

Explanatory Statement

Family Assistance (Immunisation and Vaccination) (Education) Determination 2018

Summary

The *Family Assistance (Immunisation and Vaccination) (Education) Determination 2018* (the Determination) is made under section 4 and subsection 6(7) of the *A New Tax System (Family Assistance) Act 1999* (the Assistance Act).

At the time of making the Determination, the Assistance Act was administered jointly by the Minister for Social Services and the Minister for Education and Training. This Determination is made by the Minister for Education and Training and relates to his portfolio responsibility for child care payments under the family assistance law. The Minister for Social Services is proposing to make an equivalent instrument for family tax benefit purposes.

The Determination revokes the *Child Care Benefit (Vaccination Schedules) (Education) Determination 2015* (previous Vaccination Schedules) on 2 July 2018 and replaces the *Family Assistance (Meeting the Immunisation Requirements) Principles 2015* (previous Immunisation Principles).

Part 2 of the Determination sets out the decision-making principles that the Secretary (or delegate) of the Department of Education and Training must comply with when making a determination under subsection 6(6) of the Assistance Act that a child meets the immunisation requirements. Part 3 sets out the vaccination schedules for the purposes of meeting the immunisation requirements for eligibility for Child Care Subsidy (CCS) or Additional Child Care Subsidy (ACCS) once those payments commence on 2 July 2018.

The Determination largely replicates the content of the previous Immunisation Principles and previous Vaccination Schedules. However, sections 14 and 15 of the Determination specify other circumstances in which the immunisation requirements may be met (subject to a decision by the Secretary under subsection 6(6) of the Assistance Act).

The Determination also specifies a standard vaccination schedule (Schedule 4) for children born on or after 1 January 2017. Schedule 4 takes into account the amendments made by the Minister for Health to the *National Health (Immunisation Program — Designated Vaccines) Determination 2014 (No. 1)*, including by the *National Health (Immunisation Program — Designated Vaccines) Variation Determination (No.1) 2018*. Section 15 of the Determination provides a circumstance for a child to meet the immunisation requirements where a child born between 1 January 2017 and 1 February 2018 has already received the vaccinations in accordance with Schedule 3 to the Determination, prior to the commencement of Schedule 4.

Background

The *Family Assistance Legislation Amendment (Jobs for Families Child Care Package) Act 2017* (the Amendment Act) amends the family assistance law to give effect to the legislative elements of the Australian Government's new child care package (the package), including the new CCS and the ACCS commencing from 2 July 2018. The centrepiece of the package is the CCS, which replaces the existing Child Care Benefit (CCB) and Child Care Rebate (CCR).

Prior to those amendments, the previous Immunisation Principles and the previous Vaccination Schedules operated with respect to CCB and CCR. This Determination replaces both of those instruments for the purposes of eligibility for CCS and ACCS after the key amendments to the family assistance law made by the Amendment Act commence on 2 July 2018.

The Determination is part of the No Job No Pay measures introduced into law by the Government through the *Social Services Legislation Amendment (No Job, No Pay) Act 2015* from 1 January 2016.

Under Division 3 of Part 3A of the Assistance Act (as amended from 2 July 2018), an individual is not eligible for CCS for care provided to a child unless the child meets the “immunisation requirements” as referred to in subparagraph 85BA(1)(a)(iii) of the Assistance Act. Section 6 of the Assistance Act sets out those immunisation requirements.

Subsection 6(2) of the Assistance Act provides that a child meets the immunisation requirements if the child has been immunised. **Immunised** is defined in subsection 3(1) of the Assistance Act as meaning immunised in accordance with a standard or catch up vaccination schedule determined under section 4 of the Assistance Act. Under section 4 of the Assistance Act, the Minister must, by legislative instrument, determine one or more of each of those schedules.

Part 3 of the Determination provides for the standard vaccination schedules and catch up vaccination schedules for the purposes of section 4 of the Assistance Act, and replaces the previous Vaccination Schedules which are revoked under section 4 of the Determination.

Subsection 6(6) of the Assistance Act provides that a child meets the immunisation requirements if the Secretary determines in writing that the child meets the immunisation requirements. In making a determination under subsection 6(6) the Secretary must comply with any decision-making principles made by the Minister for the purposes of subsection 6(7).

