

EXPLANATORY STATEMENT

Social Security Act 1991 Disability Care Load Assessment (Child) Determination 2020

Purpose

The purpose of the Disability Care Load Assessment (Child) Determination 2020 (this instrument) is to enable the Secretary of the Department of Social Services (DSS) (the Secretary) to determine a method for a treating health professional to assess the disability, emotional state, behaviour and special care needs of a person under the age of 16 (child).

This instrument provides a method for rating the special care needs of a child. This instrument also provides a method for assigning a qualifying rating to a person (the carer) who is caring for the child by taking into account the care provided for the child by the carer, and the assessment completed by the treating health professional.

This instrument will also determine the persons, or classes of persons, to be considered treating health professionals for the purposes of the *Social Security Act 1991* (the Act), other than for the purposes of the Adult Disability Assessment Tool.

This instrument repeals and replaces the Disability Care Load Assessment (Child) Determination 2010 (the 2010 DCLA instrument) and the Social Security (Treating Health Professionals) Determination 2010 (the 2010 THP instrument) which would otherwise sunset on 1 October 2020.

Background

Disability Care Load Assessment (Child)

Section 38E of the Act provides for the Secretary to devise a test for assessing the functional ability, behaviour and special care needs of a child by legislative instrument. The test is required to provide:

- an assessment to be completed only by a treating health professional; and
- a method for rating the care needs of the child; and
- a method for giving a qualifying rating to a carer that takes into account the care provided for the child by the carer; and the assessment completed by the treating health professional.

This instrument is divided into three parts and has four schedules.

- Schedule 1 contains the assessment of care load (ACL) questionnaire and the professional questionnaire;
- Schedule 2 contains the rating methods for the ACL questionnaire and the professional questionnaire;
- Schedule 3 contains the List of Recognised Disabilities and Medical Conditions; and
- Schedule 4 repeals the 2010 DCLA instrument and the 2010 THP instrument.

This instrument enables the Secretary to assess the functional ability, behaviour and special care needs of a child through the ACL (completed by the claimant) and a professional questionnaire (completed by a treating health professional).

Completion of the two parts of this instrument is a requirement of the qualification criteria for carer payment under sections 197B, 197C and 197D of the Act, and for carer allowance under section 953 of the Act.

Sections 197B, 197C, 197D and 953 of the Act provide, as part of the qualification criteria, that a person be given a qualifying rating of 'intense' under this instrument. If a person does not receive a qualifying rating of 'intense' in relation to care that they provide for one or more care receivers, then they are unable to qualify for carer payment under sections 197B, 197C or 197D, or carer allowance under section 953 of the Act.

A child with a disability on the List of Recognised Disabilities will not be required to complete a Disability Care Load Assessment under the Determination for a claim made for carer allowance. The List of Recognised Disabilities has no application in determining qualification for carer payment.

Social Security (Treating Health Professionals)

Section 38F of the Act enables the Secretary to determine, by legislative instrument, that a person, or any person included in a class of persons, is a treating health professional for the purposes of the Act.

The classes of persons listed as Treating Health Professionals in this instrument are the only professions able to complete the professional questionnaire contained in Part 2 of Schedule 1 to this instrument.

Repeal

This instrument repeals the 2010 DCLA instrument and the 2010 THP instrument which would otherwise sunset on 1 October 2020. This instrument is in substantially the same terms as, and will replace, the 2010 DCLA Determination and 2010 THP Determination from the day this instrument commences (discussed below).

Privacy

As with all personal information collected by Services Australia for the purpose of administering payments and services, personal information will be collected under this instrument for the purposes of determining the qualification for, and payability of, carer payment and carer allowance for a child in accordance with the Act.

Division 3 of Part 5 of the *Social Security (Administration) Act 1999* outlines confidentiality arrangements for the protection of personal information collected for the purposes of administering social security law. An offence under these sections is punishable on conviction by imprisonment for up to two years.

The *Privacy Act 1988* also requires Services Australia to have a privacy policy, which outlines what kinds of personal and sensitive information is collected, why this information is collected, and how it is handled.

Authority

This instrument is made under sections 38E and 38F of the Act.

Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power is construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

This instrument is a legislative instrument for the purposes of the *Legislation Act 2003*. This instrument is disallowable.

Commencement

This instrument commences the day after it is registered on the Federal Register of Legislation.

