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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**SOCIAL SERVICES LEGISLATION AMENDMENT
(NO JAB, NO PAY) BILL 2015**

EXPLANATORY MEMORANDUM

**(Circulated by the authority of the
Minister for Social Services, the Hon Scott Morrison MP)**

SOCIAL SERVICES LEGISLATION AMENDMENT (NO JAB, NO PAY) BILL 2015

OUTLINE

This Bill will introduce a 2015 Budget measure relevant to families. From 1 January 2016, the Bill will ensure children fully meet immunisation requirements before their families can access child care benefit, child care rebate or the family tax benefit Part A supplement.

Exceptions to the policy will apply only for valid medical reasons, such as when a general practitioner has certified that vaccinating the child would be medically contraindicated, or that vaccination is unnecessary because the child has natural immunity from having contracted the disease in question.

Families with children participating in an approved vaccine study will be taken to meet the immunisation requirements for the duration of the study, and similar rules will apply where a vaccine is temporarily unavailable.

The requirements will also be met if a recognised immunisation provider certifies that the child has an equivalent level of immunisation through an overseas vaccination programme.

Lastly, the Secretary will be able to determine that a child meets the immunisation requirements after considering any decision-making principles set out in a legislative instrument made by the Minister.

Immunisation requirements will also be extended to include children of all ages. At present, a child's vaccination status is only checked at ages one, two and five for the family tax benefit Part A supplement, and up to age seven for the child care payments.

Financial impact statement

This Bill is expected to produce savings of \$508.3 million over the forward estimates.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

The statement of compatibility with human rights appears at the end of this explanatory memorandum.

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NOTES ON CLAUSES

Clause 1 sets out how the new Act is to be cited – that is, as the *Social Services Legislation Amendment (No Jab, No Pay) Act 2015*.

Clause 2 provides a table setting out the commencement dates of the various provisions of the new Act.

Clause 3 provides that legislation specified in a Schedule is amended or repealed as set out in that Schedule.

Schedule 1 – Amendments

Summary

This Schedule makes amendments to the immunisation requirements for recipients of family tax benefit Part A supplement, child care benefit and child care rebate, commencing on 1 January 2016. The changes will tighten the existing immunisation requirements for these payments, reinforcing the importance of immunisation and protecting public health, especially for children.

Background

In broad terms, a child must meet the immunisation requirements under the *A New Tax System (Family Assistance) Act 1999* (Family Assistance Act) in order for an individual to be eligible for family tax benefit Part A supplement and child care benefit in respect of the child. A child meets the immunisation requirements if they have been immunised in accordance with the standard vaccination schedule or catch up vaccination schedule.

In some circumstances, a child may also meet the immunisation requirements despite not being immunised, including where there is a declaration in writing that an individual or adult has a conscientious objection to the child being immunised. This Schedule removes provisions that allow a child to meet the immunisation requirements on the basis of a conscientious objection.

Currently, a child may also meet the immunisation requirements if the child is in a class of persons determined in a legislative instrument by the Minister to be exempt from, or meet, those requirements. This Schedule removes the Minister's power to make such legislative instruments, and inserts into the Family Assistance Act some of the classes of person currently determined in the legislative instruments.

This Schedule also provides for new circumstances in which a person meets the immunisation requirements, on the basis of participation in a vaccine study or if the Secretary has determined in writing that the person meets the immunisation requirements.

Finally, this Schedule provides that payment of family tax benefit Part A supplement will be conditional on a child meeting the immunisation requirements in an income year in which an FTB child turns one and each later income year, not only in relation to income years in which the child turns one, two or five.

The amendments made by this Schedule commence on 1 January 2016.

Explanation of the changes

Amendments to the Family Assistance Act

Items 1 and 3 repeal the definition of ***conscientious objection*** contained in subsection 3(1) and section 5. These definitions will no longer be necessary as a result of the amendments made by item 4 of this Schedule, which mean a child will no longer meet the immunisation requirements on the basis of a conscientious objection to the child being immunised.

Item 2 inserts a new definition of ***general practitioner*** into subsection 3(1) of the Family Assistance Act. The term ‘general practitioner’ is used in new subsection 6(3), as inserted by item 4. ***General practitioner*** has the same meaning as in the *Health Insurance Act 1973*.

Item 3 repeals subsections 6(3) to (8), and substitutes new subsections 6(3) to (5).

Current subsections 6(3) and (4) provide for circumstances in which a child meets the immunisation requirements on the basis of a conscientious objection.