When the Australian Government introduced the No Job, No Pay policy through amendments to the Act (through the *Social Services Legislation Amendment (No Job, No Pay) Act 2015*), it recognised that there were going to be a small number of special circumstances in which it was not possible for particular children to be immunised in accordance with the standard or catch-up vaccination schedules.

The objective of Part 2 of the Determination is to enable the Secretary, in appropriate circumstances, to determine that a child meets the immunisation requirements even if the child is not immunised. If the Secretary makes such a determination after having regard to the Determination, then a parent or guardian of the child may remain eligible for CCS or ACCS, and an approved provider providing care for the child may be eligible for ACCS (child wellbeing).

Part 2 ensures that individuals, in very limited, legitimate and demonstrated circumstances may remain eligible for CCS or ACCS notwithstanding their inability to vaccinate their child. It ensures that only parents and guardians with a desire but genuine inability to vaccinate their child are able to continue to meet the immunisation requirements. In administering Part 2 of the Determination, the circumstances of each decision will be reviewed at the end of a period referred in section 8 of the Determination, as determined by the decision maker on a case-by-case basis.

Consultation

The Department of Health, the Department of Social Services and the Department of Human Services were consulted during the drafting of the Determination. These consultations ensure that the Determination has been made in accordance with the amendments to the *National Health (Immunisation Program — Designated Vaccines) Determination 2014 (No. 1)* in relation to the vaccination schedules, and that the Department of Human Services has ample time to implement systemic and administrative processes to implement these changes. These

consultations also ensure that the Determination is consistent with whole of government approach towards the No Job No Pay measures.

Targeted consultation was undertaken with child care stakeholders, including child care providers, advising of the review of the previous Immunisation Principles and the previous Vaccination Schedules to support the implementation of the package and CCS.

Regulation Impact Statement

This Determination is machinery in nature as it largely replicates existing measures in the previous Vaccination Schedules and previous Immunisation Principles and will not impact on business activity and will have no or minimal compliance costs or competition impact.

To reduce red tape, the requirements for CCS from the previous Immunisation Principles and the previous Vaccination Schedules were combined into one legislative instrument rather than two.

The Office of Best Practice Regulation (OBPR) assessed and determined a Regulation Impact Statement is not required for the Determination (OBPR reference: 22401).

Authority

The Determination is made under section 4 and subsection 6(7) of the Assistance Act. In revoking the old Vaccination Schedules, section 4 also relies on subsection 33(3) of the *Acts Interpretation Act 1901*, which clarifies that a power to make an instrument is to be construed as a power to revoke.

Explanation of Provisions

Part 1 Preliminary

Section 1 sets out that the name of the Determination is the *Family Assistance (Immunisation and Vaccination) (Education) Determination 2018*.

Section 2 provides that the Determination commences on 2 July 2018.

Section 3 sets out the authority for the Determination, being section 4 and subsection 6(7) of the Assistance Act.

Section 4 revokes the *Child Care Benefit (Vaccination Schedules) (Education) Determination 2015*.

Section 5 is an application provision that clarifies that the Determination applies in relation to working out whether an individual, or an approved child care provider, is eligible for CCS or ACCS for a session of care provided to a child on a day on or after 2 July 2018.

Section 6 specifies the purpose of the Determination. The purpose of Part 2 is to set out the decision-making principles that the Secretary must comply with when making a determination under subsection 6(6) of the Assistance Act that a child meets the immunisation requirements. The purpose of Part 3 is to set out the vaccination schedules for the immunisation of children, which are relevant to determining an individual's eligibility for CCS or ACCS, and an approved child care provider's eligibility for ACCS (child wellbeing).

Section 7 provides definitions of certain terms used in the Determination.

Part 2 Immunisation requirements

Part 2 sets out the decision-making principles based upon which the Secretary may make a determination under subsection 6(6) of the Assistance Act that a child meets the immunisation requirements.

Section 8 provides the general decision-making principles under this Part.