Consultation

External consultation was conducted with the following organisations:

- Australian Medical Association
- Carers Australia
- Children and Young People with Disability Australia
- Inclusion Australia
- Australian Federation of Disability Organisations
- People with Disability Australia
- Allied Health Professionals Australia
- Australian College of Nursing
- Mental Health Australia
- Occupational Therapy Australia

The organisations were provided the opportunity to comment on the instrument which was being remade in the current form, with only minor administrative changes.

Services Australia have also been notified about the making of this instrument.

Regulation Impact Statement (RIS)

This instrument does not require a Regulatory Impact Statement (OBPR Reference ID: 26463).

Explanation of the provisions

Part 1—Preliminary

Section 1 provides that the name of this instrument is the *Disability Care Load Assessment (Child) Determination 2020*.

Section 2 provides that this instrument commences on the day after this instrument is registered on the Federal Register of Legislation.

Section 3 provides that the authority for making this instrument is sections 38E and 38F of the Act.

Section 4 contains definitions of certain terms used in this instrument.

ACL is defined to mean the assessment of care load as determined under the ACL questionnaire.

ACL questionnaire is defined to mean the assessment of care load questionnaire contained in Part 1 of Schedule 1.

Act is defined to mean the *Social Security Act 1991*.

child is defined to mean a person aged under 16.

contributing ACL is defined to mean a score from an ACL questionnaire which contributes to a rating of intense.

contributing professional questionnaire is defined to mean a score from a professional questionnaire which contributes to a rating of intense.

domain is defined to mean a particular category of questions in the ACL questionnaire or the professional questionnaire.

professional questionnaire is defined to mean the questionnaire contained in Part 2 of Schedule 1.

qualifying rating is defined to mean a rating mentioned in section 10 of this instrument that must be achieved by a person for that person to be qualified to receive:

- a carer payment under the Act for the care of a child; or
- a carer allowance under the Act for the care of a disabled child

treating health professional is defined to have the meaning set out in section 8 of this instrument.

Section 5 operates to repeal the 2010 DCLA instrument and the 2010 THP instrument.

Section 6 sets out the disability assessment care load components.

Subsection 6(1) states that Part 2 of this instrument sets out the Disability Care Load Assessment (Child) (Carer Payment) in respect of a person claiming for carer payment.

Subsection 6(2) states that part 3 of this instrument sets out the Disability Care Load Assessment (Child) (Carer Allowance) in respect of a person claiming for carer allowance.

Section 7 states that Schedule 3 declares, for the purposes of section 953 of the Act, recognised disabilities.

Section 8 provides for the different classes of persons that are treating health professionals for the purposes of section 38F of the Act.

Section 8 consists of seven subsections. Each subsection refers to a different class of persons who may be regarded as a treating health professional, and who may complete the assessment (questionnaires) in relation to the functional ability, behaviour and special care needs of a person aged under 16.

Paragraph 8(a) provides that a person registered or licensed as a medical practitioner under a law of a State or Territory that provides for the registration or licensing of medical practitioners is a treating health professional for the purposes of the Act.

Paragraph 8(b) provides that a person registered or licensed as a nurse under a law of a State or Territory that provides for the registration or licensing of nurses is a treating health professional for the purposes of the Act.

Paragraph 8(c) provides that an occupational therapist who is registered as an occupational therapist with the Australian Health Practitioner Regulation Agency is a treating health professional for the purposes of the Act.

Paragraph 8(d) provides that a person registered or licensed to practise physiotherapy under a law of a State or Territory that provides for the registration or licensing of physiotherapists is a treating health professional for the purposes of the Act.

Paragraph 8(e) provides that a person registered as a psychologist under a law of a State or Territory that provides for the registration of psychologists is a treating health professional for the purposes of the Act.

Paragraph 8(f) provides that a person employed in a clinical role as an Aboriginal or Torres Strait Islander health worker, by a health service, in a geographically remote location, such as a remote Aboriginal community, is a treating health professional for the purposes of the Act. For the purposes of paragraph 8(f), a health service is an entity which provides inpatient or outpatient health care.

