

EXPLANATORY STATEMENT

Issued by the authority of Minister for Education, the Hon Jason Clare MP

A New Tax System (Family Assistance) Act 1999

Family Assistance (Immunisation and Vaccination) (Education) Amendment Determination 2024

AUTHORITY

The *Family Assistance (Immunisation and Vaccination) (Education) Amendment Determination 2024* (the Instrument) is made under subsection 4(1) of the *A New Tax System (Family Assistance) Act 1999* (Family Assistance Act) as construed in accordance with subsection 33(3) of the *Acts Interpretation Act 1901* (Acts Interpretation Act).

Under subsection 33(3) of the Acts Interpretation Act, 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 shall be 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.

PURPOSE AND OPERATION

The purpose of this Instrument is to amend the *Family Assistance (Immunisation and Vaccination) (Education) Determination 2018* (Determination) to provide a new vaccination schedule for children born on or after 1 July 2024, for the purposes of the immunisation requirements for an individual to be eligible for Child Care Subsidy (CCS) or for an individual or a provider to be eligible for Additional Child Care Subsidy (ACCS).

Under subparagraph 85BA(1)(a)(iii) of the Family Assistance Act, an individual is not eligible for CCS for care provided to a child unless the child meets the “immunisation requirements” in section 6 of the Family Assistance Act. In addition, an individual must be eligible for CCS in order to receive any form of ACCS: see Family Assistance Act, paragraphs 85CA(1)(a) (ACCS (child wellbeing)), 85CG(1)(a) (ACCS (temporary financial hardship)), 85CJ(1)(a) (ACCS (grandparent)), and 85CK(1)(a) (ACCS (transition to work)). This means an individual who is not eligible for CCS because their child does not meet the immunisation requirements is also not eligible for ACCS.

Under subparagraph 85CA(2)(ba)(ii) of the Family Assistance Act, an approved provider is not eligible for ACCS (child wellbeing) for a session of care provided by the service to a child unless the child meets the immunisation requirements in section 6 of the Family Assistance Act.

Vaccination Schedules

For an individual to be eligible for CCS in respect of a child, the child must meet the immunisation requirements in section 6 of the Family Assistance Act. 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 Family Assistance Act as meaning immunised in accordance with a standard or catch up vaccination schedule determined under section 4 of the Family Assistance Act.

Under subsection 4(1) of the Family Assistance Act, the Minister must, by legislative instrument, determine one or more of each of those schedules. The Determination determines standard vaccination schedules and catch up vaccination schedules for the purposes of section 4 of the Family Assistance Act.

This Instrument amends the Determination to reflect changes to the *National Health (Immunisation Program – Designated Vaccines) Determination 2014 (No.1)*. These amendments require vaccination against Meningococcal Groups A, C, W-135 and Y at 12 months of age for children born on or after 1 July 2024 to meet the immunisation requirements in section 6 of the Family Assistance Act.

The Determination applies for the purposes of determining whether an individual is eligible for CCS or ACCS for care provided to a child, and whether a provider is eligible for ACCS (child wellbeing) for a child. Under the Administrative Arrangements Order, the Minister for Education is responsible for administering the Family Assistance Act insofar as it relates to CCS, ACCS, child care providers and child care services. As such, the Minister for Education is responsible for determining vaccination schedules for CCS and ACCS payments. This Instrument does not affect a determination made by the Minister for Social Services for Family Tax Benefit purposes.

IMPACT ANALYSIS

The Department of Social Services has consulted with the Office of Impact Analysis on variations to both the *Family Assistance (Immunisation and Vaccination) (Education) Determination 2018* and the *Family Assistance (Immunisation Principles and Vaccination Schedules) (DSS) Determination 2018*. The Office of Impact Analysis confirmed a detailed Impact Analysis is not required under the Government’s Policy Impact Analysis Framework (OIA ID: OIA24-07500). The amendments are not likely to have more than a minor impact on people, businesses or community organisations.