Subsection 8(1) provides that the Secretary may make a determination under subsection 6(6) of the Assistance Act that a child meets the immunisation requirements only if the requirements in one of sections 9, 10, 11, 12, 13, 14 or 15 of the Determination are met. This means that sections 9, 10, 11, 12, 13, 14 and 15 are an exhaustive statement of the circumstances in which the Secretary may make a determination under subsection 6(6) of the Assistance Act. To avoid doubt, subsection 8(1) means that it will not be possible for the Secretary to make a determination under subsection 6(6) of the Assistance Act on the basis that an individual has a conscientious, ethical or religious objection to a child being immunised.

Subsection 8(2) provides that if the Secretary, when making a determination under subsection 6(6) of the Assistance Act, is satisfied that the child is likely to meet the usual immunisation requirements (see subsection 7(2) of the Determination) within a particular time, then the Secretary's determination must not apply for longer than that time period.

This requirement reflects the current policy that determinations under subsection 6(6) should be for the minimum reasonable period, and the reasons for their issue should be reviewed reasonably regularly. The note to subsection 8(2) clarifies that when a time-limited determination expires, the Secretary is able to issue another determination if the circumstances still justify the issue of a determination.

Subsection 8(3) provides that any determination the Secretary makes under subsection 6(6) of the Assistance Act, because the Secretary is satisfied that the requirements in section 11 of the Determination (in relation to a permanent humanitarian visa holder) are met, must be made for no longer than 6 months after the child's first entry into Australia.

Subsection 8(4) provides that if, while a determination under subsection 6(6) of the Assistance Act is in force, the Secretary is satisfied that the child meets the usual immunisation requirements, the Secretary must revoke the determination. The usual immunisation requirements are the immunisation requirements mentioned in subsections 6(2), (3), (4) or (5) of the Assistance Act (see subsection 7(2) of the Determination).

Section 9 provides that the Secretary may make a determination that a child meets the immunisation requirements if, in certain circumstances, the child is in the care of an individual who does not have legal authority to make decisions about the medical treatment of the child. The circumstances are where:

- if the child is aged under 14 years – a person (other than the child) with legal authority to make decisions about medical treatment of the child either refuses to consent to the child being immunised, or does not provide consent to the child being immunised within a reasonable period of time;
- if the child is aged at least 14 years – the child refuses to consent to being immunised, or does not provide consent to being immunised within a reasonable period of time.

Section 9 will enable the Secretary to determine that a child meets the immunisation requirements where the child is in the care of a person who does not have the authority to consent to the child being immunised but where the person with that authority has refused to consent to immunisation, or has failed to provide consent within a reasonable period. It is anticipated that this provision will only apply in very limited and rare cases, as most children are in the care of a parent or guardian who have the legal authority to make decisions about the medical treatment of their child.

Section 10 provides that the Secretary may make a determination that a child meets the immunisation requirements if there is a risk that certain persons would be subject to family violence if action was taken to enable the child to meet the usual immunisation requirements. The persons are:

- the individual whose eligibility for CCS is being assessed, or the individual who has care of a child where the child must meet the immunisation requirements for FTB Part A supplement; or
- the child; or
- a member of the immediate family of the individual or the child.

Member of the immediate family is defined in section 7 to mean a partner, child, parent, grandparent, grandchild or sibling of the individual or FTB child.

Family violence is defined in section 7 to have the same meaning as in section 4AB of the *Family Law Act 1975*, which defines this term as ‘violent, threatening or other behaviour by a person that coerces or controls a member of the person’s family (the family member), or causes the family member to be fearful’. Examples of behaviour that may constitute family violence are also set out in section 4AB of that Act.

Section 11 provides that the Secretary may make a determination that a child meets the immunisation requirements if the individual, whose eligibility for CCS is being assessed, is the holder of a permanent humanitarian visa where no more than 6 months have passed since the child’s first entry to Australia.

Permanent humanitarian visa is defined in section 4 to have the same meaning as in regulation 1.03 of the *Migration Regulations 1994*. Under that regulation, **permanent humanitarian visa** means:

- a Subclass 200, 201, 202, 203, 204, 209, 210, 211, 212, 213, 215, 216, 217 or 866 visa; or
- a Resolution of Status (Class CD) visa; or
- a Group 1.3 or Group 1.5 (Permanent resident (refugee and humanitarian)) visa or entry permit within the meaning of the *Migration (1993) Regulations*; or
- a humanitarian visa, or equivalent entry permit, within the meaning of the *Migration (1989) Regulations*; or
- certain transitional (permanent) visas, within the meaning of the *Migration Reform (Transitional Provisions) Regulations*.

