

## **EXPLANATORY STATEMENT**

Issued by the authority of the Minister for Education and Training

*A New Tax System (Family Assistance) Act 1999*

*Child Care Benefit (Vaccination Schedules) (Education) Determination 2015*

### **Purpose**

The purpose of this determination is to provide new vaccination schedules for the purposes of the immunisation requirements for eligibility for child care benefit.

### **Background**

Currently, the general effect of sections 42 to 46 of the *A New Tax System (Family Assistance) Act 1999* (the Act) is that an individual is not eligible for child care benefit (CCB) for care provided to a child under seven 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 *Child Care Benefit (Vaccination Schedules) (DEEWR) Determination 2013* (2013 Determination) is determined for the purposes of section 4. This determination revokes the 2013 Determination 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 CCB. Following those amendments, a child under 20 will need to meet the immunisation requirements in order for an individual or an approved child care service to be eligible for CCB under sections 42 to 47 of the Act.

This determination applies for the purposes of CCB. Under the Administrative Arrangements Order, the Minister for Social Services is responsible, amongst other things, for administering the Act insofar as it relates to FTB Part A supplement, for which immunisation requirements also apply. As such, the Minister for Social Services is responsible for determining vaccination schedules for the purposes of FTB Part A supplement.

The Minister for Social Services is making a new determination of vaccination schedules for the purposes of FTB Part A supplement which is identical in material respects to this determination.

### **Commencement**

This determination commences on 1 January 2016.

### **Consultation**

The Department of Health, the Department of Human Services and the Department of Social Services 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 CCB. The Department of Social Services 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 *Child Care Benefit (Vaccination Schedules) (Education) 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 2013 Determination is revoked. The vaccination schedules for the purposes of eligibility for CCB 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 defined by reference to the 10<sup>th</sup> edition published by the National Health and Medical Research Council, which is the current edition of that document.

## Section 5

Subsection 5(1) provides that the determination applies to CCB. Under the Administrative Arrangements Order, the Minister for Social Services is responsible, amongst other things, for administering the Act insofar as it relates to FTB Part A supplement, for which immunisation requirements also apply. As such, the Minister for Social Services is responsible for determining vaccination schedules for the purposes of FTB Part A supplement.

Subsection 5(2) provides that the determination applies only in relation to working out whether an individual, or an approved child care service, is eligible for CCB for care provided to a child on or after 1 January 2016. This reflects the application of the amendments to the Act made by the No Jab, No Pay Act as set out in paragraph 19(1)(b) of Schedule 1 to the No Jab, No Pay Act.

## 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 10<sup>th</sup> 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.

Schedule 1 contains the same antigens and diseases as are in Schedule 1 to the 2013 Determination, with the exception of Hepatitis B, which was included in Schedule 1 to the 2013 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 2013 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 2 and 3 to the 2013 Determination.

### 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*

### Child Care Benefit (Vaccination Schedules) (Education) 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 child care benefit (CCB). This Determination revokes and replaces the *Child Care Benefit (Vaccination Schedules) (DEEWR) Determination 2013* (2013 Determination). 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 under the Family Assistance Act a child under seven must meet the immunisation requirements for an individual to be eligible for CCB for care provided to the child. From 1 January 2016, the immunisation requirements for CCB will be amended, so that an individual or approved child care service will not be eligible for CCB for care provided to a child under 20 unless the child meets the immunisation requirements.

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. Schedule 1 contains the same antigens and diseases as are in Schedule 1 to the 2013 Determination, with the exception of Hepatitis B, which was included in Schedule 1 to the 2013 Determination, but is not in Schedule 1 to this determination.

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 2013 Determination. Hepatitis B is required only for a child born on or after 1 May 2000.

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 2 and 3 to the 2013 Determination.

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.

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 Education and Training, the Honourable Simon Birmingham MP**