COMMENCEMENT

The Instrument commences on the day after it is registered on the Federal Register of Legislation.

CONSULTATION

The Department of Social Services, Services Australia and the Department of Health and Aged Care were consulted in the preparation of this Instrument.

These consultations have ensured that the amendments accurately reflect changes to the *National Health (Immunisation Program – Designated Vaccines) Determination 2014 (No.1)*.

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) Amendment Determination 2024

The *Family Assistance (Immunisation and Vaccination) (Education) Amendment Determination 2024* (the 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

The purpose of this Instrument is to amend the *Family Assistance (Immunisation and Vaccination) (Education) Determination 2018* (Determination) to provide a new vaccination schedule for children born on or after 1 July 2024 for the purposes of the immunisation requirements for an individual to be eligible for Child Care Subsidy (CCS) or for an individual or a provider to be eligible for Additional Child Care Subsidy (ACCS).

Under subparagraph 85BA(1)(a)(iii) of the *A New Tax System (Family Assistance) Act 1999* (Family Assistance Act), an individual is not eligible for CCS for care provided to a child unless the child meets the “immunisation requirements” in section 6 of the Family Assistance Act. In addition, an individual must be eligible for CCS in order to receive any form of ACCS: see Family Assistance Act, paragraphs 85CA(1)(a) (ACCS (child wellbeing)), 85CG(1)(a) (ACCS (temporary financial hardship)), 85CJ(1)(a) (ACCS (grandparent)), and 85CK(1)(a) (ACCS (transition to work)). This means an individual who is not eligible for CCS because their child does not meet the “immunisation requirements” is also not eligible for ACCS.

Under subparagraph 85CA(2)(ba)(ii) of the Family Assistance Act, an approved provider is not eligible for ACCS (child wellbeing) for a session of care provided by the service to a child unless the child meets the immunisation requirements in section 6 of the Family Assistance Act.

Vaccination Schedules

For an individual to be eligible for CCS in respect of a child, the child must meet the immunisation requirements in section 6 of the Family Assistance Act. 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 Family Assistance Act as meaning immunised in accordance with a standard or catch up vaccination schedule determined under section 4 of the Family Assistance Act.

Under section 4 of the Family Assistance Act, the Minister must, by legislative instrument, determine one or more of each of those schedules. The Determination determines standard vaccination schedules and catch up vaccination schedules for the purposes of section 4 of the Family Assistance Act.

This instrument amends the Determination to reflect changes to the *National Health (Immunisation Program – Designated Vaccines) Determination 2014 (No.1)*. These amendments require vaccination against Meningococcal Groups A, C, W-135 and Y at 12 months of age for children born on or after 1 July 2024 to meet the immunisation requirements in section 6 of the Family Assistance Act.

The Determination applies for the purposes of determining whether an individual is eligible for CCS or ACCS for care provided to a child, and whether a provider is eligible for ACCS (child wellbeing) for a child. Under the Administrative Arrangements Order, the Minister for Education is responsible for administering the Family Assistance Act insofar as it relates to child care subsidy, additional child care subsidy, child care providers and child care services. As such, the Minister for Education is responsible for determining vaccination schedules for CCS and ACCS payments. This Instrument does not affect a determination made by the Minister for Social Services for Family Tax Benefit purposes.

Human rights implications

The Instrument 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); and
- the right to social security in Article 9 of the ICESCR and Article 26 of the CRC.

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 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 Family Assistance Act imposes immunisation requirements as a condition of eligibility for both CCS and ACCS. The amendments in this Instrument, which provide a new vaccination schedule for children born on or after 1 July 2024, promote these rights by 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.

Where the immunisation requirements are not met, an individual is not eligible for CCS or ACCS, and a provider is not eligible for ACCS (child wellbeing).