A determination made under section 11 can only be in force for a maximum of 6 months after the child first enters Australia (see subsection 7(2) of the Determination).

Section 12 provides that the Secretary may make a determination that a child meets the immunisation requirements if the child is at risk of serious abuse or neglect. This exemption can only apply where, but for the immunisation requirements, an individual would have been eligible for ACCS or an approved provider would have been eligible for ACCS (child wellbeing) in respect of the child, and where the Secretary is satisfied that a delay in accessing child care would put the child at an increased risk of serious abuse or neglect.

Section 13 provides that the Secretary may make a determination that a child meets the immunisation requirements if:

- a listed medical practitioner (as defined in section 7) has certified in a form and manner determined by the Secretary that, for the reasons set out in the certificate, immunisation of the child would result in an unacceptable risk of physical harm to the child or a person administering a vaccination to the child; and
- the Commonwealth Chief Medical Officer has certified in writing that he or she agrees with the listed medical practitioner.

The provision sets out an example of where this might occur – a child with a disruptive behavioural disorder or developmental disorder who reacts with aggression or defiant behaviour when faced with a medical procedure.

Clinical authorities have advised that there are a small number of individuals who do not meet the criteria for medical exemptions set out in the Australian Immunisation Handbook, but for whom the risks of vaccinating are greater than the benefits.

This provision addresses this unintended consequence and responds to the clinical needs of this small group of individuals, by enabling the Secretary to determine that a child under those circumstances meets the immunisation requirements.

In order for the Secretary to be satisfied under section 13 of the instrument that a child will pose a risk to themselves or others if vaccination is attempted, the provision provides for a rigorous evidentiary standard to be met.

Listed medical practitioners are expected to be clinicians with specialist expertise in immunisation, for example those working in specialist immunisation clinics. There will only be a very limited, and highly qualified group of medical practitioners nominated.

The Chief Health Officer in each state and territory must nominate in writing to the Commonwealth Chief Medical Officer the 'listed medical practitioner/s' for their State or Territory. Chief Health Officers can also request the removal of a listed medical practitioner(s) if they are no longer required to perform the role.

The Department of Health has previously consulted health departments in each State and Territory who agreed to ensure there will only be a small number of highly qualified 'listed medical practitioners' able to assess patients and refer their details to the Chief Medical Officer for consideration under this instrument. The Department of Health will keep a list of listed medical practitioners, which is a defined term in section 7 of the Determination.

A note to the section also highlights that subsection 6(3) of the Assistance Act already provides that a child meets the immunisation requirements if immunisation would be medically contraindicated, the child has developed a natural immunity, or the child is participating in a vaccine study.

Section 14 intends to ensure that where a vaccination deadline is missed for a child, the 63 day grace period only starts from the date specified in a notice that is received by a parent or guardian informing that the vaccination was missed and that the 63 day grace period is to commence. To give effect to this intention, it provides that the Secretary may make a determination that a child meets the immunisation requirements if:

- the child has not been immunised in accordance with subsection 6(2) of the Family Assistance Act, due to missing a vaccination that was required within one month of an age (as set out in column 2 of a standard vaccination schedule in Part 3 of the Determination); and
- the individual or approved provider has not yet received the notice reminding to have the child immunised, (this objective is achieved by referring to the date of the notice that has not yet arrived).

The provision is also intended to align the immunisation grace period with the grace period that will apply (subject to amendments proposed by the *Family Assistance and Child Support Legislation Amendment (Protecting Children) Act 2018*) for the purposes of a reduction in an individual's FTB.

Section 15 provides that the Secretary may make a determination that a child meets the immunisation requirements for a child born between 1 January 2017 and 1 February 2018 despite the child not receiving the vaccinations in accordance with Schedule 4 (as applicable under section 16 of the Determination), if the child has received the vaccinations in accordance with Schedule 3 to the Determination (as if the child was born on or after 1 October 2014 and before 1 January 2017). The 13-month period reflects that children born between those dates can receive vaccinations consistently with Schedule 3 (or Schedule 4 of the previous Vaccination Schedules).