The amendments made by this item mean a child will no longer meet the immunisation requirements on the basis of a conscientious objection. A child may need to meet the immunisation requirements in order for an individual to be eligible for child care benefit or family tax benefit Part A supplement. This is intended to encourage parents and guardians, who would otherwise be eligible for these payments, to vaccinate their children.

New subsection 6(3) provides for when a person meets the immunisation requirements on the basis of a medical contraindication, natural immunity and vaccine study.

New paragraph 6(3)(a) provides that a child meets the immunisation requirements if a general practitioner has certified in writing that the immunisation of the child would be medically contraindicated under the specifications set out in the Australian Immunisation Handbook. Paragraph 6(3)(a) is similar to current subsection 6(5). However, a general practitioner, not a recognised immunisation provider, would now be required to make the certification in relation to medical contraindication. Following consultation with medical experts, it has been identified that the assessment of medical contraindication can be complex. It is therefore appropriate that this assessment is made by a general practitioner. If a diagnosis of medical contraindication is made by a medical specialist, then it is expected the specialist would refer the matter back to the person’s general practitioner who could then make the relevant certification for the purpose of new paragraph 6(3)(a).

Item 2 of this Schedule defines ***general practitioner*** by reference to the definition of that term in the *Health Insurance Act 1973*.

New paragraph 6(3)(b) provides that a child meets the immunisation requirements if a general practitioner has certified in writing that the child does not require immunisation because the child has contracted a disease or diseases and, as a result, has developed a natural immunity. Paragraph 6(3)(b) is similar to current subsection 6(6). However, a general practitioner, not a medical practitioner, would now be required to make the certification in relation to natural immunity. The current definition of **medical practitioner** in subsection 3(1) of the Family Assistance Act would include a broader range of medical professionals than the definition of **general practitioner** in the *Health Insurance Act 1973*. It is appropriate that medical professionals who undertake vaccinations are those who can make a relevant certification in relation to natural immunity.

New paragraph 6(3)(c) provides that the child meets the immunisation requirements if the child is a participant in a vaccine study approved by a Human Research Ethics Committee registered with the National Health and Medical Research Council. This is a new circumstance in which a child is taken to meet the immunisation requirements. This will ensure families with children participating in a vaccine study will not be disadvantaged for the duration of the study. The out-dated provision for participants of the vaccine study conducted by the Murdoch Children's Research Institute (as contained in the *Family Assistance (Meeting the Immunisation Requirements) (FaHCSIA) Determination 2012* and the *Child Care Benefit (Immunisation Requirements) (DEEWR) Determination 2013*) will be removed as a consequence of items 4 and 5.

New subsection 6(4) provides that a child meets the immunisation requirements if:

- the child has not received a vaccination at a particular age; and
- the Commonwealth Chief Medical Officer has confirmed that the vaccine for that vaccination is, or all of the vaccines for that vaccination are, temporarily unavailable; and
- if that vaccine, or one of those vaccines, had been available, the Secretary is satisfied that the child would have been immunised; and
- that vaccine has not, or none of those vaccines has, become available.

New paragraph 6(4)(c) ensures the Secretary, in being satisfied that the child would have been immunised, considers whether the child has received all other vaccinations that the child is required to have received by that particular age.

This subsection ensures a child can meet the immunisation requirements in circumstances where a vaccine is temporarily unavailable. This circumstance is currently contained in the *Child Care Benefit (Immunisation Requirements) (DEEWR) Determination 2013* and the *Family Assistance (Meeting the Immunisation Requirements) (FaHCSIA) Determination 2012* made under subsection 7(2). Item 5 of this Schedule repeals section 7. It is still appropriate for a child to meet the immunisation requirements where a vaccine is temporarily unavailable, and this circumstance will now be included in the Family Assistance Act.

Schedule 1 – Amendments

The Commonwealth Chief Medical Officer, not a recognised immunisation provider, will now be responsible for confirming that a vaccine is, or all of the vaccines are, temporarily unavailable for the purposes of paragraph 6(4)(b). In practice, it is likely the Commonwealth Chief Medical Officer will have regard to the Medicines Shortage Information Initiative provided by the Therapeutic Goods Administration and other sources when considering whether there is a temporary unavailability of a vaccine. Consultation would likely also occur with the vaccine supplier.