Paragraph 8(g) provides that:

- a person registered or licensed to practise speech pathology under a law of a State or Territory that provides for the registration or licensing of speech pathologists; or

- if registration or licensing of speech pathologists is not available in a State or Territory, a person employed as a speech pathologist who is a member of the Speech Pathology Association of Australia Limited;

is a treating health professional for the purposes of the Act.

Section 9 provides two questionnaires.

Subsection 9(1) states that Part 1 of Schedule 1 sets out the ACL questionnaire about the functional ability, behaviour and special care needs of a child.

Subsection 9(2) provides the ACL questionnaire must only be completed by a person seeking to claim a carer payment for the care of a child or a carer allowance for the care of a disabled child under the Act.

Subsection 9(3) provides that the professional questionnaire is set out in Part 2 of Schedule 1.

Subsection 9(4) provides that only a treating health professional must complete the professional questionnaire.

Section 10 sets out the rating method for the Disability Care Load Assessment (Child). A claimant achieves a qualifying rating if they achieve a rating of intense in accordance with Part 2 or Part 3.

Section 11 sets out further detail in relation to the ACL questionnaire.

Subsections 11(1) to (4) set out the scoring method for the ACL questionnaire. The questions in the ACL questionnaire are grouped into four domains (subsection 11(1)) and the total score for each domain must not be less than 0 (subsection 11(4)).

Subsection 11(2) provides that if the claimant marks more than 1 answer to any question, then only the answer that gives the highest score should be taken. There are exceptions given of questions 51 and 52 which allow multiple responses. The scoring for questions within each domain, and the method used to determine the total score for each ACL questionnaire is set out in Part 1 of Schedule 2 (subsection 11(3)).

Subsection 11(5) provides that the Secretary must be satisfied that a completed ACL questionnaire is an accurate reflection of the functional ability, behaviour and special care needs of the child to whom it relates. Subsection 11(6) provides that if the Secretary is not satisfied that the completed ACL questionnaire is an accurate reflection of the child's functional ability, behaviour and special care needs, then the Secretary has the power to amend the scores for any of the domains if a question is deemed to have been missed or misinterpreted. Subsection 11(7) provides that the Secretary may only add additional points to the scores of the domains to reflect unaccounted for care load that is not presently recognised by the ACL questionnaire.

Section 12 sets out further detail in relation to the professional questionnaire.

Subsection 12(1) provides that the scoring method for the professional questionnaire is set out in Part 2 of Schedule 2.

Subsection 12(2) states that as regards calculations in Part 2 of Schedule 2, numbers extending to more than 2 decimal places must be rounded to 2 decimal places.

Unlike the ACL questionnaire, the total score for the professional questionnaire may be less than 0 (subsection 12(3)). The Secretary must be satisfied that a completed professional questionnaire is an accurate reflection of the functional ability, behaviour and special care needs of the child to whom it relates (subsection 12(4)). If the Secretary is not satisfied that a completed professional questionnaire is an accurate reflection of the functional ability, behaviour and special care needs of the child to whom it relates, then subsection 12(5) provides the Secretary with the power to request a replacement questionnaire be completed by another treating health professional.

Part 2—Disability Care Load Assessment (Child) (Carer Payment)

Section 13 sets out the qualifying scores that a person who is caring for a child with a severe disability or severe medical condition has to obtain to achieve a qualifying rating of intense (subsection 13(1)).

Subsection 13(2) provides that a professional questionnaire must be completed for the child and that an ACL questionnaire must be completed for the child. A claimant receives a qualifying rating of intense under subsection 13(3) if the total score on the person's ACL questionnaire is 85 or more and the score on the professional questionnaire is greater than 0.

Section 14 sets out the qualifying scores that a person, who is caring for 2 or more children, each with disability or medical condition, has to obtain to achieve a qualifying rating of intense (subsection 14(1)). If a claimant is caring for 2 or more children, each of whom has a disability or medical condition, the claimant must complete an ACL for each child and a professional questionnaire must be completed for each child (subsection 14(2)).

In order for the claimant to achieve a qualifying rating of intense the total score from the contributing ACL questionnaires must be 85 or higher and each child must receive a professional questionnaire score of greater than 0 (subsection 14(4)). An ACL score in respect of care that the claimant gives to a child must be 20 or more for the ACL to be able to contribute to the qualifying rating (subsection 14(5)). If a claimant does not achieve an ACL score of 20 or more in respect of care that they provide to a child then that ACL cannot contribute to the claimant's qualifying rating. A maximum of 4 ACL questionnaires and 4 professional questionnaires can contribute to a person's qualifying rating (subsection 14(3)).