This provision reflects the changes made to the *National Health (Immunisation Program — Designated Vaccines) Determination 2014 (No. 1)* which results in a new Schedule 4 to the Determination. This provision intends to ensure that children who were born on or after 1 January 2017 are not required to receive an extra fourth dose of vaccination for Pneumococcal and Hib in accordance with Schedule 4 to the Determination when they have already been vaccinated in accordance with Schedule 3 before the Determination commences.

Part 3 Vaccination schedules

Part 3 contains the standard vaccination schedule and catch up vaccination schedule for children.

Section 16 determines standard vaccination schedules for the purposes of paragraph (a) of the definition of immunised in subsection 3(1) of the Assistance Act. Subsection 16(1) provides that standard vaccination schedules are set out in Schedules 1 to 4 to the Determination. The application of a schedule to a particular child depends on the child's date of birth:

- Schedule 1 applies if the child was born on or after 1 May 1998 and before 1 July 2012
- Schedule 2 applies if the child was born on or after 1 July 2012 and before 1 October 2014; and
- Schedule 3 applies if the child was born on or after 1 October 2014 and before 1 January 2017; and
- Schedule 4 applies if the child was born on or after 1 January 2017.

Subsection 16(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 17 determines the catch up vaccination schedules under section 4 of the Assistance Act for the purposes of paragraph (b) of the definition of “immunised” in section 3. At the time the Determination is made, 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. The *Australian Immunisation Handbook* is defined in the Determination as the latest edition of that handbook published by the National Health and Medical Research Council (which means that if a newer edition is published, this will replace the 10th edition for the purposes of this Determination). An amendment to subsection 4(2) of the Assistance Act made by the Amendment Act allows this Determination to refer to the *Australian Immunisation Handbook* as it exists from time to time, notwithstanding subsection 16(2) of the *Legislation Act 2003*.

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 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 *Child Care Benefit (Vaccination Schedules) (DEEWR) Determination 2013*. Hepatitis B is required only for a child born on or after 1 May 2000. This Schedule contains the same antigens and diseases as are in Schedule 2 to the previous Vaccination Schedules.

Schedule 2 sets out the standard vaccination schedule for a child born on or after 1 July 2012 and before 1 October 2014. This Schedule contains the same antigens and diseases as are in Schedule 3 to the previous Vaccination Schedules.

Schedule 3 sets out the standard vaccination schedule for a child born on or after 1 October 2014 and before 1 January 2017. This schedule is different to Schedule 2 to this Determination as a vaccine for Hepatitis B is required at six months rather than at six or 12 months, and vaccines for Diphtheria, Tetanus and Pertussis are added at 18 months. This Schedule contains the same antigens and diseases as are in Schedule 4 to the previous Vaccination Schedules.

Schedule 4 sets out the standard vaccination schedule for a child born on or after 1 January 2017. Schedule 4 implements the amendments made to the *National Health (Immunisation Program — Designated Vaccines) Determination 2014 (No. 1)*. Schedule 4 to this Determination is different to Schedule 3 to this Determination as a vaccine for Hib is required at 18 months rather than at 12 months, and a vaccine for Pneumococcal is required at 12 months rather than at six months.

The notes under Schedule 4 to the Determination, clarify the application of section 15 of the Determination, that a child born between 1 January 2017 and 1 February 2018 who has already received the third vaccination against Pneumococcal or Hib in accordance with Schedule 3, is not required to receive another vaccination against the same antigen or disease in order to meet the immunisation requirements.

Statement of Compatibility with Human Rights

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

Family Assistance (Immunisation and Vaccination) (Education) Determination 2018

The *Family Assistance (Immunisation and Vaccination) (Education) Determination 2018* (the 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 Legislative Instrument

The Determination is made by the Minister for Education and Training under section 4 and subsection 6(7) of the *A New Tax System (Family Assistance) Act 1999* (the Assistance Act).

The Determination revokes the *Child Care Benefit (Vaccination Schedules) (Education) Determination 2015* (previous Vaccination Schedules) and replaces both the previous Vaccination Schedules and the *Family Assistance (Meeting the Immunisation Requirements) Principles 2015* (previous Immunisation Principles). The Determination takes into account the amendments made to the family assistance law by *Family Assistance Legislation Amendment (Jobs for Families Child Care Package) Act 2017* to give effect to the Australian Government's new child care package (the package), including the new Child Care Subsidy (CCS) and the Additional Child Care Subsidy (ACCS) commencing from 2 July 2018.