New subsection 6(5) provides for the ‘child vaccinated overseas’ circumstance in which a child meets the immunisation requirements. Specifically, a child will meet the immunisation requirements on this basis if:

- the child has received one or more vaccinations while outside Australia; and
- a recognised immunisation provider has certified in writing that those vaccinations have provided the child with the same level of immunisation that the child would have acquired had the child been vaccinated in accordance with a standard vaccination schedule, or a catch up vaccination schedule; and
- the child has received all other vaccinations under a standard vaccination schedule, or a catch up vaccination schedule.

This circumstance is currently contained in the *Child Care Benefit (Immunisation Requirements) (DEEWR) Determination 2013* and the *Family Assistance (Meeting the Immunisation Requirements) (FaHCSIA) Determination 2012*.

New subsection 6(6) provides that a child meets the immunisation requirements if the Secretary determines in writing that the child meets the immunisation requirements. Before making such a determination, the Secretary will be required to comply with any decision-making principles set out in a legislative instrument made by the Minister for the purposes of new subsection 6(7). Any such instrument made by the Minister would be subject to Parliamentary scrutiny and disallowance. New subsections 6(6) and (7) will ensure that, in appropriate circumstances, the Secretary can determine that a particular child meets the immunisation requirements despite the child not meeting the requirements in any of the other subsections of section 6.

Current subsection 6(7) provides that the child meets the immunisation requirements if the child is in a class exempted, by a determination under subsection 7(1), from the requirement to be immunised. Current subsection 6(8) provides that the child meets the immunisation requirements if a determination in force under subsection 7(2) provides that the child meets the immunisation requirements. This item removes these circumstances in which a child meets the immunisation requirements because the amendments made by item 5 of this Schedule repeal section 7.

Item 5 repeals section 7. Current section 7 provides that the Minister may, by legislative instrument, determine that a child included in a specified class is exempt from the requirement to be immunised, or meets the immunisation requirements in circumstances specified in the determination. The effect of item 5 is therefore to remove the Minister’s power to make determinations in relation to classes that are exempt from, or meet, the immunisation requirements.

Some of the classes contained in current determinations made under section 7 will now be specified in section 6 of the Family Assistance Act as a result of item 4 of this Schedule. However, a person will no longer be exempt from the immunisation requirements on the basis that the child is an FTB child or regular care child of an individual who is a practising member of the Church of Christ, Scientist, or on the basis that the child is unable to be immunised due to exceptional circumstances (as currently contained in the *Family Assistance (Exemption from Immunisation Requirements) (FaHCSIA) Determination 2012* and the *Child Care Benefit (Immunisation Requirements) (DEEWR) Determination 2013*).

Items 6 to 9 amend the immunisation requirements in sections 42, 44 and 45.

Current subsection 42(1) provides that an individual is conditionally eligible for child care benefit by fee reduction for care provided by an approved child care service if the requirements set out in paragraphs 42(1)(a) to (c) are met. Relevantly, current paragraph 42(1)(c) provides that an individual is conditionally eligible for child care benefit by fee reduction where the child is under seven, was born on or after 1 January 1996 and meets one of the requirements detailed in subparagraph 42(1)(c)(i), (ii) or (iii).

Item 6 amends paragraph 42(1)(c) to refer to where the child is under 20 years of age and meets the requirements detailed in subparagraph 42(1)(c)(i), (ii) or (iii), instead of to where the child is under seven and born on or after 1 January 1996.

Currently, individuals who make a claim for payment of child care benefit by fee reduction for care provided by an approved child care service to a child are taken to satisfy the requirement in paragraph 42(1)(c) even if the child does not meet the immunisation requirements set out in section 6. In this situation, on determining the individual to be conditionally eligible, the Secretary will give the individual a notice to require that the child meet the immunisation requirement within 63 days of the notice (section 57E of the *A New Tax System (Family Assistance) (Administration) Act 1999* (Family Assistance Administration Act)). Effectively, this means that, on making a claim, an individual currently has a 63-day grace period to ensure the child meets the immunisation requirements in section 6 of the Family Assistance Act.

Item 7 inserts a new subsection 42(1AA), which has the effect of removing the 63-day grace period to ensure the child meets the immunisation requirements in section 6, on an individual making a claim. New subsection 42(1AA) provides that subparagraphs 42(1)(c)(ii) and (iii) do not apply to an individual in connection with the Secretary determining a claim by an individual for payment of child care benefit by fee reduction for care provided by an approved child care service. That is to say, from commencement of this item, when the Secretary determines a claim for conditional eligibility (under section 50F or 50G of the Family Assistance Administration Act), an individual will only satisfy paragraph 42(1)(c) of the Family Assistance Act if, at the time the Secretary makes the determination, the child meets the immunisation requirements set out in section 6.