Example

Nigel provides care for his four children, Anne, Liz, Erin and Thomas, each of whom has a disability or medical condition. Nigel completes an ACL in respect of the care

that he provides to each of the four children. A professional questionnaire is also completed for each child. The children receive the following scores:

	ACL Score	Professional questionnaire score
Anne	22	2
Liz	21	1.9
Erin	20	1.8
Thomas	23	2.2

Anne's, Liz's, Erin's and Thomas' ACL scores are all at or above 20 and their scores can be used to contribute to Nigel's qualifying rating. Their combined score is 86 and they each have a professional questionnaire score of greater than 0. Therefore, Nigel achieves a qualifying rating of intense for the care that he provides to Anne, Liz, Stephen and Thomas.

Section 15 sets out the qualifying scores that a person who is caring for a lower ADAT score adult (lower Adult Disability Assessment Tool score adult) and 1 or more children with a disability or medical condition (subsection 15(1)) is to achieve to have a qualifying rating of intense.

Subsection 15(2) states that one professional questionnaire and one ACL questionnaire must be completed for each child.

To achieve a qualifying rating of intense in this situation a total ACL score of 85 or more must be achieved and the score on the contributing professional questionnaire for each child must be greater than 0 (subsection 15(3)). The lower ADAT score adult is taken to contribute 40 to the total combined score for the contributing ACL Questionnaires (subsection 15(4)). A maximum of 2 ACL questionnaires and 2 professional questionnaires can contribute to a person's qualifying rating (subsection 15(5)). The ACL is a contributing ACL for the purposes of subsection 15(3) only if the total score for that ACL is 20 or more (subsection 15(6)).

Example

Kelly provides care to her husband, John, and daughter, Sharon. John has been assessed and rated under the Adult Disability Assessment Tool and given a score of 25, with a professional questionnaire score of 10. Kelly has completed an ACL for Sharon and has achieved a rating of 47. Sharon's professional questionnaire score is 3. Kelly's combined ACL score is 87 and as Sharon's professional questionnaire score is greater than 0, Kelly achieves a qualifying rating of intense.

Part 3—Disability Care Load Assessment (Child) (Carer Allowance)

Section 16 sets out the qualifying scores that a person who is caring for a single disabled child has to obtain to achieve a qualifying rating of intense.

Subsection 16(1) provides that a professional questionnaire must be completed for the child and that an ACL questionnaire must be completed for the child. A claimant receives a qualifying rating of intense under subsection 16(2) if the total score on the person's ACL questionnaire is 85 or more and the score on the professional questionnaire is greater than 0.

Example

Ian cares for his daughter Sarie. Ian completes an ACL in respect of the care that he provides to Sarie and a professional questionnaire is also completed. Ian receives an ACL score of 90 and a professional questionnaire score of 1. As the ACL score is above 85 and the professional score is above 0, Ian has achieved a qualifying rating of intense for the care he provides for Sarie.

Section 17 sets out the qualifying scores that a person who is caring for 2 disabled children has to obtain to achieve a qualifying rating of intense. If a claimant is caring for 2 disabled children the claimant must complete an ACL for each child and a professional questionnaire must be completed for each child (subsection 17(1)).

In order for the claimant to achieve a qualifying rating of intense the total score from the contributing ACL questionnaires must be 85 or higher and each child must receive a professional questionnaire score of greater than 0 (subsection 17(3)). An ACL score in respect of care that the claimant gives to a child must be 20 or more for the ACL to be able to contribute to the qualifying rating (subsection 17(4)).

If a claimant does not achieve an ACL score of 20 or more in respect of care that they provide to a child then that ACL cannot contribute to the qualifying rating. A maximum of 2 ACL questionnaires and 2 professional questionnaires can contribute to a person's qualifying rating (subsection 17(2)).

Example

Emma has 2 children, Georgina and David, each of whom has a disability or medical condition. Emma completes a separate ACL in respect of the care she provides to Georgina and David and a professional questionnaire is also completed for each child. Georgina and David have a combined ACL score of 85, scoring 65 and 20 respectively. The professional questionnaire score for each child is 1. The combined scores of Georgina and David meet the ACL minimum of 85, their individual scores are 20 or more, and each professional score is greater than 0. Therefore, Emma has achieved a qualifying rating of intense for both children together.