The Determination applies in relation to working out whether an individual is eligible for CCS or ACCS, and whether an approved child care provider is eligible for ACCS (child wellbeing), for a session of care provided to a child on a day on or after 2 July 2018.

Under Division 3 of Part 3A of the Assistance Act commencing on 2 July 2018, an individual is not eligible for CCS for care provided to a child unless the child meets the immunisation requirements. Section 6 of the Assistance Act provides for when the immunisation requirements are met, which includes when the Secretary determines that in writing, having regard to the decision-making principles made by the Minister under subsection 6(7) of the Assistance Act.

Part 2 of the Determination sets out the decision-making principles that the Secretary (or delegate) of the Department of Education Training must comply with when making a determination under subsection 6(6) of the Assistance Act that a child meets the immunisation requirements. Part 3 of the Determination sets out the standard and catch up vaccination schedules for the purposes of defining *immunised* in subsection 3(1) of the Assistance Act.

The Determination largely replicates the content of the previous Immunisation Principles and previous Vaccination Schedules. However, it inserts new sections 14 and 15 to provide other circumstances in which the immunisation requirements may be met. Section 14 includes where the notice has not yet been received by the individual or approved provider reminding that the child has not met the immunisation requirements.

The Determination also inserts a new standard vaccination schedule (Schedule 4) for children born on or after 1 January 2017, which takes into account the amendments made by the Department of Health to the *National Health (Immunisation Program — Designated Vaccines) Determination 2014 (No. 1)*. Section 15 provides a circumstance for a child to meet the immunisation requirements where a child born between 1 January 2017 and 1 February 2018 has already received the vaccinations in accordance with Schedule 3 to the Determination, prior to the insertion of Schedule 4.

Human Rights Implications

The Determination engages the following rights:

- the right to health recognised in Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and Article 24 of the Convention on the Rights of the Child (CRC);
- the right to social security and the right for every child to benefit from social security in Article 9 of the ICESCR and Article 26 of the CRC; and
- the right to protection against violence in Article 19(1) of the CRC, the elimination of violence against women Commission of Human Rights resolution 2003/45, the United Nations Declaration on the Elimination of Violence against Women (1993), and the Committee on the Elimination of All Forms of Discrimination Against Women in its General Recommendation No. 19.

The right to health

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. Article 24 of the CRC also contains specific obligations to ensure that children enjoy the highest attainable standard of health.

The Assistance Act imposes immunisation requirements as a condition of eligibility for receipt of family payments for the purpose of protecting the health of the public through increasing national immunisation rates and protecting both children and those in the community more broadly from the spread of disease. The Determination provides that the Secretary may determine that certain children meet the immunisation requirements for the purposes of subsection 6(6) of the Assistance Act even though they are not immunised (within the meaning of ‘immunised’ as defined in subsection 3(1) of the Assistance Act).

The Determination recognises that there are certain circumstances where it is not practicable or would be harmful to enable the child to be immunised in accordance to the vaccination schedules determined under section 4 of the Assistance Act.

Part 2 of the Determination therefore enables the Secretary to determine a child meeting the immunisation requirements in certain circumstances, even if the child has not been immunised.

These circumstances include where:

- the child is in the care of a non-parent carer who is unable to consent to vaccination on the child’s behalf;
- there is a risk that certain persons would be subject to family violence if the child was immunised;
- the individual in relation to whom the child is an FTB child is the holder of a permanent humanitarian visa where no more than 6 months have passed since the child’s first entry to Australia;
- a child is at risk of serious abuse and neglect; and
- a listed medical practitioner has certified that immunisation of the child would result in an unacceptable risk of physical harm to the child or person administering vaccination to child.

The Determination allows the Secretary to determine a child who is at risk of serious abuse or neglect to meet the immunisation requirements if the risk to the child would increase without such a determination being made, so that an approved provider would be eligible for ACCS (child wellbeing) for providing care to the child.