Current sections 44 and 45 provide that an individual is eligible for child care benefit for a past period of care, in relation to care provided by an approved child care service or care provided by a registered carer respectively, when the requirements of these sections are met.

Current subsection 44(2) and paragraph 45(2)(a) require, where the child is under seven and born on or after 1 January 1996, that the child meet the immunisation requirements set out in section 6. **Items 8 and 9** amend subsection 44(2) and subsection 45(2) to refer to where the child is under 20 years of age, instead of to whether the child is under seven and born on or after 1 January 1996. Minor amendments have also been made to the wording of subsection 45(2) so that it is in the same form as subsection 44(2).

Item 10 inserts a new paragraph 47(1)(c).

Section 47 provides for when an approved child care service is eligible for child care benefit by fee reduction for care provided to a child at risk. New paragraph 47(1)(c) will ensure that, in addition to the current criteria, an approved child care service will be eligible for child care benefit by fee reduction for care provided to a child at risk only if the child meets the immunisation requirements.

Items 11 to 18 amend the immunisation requirements in section 61B.

Current subsections 61B(1) and (2) provide the general rule that the Secretary must disregard clause 38A of Schedule 1 in relation to an individual, an FTB child of the individual and a particular day or days in an income year if, among other things, the FTB child turned one, two or five in that income year. Clause 38A provides for the rate of family tax benefit Part A supplement. The effect of this current general rule is therefore that an individual is not eligible to receive a rate of family tax benefit Part A supplement for income years in which the FTB child turns one, two or five.

Items 11 to 14 amend this general rule so it applies in each income year (the **current income year**), not just income years in which the FTB child turned one, two or five, if the FTB child is aged one or over on an applicable day in the income year.

Subsection 61B(3) provides an exception to this general rule. That is, subsection 61B(3) provides for circumstances in which the Secretary must not disregard clause 38A, the effect of which is that an individual may be eligible for a rate of family tax benefit Part A supplement. Those circumstances are currently where:

- (a) the Secretary becomes aware of information suggesting the child meets the immunisation requirements at any time before the end of the first income year after the income year in which the FTB child turned one, two or five (as the case requires) or of such further period (if any) as the Secretary allows; and
- (b) at any time, the Secretary is satisfied the child met the immunisation requirements before the end of that first income year.

Schedule 1 – Amendments

Item 15 amends paragraph 61B(3)(a) to replace the reference to the income year in which the FTB child turned one, two or five (as the case requires) with reference to the current income year. The effect of this is that the Secretary must not disregard clause 38A if the Secretary becomes aware of information suggesting the child meets the immunisation requirements at any time before the end of the income year after the current income year.

Current paragraph 61B(3A)(a) provides that the Secretary must not allow a further period for the purpose of paragraph 61B(3)(a) unless certain circumstances are met, including that a further period in respect of the individual's claim for family tax benefit was allowed and that claim is for a past period falling within an income year in which the child turned one, two or five. Current paragraph 61B(3A)(b) provides that any further period allowed by the Secretary must end no later than the end of the second year after the income year in which the FTB child turned one, two or five (as the case requires).

Items 16 and 17 replace the references in paragraphs 61B(3A)(a) and (b) to the income year in which the FTB child turned one, two or five (as the case requires) with references to the current income year to ensure consistency with the other amendments to section 61B made by this Schedule.

Item 18 amends paragraph 61B(4)(a). Current paragraph 61B(4)(a) provides that subsections 61B(1), (2) and (3) do not apply if the FTB child or the relevant individual dies before the end of the first income year after the income year in which the FTB child turned one, two or five (as the case requires). Item 18 replaces the references in paragraph 61B(4)(a) to the income year in which the FTB child turned one, two or five (as the case requires) with references to the current income year to ensure consistency with the other amendments to section 61B made by this Schedule.

Item 19 provides for application and transitional provisions for the amendments made by this Schedule.

Subitem 19(1) provides that the amendments made by this Schedule apply:

- (a) in working out whether family tax benefit Part A supplement is to be added to an individual's Part A rate of family tax benefit, for a day on or after the commencement of this item; and
- (b) in working out whether an individual, or an approved child care service, is eligible for child care benefit provided to a child on a day on or after the commencement of this item.

