination

The purpose of this Determination is to provide for a new vaccination schedule for the purposes of the immunisation requirements for Family Tax Benefit (FTB) Part A supplement. This Determination revokes and replaces the *Family Assistance (Vaccination Schedules (FaHCSIA) Determination 2008* (Vaccination Schedules Determination 2008) and *Family Assistance (Vaccination Schedules) (FaHCSIA) Determination 2012* (Vaccination Schedules Determination 2012). This Determination is made for the purposes of the definition of **immunised** in subsection 3(1) of the *A New Tax System (Family Assistance) Act 1999* (the Family Assistance Act).

Currently immunisation requirements must be met for the FTB Part A supplement to be payable in the income years which an FTB child turned one, two and five years. From 1 January 2016, immunisation requirements for the FTB Part A supplement are to be amended and will apply to children who turn one in an income year, and in each income year after that, up to the end of the calendar year in which a child turns 19. Therefore this Determination clarifies which vaccination schedule applies for children born from 1997 onwards.

This Determination provides four vaccination schedules which apply on the basis of the year in which the child was born. Schedule 1 to this Determination applies to children born before 1 May 1998. It contains the same antigens and diseases as are in Schedule 1 to the Vaccination Schedules Determination 2008, with the exception of Hepatitis B which was included in the Vaccination Schedules Determination 2008 at two, four, six and 12 months and four years, but not in this Determination.

Schedule 2 to this Determination applies to children born on or after 1 May 1998 and before 1 July 2012. This schedule aligns with Schedule 1 to the Vaccination Schedules Determination 2008 and amalgamates Schedules 1, 2 and 3 to the Vaccination Schedules Determination 2012.

Schedule 3 to this Determination applies to children born on or after 1 July 2012 and before 1 October 2014. This schedule amalgamates Schedules 4, 5 and 6 to the Vaccination Schedules Determination 2012, although removes a vaccine for Pneumococcal at 18 months.

Schedule 4 to this Determination applies to children born on or after 1 October 2014. This is a new schedule; it is different to Schedule 3 to this Determination as a

vaccine for Hepatitis B is included at six months rather than at six or 12 months, and vaccines for Diphtheria, Tetanus and Pertussis are added at 18 months.

The catch up vaccination schedule continues to be a catch up vaccination schedule in accordance with the Australian Immunisation Handbook, although is limited to the antigens or diseases in the National Immunisation Program early childhood schedule.

Human rights implications

The setting out of a standard and catch-up vaccination schedule is likely to engage the right to health recognised in Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

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.

By providing evidence based vaccination schedules designed to protect children from harmful diseases, this Determination clearly advances this right.

Conclusion

The Determination is compatible with human rights because it advances the human right to health.

Minister for Social Services, the Honourable Christian Porter MP