

## **EXPLANATORY STATEMENT**

Issued by the authority of the Minister for Social Services

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

*Family Tax Benefit (Meeting the Health Check Requirement) Determination 2018*

### **Purpose**

The *Family Tax Benefit (Meeting the Health Check Requirement) Determination 2018* (this Determination) specifies the requirements relating to the health of children that must be met for a child to satisfy the health check requirement for family tax benefit (FTB) and sets out the classes of children that are taken to meet the health check requirement.

This Determination is made under paragraphs 61A(9)(a) and (c) of the *A New Tax System (Family Assistance) Act 1999* (the Act).

A child meets the health check requirement if the child undergoes an age appropriate health check provided under a State or Territory program or a health check overseas which includes those specified assessments and examinations. The health check must occur within the period that commences on the day the child turns 3 and ends on the day before the child turns 5. This period can, where special circumstances exist, be extended to a later day (not later than the child's sixth birthday) determined by the Secretary under subsection 61A(5) of the Act.

A child who, at any time from the beginning of the income year in which the child turned 4 to the day before the child turns 5, attracts payment of carer payment or carer allowance or who qualifies for a health care card as a disabled child is taken to meet the health check requirement. This period can, where special circumstances exist, be extended to a later day (not later than the child's sixth birthday) determined by the Secretary under subsection 61A(5) of the Act.

Similarly, a child with a severe disability or a severe medical condition who has undergone a health assessment suitable to their needs is taken to meet the health check requirement, provided the assessment occurs within the period that commences on the day the child turns 3 and ends on the day before the child turns 5. This period can, where special circumstances exist, be extended to a later day (not later than the child's sixth birthday) determined by the Secretary under subsection 61A(5) of the Act.

### **Background**

The *Supporting No Jab No Pay - Healthy Start for School — new compliance arrangements* measure announced in the 2017-18 Budget replaces the current Health Check compliance incentives. Currently, if (among other things) an individual has an FTB child that turns four in the income year they receive FTB Part A and the individual or their partner also receives a relevant payment, pension, benefit or supplement, an age-appropriate health check must be undertaken within the relevant

period in order for the individual to be eligible for the end of year FTB Part A supplement for that child.

With effect from 1 July 2018, families who do not meet the health check requirements for a child will, instead of losing their FTB Part A end of year supplement, have approximately \$2.02 reduced from their daily rate of FTB Part A, for each FTB child that fails to meet the health check requirements.

From 1 July 2018, the Minister's power to determine the health check requirements and to determine when a person is taken to meet the health check requirements will be in paragraphs 61A(9)(a) and (c) of the Act and it is under these paragraphs that the Minister makes this Determination.

## **Commencement**

The Determination commences on 1 July 2018.

## **Consultation**

Consultation on the Determination was undertaken with the Department of Human Services.

## **Regulation Impact Statement (RIS)**

The Determination is not regulatory in nature, will not impact on business activity and will have no, or minimal, compliance or competition impact.

## **Explanation of the provisions**

### Section 1

This section provides how the Determination is to be cited, that is, as the *Family Tax Benefit (Meeting the Health Check Requirement) Determination 2018*.

### Section 2

This section provides that the Determination commences on 1 July 2018. New paragraphs 61A(9)(a) and (c) of the Act, the paragraphs under which this Determination is made, will not commence until 1 July 2018. Where an Act confers a power to make a legislative instrument, the power may be exercised in the period between the Act being enacted and the time that the Act starts to operate (see subsection 4(2) of the *Acts Interpretation Act 1901*).

### Section 3

This section sets out the legislative provisions under which the Determination is made. The Determination is made under paragraphs 61A(9)(a) and (c) of the Act.

### Section 4

This section sets out certain defined terms for the purposes of the Determination.

## Section 5

This section defines the ***specified period*** for the purposes of section 6 and paragraph 8(c) of the Determination.

The specified period is the timeframe during which children are required to have a health check or meet certain other conditions for being taken to meet the health check requirement.

Section 5 of the Determination defines the specified period as the period that commences on the day the child turns 3 and ends on the day before the child turns 5.

Under subsection 61A(5) of the Act, the period for meeting the health check requirement can be extended to a later day determined by the Secretary. Any later day determined by the Secretary must not be after the day the child turns 6. The Secretary must not determine a later day under subsection 61A(5) of the Act unless the Secretary is satisfied that there are special circumstances which prevented an individual, or the individual's partner (or both), from arranging for the child to undertake the health check before the day the child turned 5. Further, an application for a later day may be made after the child turns 5, but must be made before the child turns 6.