Schedule 1—Questionnaires

Schedule 1, Part 1 sets out the claimant questionnaire, to be completed only by the claimant for carer allowance or carer payment, or both. This Part clarifies that the claimant questionnaire may be used by a claimant to claim payment or to continue to be qualified for payment. The claimant would use the claimant questionnaire to continue to be qualified for payment where the claimant's ongoing eligibility for

carer allowance or payment is being reviewed. This section also provides that Part 2 of Schedule 1 sets out the professional questionnaire, to be completed only by the treating health professional

Schedule 1, Part 2 provides for the professional questionnaire.

The professional questionnaire has been revised following evaluation of the questionnaire after it had been in use for several months. The evaluation took into account the views of a panel of health and medical professionals and feedback from customers and Services Australia employees.

Schedule 2—Rating Methods

Schedule 2, Part 1 provides for the Scoring for the professional questionnaire.

The scoring for the ACL questionnaire has been revised in conjunction with the evaluation of the questionnaire.

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Schedule 3—List of Recognised Disabilities

Schedule 3, Part 1 provides the list of Recognised Disabilities.

The list of Recognised Disabilities remains identical to the list of Recognised Disabilities included in the 2010 DCLA instrument. No new disabilities have been included in the list of Recognised Disabilities and no disabilities have been removed from the list.

Schedule 3, Part 2 provides the list of Medical Conditions.

The list of Medical Conditions remains identical to the list of Medical Conditions included in the 2010 DCLA instrument. No new conditions have been included in the list of Medical Conditions and no conditions have been removed from the list.

Schedule 4—Repeals

Schedule 4, Section 1 repeals the 2010 DCLA instrument.

Schedule 4, Section 2 repeals the 2010 THP instrument.

Kathryn Campbell AO CSC, the Secretary of the Department of Social Services

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) Determination 2020

The Disability Care Load Assessment (Child) Determination 2020 (this 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

This instrument will enable the Secretary to assess the disability or medical condition of a child care receiver (a person aged under 16 years) and the behaviour and special care needs required as a result of the child's condition. This assessment is one of the qualification criteria for carer payment under sections 197B-197H, 197J 197K and 198 of the *Social Security Act 1991* (the Act), and carer allowance under sections 953, 953A and 954B of the Act.

This instrument includes a test for assessing and a method for rating care by allocating a score that indicates the level of additional care required by the child and provided by the carer. The test and the rating method are collectively known as the Disability Care Load Assessment (DCLA). The DCLA will also be used to conduct ongoing reviews of qualification.

This instrument determines the person, or any person included in a class of persons, is a treating health professional for the purposes of the Act. The classes of persons included in this instrument are the treating health professionals who are able to complete the professional questionnaire contained in Part 2 of Schedule 1 to this instrument.

This instrument repeals and replaces the *Disability Care Load Assessment (Child) Determination 2010* and *Social Security (Treating Health Professionals) Determination 2010* which are due to sunset on 1 October 2020.

Human rights implications

Right to social security

This instrument engages the right to social security under Article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). The right to social security requires that a system be established under domestic law, and that public authorities must take responsibility for the effective administration of the system. The social security scheme must provide 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.

This instrument enables eligible carers to claim carer payment and/or carer allowance subject to residency, income and assets, which are considered separately in the assessment process. This instrument is therefore compatible with the right to social security

Right to privacy and reputation

This instrument engages with the right to privacy and reputation under Article 17 of the *International Covenant on Civil and Political Rights* (ICCPR). The right to privacy and reputation provides that '[n]o one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.'

This instrument will only authorise the collection information for the purposes of determining the qualification for, and payability of, carer payment and carer allowance for a child in accordance with the Act. This instrument will also operate in conjunction with the privacy requirements of the Division 3 of Part 5 of the *Social Security (Administration) Act 1999* and the *Privacy Act 1988*. This instrument is therefore compatible with the right to privacy and reputation.

Conclusion

This instrument is compatible with human rights as it enables a person to access social security in the form of carer payment and/or carer allowance and provides the appropriate protection to a person's privacy with the collection of information.

Kathryn Campbell AO CSC, the Secretary of the Department of Social Services