The Determination also covers the situation where families could not immunise their children because their children had a disruptive behavioural disorder or developmental disorder and react with aggression or defiant behaviour when faced with a medical procedure, including vaccination. This kind of response by a child to the vaccination procedure is not “medical contraindication” as set out in the Australian Immunisation Handbook (as referred to in paragraph 6(3)(a) of the Assistance Act).

Making a determination that a child meets the immunisation requirements where the child has not been immunised could constitute limitations on the right to health, by excluding the application of a scheme of vaccination of children, which is intended, overall, to protect public health. However, these exemptions are reasonable, necessary and proportionate to achieving a legitimate objective, which is to ensure that the Secretary has the capacity in appropriate circumstances to determine that a child meets the immunisation requirement even if the child is not immunised.

The setting out of a standard and catch-up vaccination schedule in Part 3 of the Determination also engages the right to health recognised in Article 12 of the ICESCR. 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, the Determination clearly advances this right.

The right to social security

Article 9 of the ICESCR recognises the right of everyone to social security, and Article 26 of the CRC recognises the right of every child to benefit from social security. The Determination engages these rights by enabling the Secretary to make a determination that a child meets the immunisation requirements, so that parents may be eligible for CCS or ACCS even if their child has not been immunised in accordance with the vaccination schedules.

Consistently with the “No Job No Pay” measures introduced by the *Social Services Legislation Amendment (No Job, No Pay) Act 2015* the Determination ensures that parents retain eligibility for child care payments, where their child is up to date with their immunisations, is pursuing a “catch-up” schedule or otherwise is subject to a determination made in accordance with one of the immunisation principles (which operate as limited exceptions). As a result of these measures, parents who send their children to child care can be more assured that all children in care are likely to be immunised to the extent possible at their age.

The Determination largely replaces the previous Immunisation Principles and the previous Vaccination Schedules on and from 2 July 2018 in relation to CCS and ACCS. Section 14, in particular, replicates how the immunisation grace period had operated for Child Care Benefit purposes.

In accordance with Article 14 of the CRC, the Determination recognises that a child aged 14 years and above may exercise their freedom of thought, conscience and religion to make an informed decision on whether they wish to receive vaccinations. In the situation where a child aged 14 years or above has made a decision to refuse a vaccination, the Determination ensures that the child’s decision would not unnecessarily affect his or her legal guardian’s right to social security, and the child’s ability to access child care.

However, this Determination does not enable the Secretary to make a determination under subsection 6(6) of the Assistance Act that a child meets the immunisation requirements where an individual who has legal authority to make decisions for the child has a conscientious, ethical or religious objection to the child being immunised. This has implications on an individual’s eligibility for CCS or ACCS with potential limitation on the individual’s right to social security.

Where this Determination limits the circumstances for which the Secretary can make a determination that a child meets the immunisation requirements under subsection 6(6) of the Assistance Act, the limitation to the right to social security is consistent with the right to health in Article 12 of the ICESCR and Article 3 of the CRC, which reinforces that the best interests of the child shall be the primary consideration. This measure is reasonable and proportionate to promoting the right to health and ensuring that children have the protection and care necessary for their well-being, namely to be immunised and protected against potentially health-threatening diseases. Article 14(3) of the CRC also supports this approach, as the limitation prescribed by law is necessary to protect public health and safety.

The right to protection against violence

The Determination also promotes the right to protection against violence in Article 19(1) of the CRC, the elimination of violence against women Commission of Human Rights resolution 2003/45, and the United Nations Declaration on the Elimination of Violence against Women (1993).

Article 19(1) of the CRC states parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child. Section 8 of the Determination promotes these rights as when a partner or ex-partner disagrees to immunise the child and threatens family violence, the risk of violence may be lessened if the Secretary determines that the child meets the immunisation requirements despite not being immunised. Section 10 of the Determination also promotes these rights as when a child is at risk of serious abuse or neglect and the Secretary determines that the child meets the immunisation requirements despite not being immunised, the child's safety is improved by being allowed to stay in child care.

Conclusion

The Determination is compatible with human rights as it promotes the human right to health, the right to social security, and the right to protection from violence rights and, to the extent that it limits the right, these limitations are reasonable, necessary and proportionate to achieving a legitimate aim.

Simon Birmingham
Minister for Education and Training