The definition of specified period in section 5 of the Determination therefore takes account of the possibility that the Secretary may have determined a later day under section 61A(5) of the Act and that there may be a further period of time within which the child must meet the health check requirement.

## Section 6

This section sets out the health check requirement for a child for the purposes of paragraph 61A(9)(a) of the Act.

The health check requirement for a child is that the child meets one of the following requirements:

- the child has undergone an age appropriate health check provided under a State or Territory program, for example health checks provided through child and maternal health clinics, and conducted by a suitably qualified health professional. A suitably qualified health professional is one suitably qualified under State and Territory requirements and may include a maternal and child health nurse;
- the child has undergone a health check in another country which is conducted by a suitably qualified health professional and which includes the required assessments and examinations listed in section 7.

The health check must occur within the specified period (as defined in section 5).

## Section 7

This section provides a list of assessments and examinations that certain children must undergo as part of the health check requirement. These are height and weight (plot and interpret growth curve and calculate Body Mass Index), eyesight, hearing, oral health (teeth and gums), toileting and allergies.

## Section 8

This section sets out when children in a specific class are taken to meet the health check requirement for the purposes of paragraph 61A(9)(c) of the Act.

These are children who may not have undergone the required health checks in sections 6 and 7 but who have a diagnosed illness or disability or have undergone medical assessments to qualify for certain social security payments or benefits, and are likely to be receiving ongoing medical care.

The section specifies 3 classes of children, each member of which is taken to meet the health check requirement.

The first class of children are children in respect of whom another person was receiving a carer payment or carer allowance at any time from the beginning of the income year in which the child turned 4 to the day before the child turns 5. This period will be extended if the Secretary has determined a later day under subsection 61A(5) of the Act. Carer payment and carer allowance are payments available under the social security law.

The second class of children are children who qualify for a health care card under subsection 1061ZK(3) of the Social Security Act at any time from the beginning of the income year in which the child turned 4 to the day before the child turns 5. This period will be extended if the Secretary has determined a later day under subsection 61A(5) of the Act.

The third class of children are children who have been assessed by a medical practitioner as having a severe disability or a severe medical condition where a health assessment suitable to their needs occurred within the specified period (see section 5).

**'Medical practitioner'** is defined in section 3 of the Act as 'a person registered or licensed as a medical practitioner under a State or Territory law that provides for the registration or licensing of medical practitioners'.

## **Statement of Compatibility with Human Rights**

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

### ***Family Tax Benefit (Meeting the Health Check Requirement) Determination 2018***

The *Family Tax Benefit (Meeting the Health Check Requirement) 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**

This Determination specifies the requirements relating to the health of children that must be met for a child to satisfy the health check requirement for family tax benefit and sets out the classes of children that are taken to meet the health check requirement.

A child meets the health check requirement if the child undergoes an age appropriate health check provided under a State or Territory program or a health check overseas which includes the specified assessments and examinations.

A child who attracts payment of carer payment or carer allowance or who qualifies for a health care card as a disabled child at any time within the period set out in the Determination is taken to meet the health check requirement. Similarly, a child with a severe disability or a severe medical condition who has undergone an assessment suitable to their needs is taken to meet the health check requirement, provided the assessment occurs within the specified period.

#### **Human rights implications**

This legislative instrument engages the following rights:

##### **Right to social security**

The amending instrument engages the right to social security contained in article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), as well as article 26 of the Convention on the Rights of the Child (CRC), which specifically recognises the right of a child to benefit from social security.

The right to social security in article 9 of the ICESCR requires a social security system be established and that a country must, within its maximum available resources, ensure access to a social security scheme that provides a minimum essential level of benefits to all individuals and families that will enable them to acquire at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education.

Article 26 of the CRC requires countries to recognise the right of the child to benefit from social security. Benefits should take into account the resources and the

circumstances of the child and persons having responsibility for the maintenance of the child. This engages these rights by removing eligibility to receive the full entitlement to FTB Part A. However, this limitation is proportionate to the legitimate aim of promoting the right to physical and mental health. Additionally, families affected are still eligible to receive most of their fortnightly payments of family tax benefit to assist with the costs of raising children.

### **Right to Health**

Article 12 of ICESCR recognises the right of everyone to 'the enjoyment of the highest attainable standard of physical and mental health'. It also requires parties to take specific steps to improve the health of their citizens, including improving child health.

Article 24 of CRC recognises the right of the child to the enjoyment of the highest attainable standard of health. The CRC requires that parties shall take appropriate measures to ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care.

### **Conclusion**

The Determination is compatible with human rights because it advances the protection of human rights, and, to the extent that it may limit human rights, those limitations are reasonable and necessary to achieving a legitimate aim.

**The Hon Dan Tehan MP, the Minister for Social Services**