Article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and Article 26 of the Convention on the Rights of the Child (CRC)

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 ensures that parents retain eligibility for CCS and ACCS where their child is up to date with their immunisations, is on a “catch-up” schedule for missed immunisations, or where the Secretary has determined under subsection 6(6) of the Family Assistance Act that an exception applies. The Secretary may determine that an exception applies only if satisfied that the requirements in section 9, 10, 11, 12, 13, 14 or 15 of the Determination applies. As a result of these measures, parents who send their children to early childhood education and care can be more assured that all children in childhood education and care are likely to be immunised to the extent possible at their age. The Determination engages the rights in Article 9 of the ICESCR and Article 26 of the CRC by enabling the Secretary to make a determination under subsection 6(6) of the Family Assistance Act 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.

The amendments in this Instrument limit the right to social security in a necessary and proportionate manner to supporting children’s right to the highest attainable standard of health in Article 12 of the ICESCR and Article 24 of the CRC, 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.

Conclusion

The Instrument is compatible with human rights because it promotes the protection of human rights and to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.

Minister for Education, the Honourable Jason Clare MP

FAMILY ASSISTANCE (IMMUNISATION AND VACCINATION) (EDUCATION) AMENDMENT DETERMINATION 2024

EXPLANATION OF PROVISIONS

Section 1: Name

1. This is a formal provision specifying the name of the instrument.

Section 2: Commencement

2. This section provides that the instrument commences the day after it is registered.

Section 3: Authority

3. This section provides that the instrument is made under subsection 4(1) of the *A New Tax System (Family Assistance) Act 1999*.

Section 4: Schedules

4. This section provides that each instrument specified in a Schedule to the instrument is amended or repealed as set out in the Schedule concerned, and any other item in a Schedule to the instrument has effect according to its terms.

Schedule 1 – Amendments

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

5. This Schedule amends the *Family Assistance (Immunisation and Vaccination) (Education) Determination 2018* (Determination).

Item 1

6. Item 1 repeals note 2 to subsection 7(1) to insert the updated website where the Australian Immunisation Handbook, which is incorporated by reference to the Determination, is published and can be freely accessed and used by members of the public.

Item 2

7. Item 2 inserts “and before 1 July 2024” to the cell at the table item dealing with children born on or after 1 January 2017 in subsection 16(1) of the Determination. This is to specify that, for a child born on or after 1 January 2017 and before 1 July 2024, the standard vaccination schedule for the child is set out in Schedule 4 of the Determination.

Item 3

8. Item 3 adds a new table item to the Table in subsection 16(1) dealing with children born on or after 1 July 2024. The new table item specifies that the standard vaccination schedule for a child born on or after 1 July 2024 is set out in new Schedule 5.

Item 4

9. Item 4 amends section 17 to provide that the catch up vaccination schedule for a child relates to the antigens and diseases mentioned in column 3 of the Schedules 1 to 5, that is, the existing Schedules and new Schedule 5.

Item 5

10. Item 5 repeals note 1 to section 17 to insert the updated website where the Australian Immunisation Handbook, which is incorporated by reference to the Determination, is published and can be freely accessed and used by members of the public.

Item 6

11. Item 6 adds “and before 1 July 2024” to the heading of Schedule 4, reflecting changes made by item 2. Schedule 4 now sets out the standard vaccination schedule for a child born on or after 1 January 2017 and before 1 July 2024.

Item 7

12. Item 7 inserts the new Schedule 5. New Schedule 5 sets out the standard vaccination schedule for a child born on or after 1 July 2024. The new Schedule 5 sets out the new requirement for vaccination for Meningococcal Groups A, C, W-135 and Y at 12 months of age. This is an expansion from the Schedule 4 Meningococcal requirements, which only relate to Meningococcal Group C. New Schedule 5 aligns the Determination with vaccines available under the National Immunisation Program, through the *National Health (Immunisation Program – Designated Vaccines) Determination 2014 (No. 1)*.