Schedule 1 – Amendments

One of the effects of subitem 19(1) is that an individual may be paid family tax benefit Part A supplement for the period of 1 July to 31 December 2015 if an FTB child meets the immunisation requirements before the amendments made by this Schedule, but not for days on or after 1 January 2016, if, as a result of this Schedule, the FTB child no longer meets the immunisation requirements. For example, an individual may be paid the family tax benefit Part A supplement for a child who meets the immunisation requirements on the basis of a conscientious objection until 31 December 2015, but not for the days on or after 1 January 2016 because they would no longer meet the immunisation requirements.

Subitem 19(2) provides that certifications in relation to medical contraindication or natural immunity mentioned in subsection 6(5) or (6) of the Family Assistance Act (as in force immediately before the commencement of this item) that had effect immediately before that commencement are taken on and after that commencement to be a certification of a general practitioner for the purposes of paragraph 6(3)(a) or (b) of that Act (as amended by this Schedule). New paragraphs 6(3)(a) and (b) now provide for circumstances in which a person meets the immunisation requirements on the basis of a certification on the grounds of a medical contraindication or natural immunity. These certifications were previously made by a recognised immunisation provider or medical practitioner under subsections 6(5) and (6) but will now be made by a general practitioner. It is therefore necessary to 'save' the certifications made under subsections 6(5) and (6) before the commencement date and provide that they are taken to be certifications of a general practitioner.

Subitem 19(3) makes it clear that current sections 6 and 7 of the Family Assistance Act do not apply on or after the commencement of item 19, in relation to days before that commencement.

Current section 6 of the Family Assistance Act sets out when a child meets the immunisation requirements. Item 4 of this Schedule amends section 6. One of the effects of the amendments made by item 4 is that a child will no longer meet the immunisation requirements on the basis of a conscientious objection. One of the effects of subitem 19(3) is that a child will not be able to meet the immunisation requirements for days before 1 January 2016 on the basis of a conscientious objection declaration made on or after 1 January 2016. A child will meet the immunisation requirements for days before 1 January 2016 if a relevant conscientious declaration is made before that date.

Schedule 1 – Amendments

A further effect of subitem 19(3) is that it will not be possible for a child to be exempt from the immunisation requirements for days before 1 January 2016, on the basis of a relevant Church of Christ, Scientist, declaration made on or after 1 January 2016. It will also not be possible for the Secretary to take action on or after 1 January 2016 to exempt a child from the immunisation requirements for days before 1 January 2016, on the basis of exceptional circumstances. These exemptions are currently contained in determinations made under section 7 of the Family Assistance Act. The effect of the amendments made by items 4 and 5 of this Schedule is that those exemptions will no longer apply from 1 January 2016. A child will meet the immunisation requirements for days before 1 January 2016 if a relevant Church of Christ, Scientist, declaration is made before that day, or if the Secretary takes action before that day to exempt the child from those requirements on the basis of exceptional circumstances.

One instance in which subitem 19(3) would affect a child meeting the immunisation requirements is if a declaration is made in relation to a lump sum claim made after 1 January 2016 but pertaining to days before 1 January 2016. In this instance, a declaration could not be made for days before or after 1 January 2016.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

SOCIAL SERVICES LEGISLATION AMENDMENT (NO JAB, NO PAY) BILL 2015

This Bill 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 Bill

This Bill amends the immunisation requirements for child care benefit, child care rebate and the family tax benefit Part A supplement.

From 1 January 2016, this measure makes these payments conditional on meeting the childhood immunisation requirements for children at all ages. Exemptions will only apply for valid medical reasons, or if the Secretary has determined in writing that a child meets the immunisation requirements.

Individuals with a conscientious objection will no longer meet the immunisation requirements under subsections 6(3) and 6(4) of the *A New Tax System (Family Assistance) Act 1999* (the Family Assistance Act). A child of a practising member of the Church of Christ, Scientist, (a religious exemption) will also no longer meet the immunisation requirements under subsections 6(7) and 7(1) of the Family Assistance Act.

The purpose of this Bill is to encourage parents to immunise their children. The changes will reinforce the importance of immunisation and protecting public health.

Human rights implications

This Bill engages the following human rights:

The right to physical and mental health

Extending the immunisation requirements engages article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). Article 12 recognises the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. In particular, State Parties shall take steps necessary for 'the reduction of ... infant mortality and for the healthy development of the child' and the 'prevention, treatment and control of epidemic, endemic, occupational and other diseases'. Similarly, article 24 of the Convention of the Rights of the Child (CRC) recognises the right of the child to the enjoyment of the highest attainable standard of health, and measures 'to diminish infant death and child mortality' and to 'combat disease'.

Statement of compatibility with human rights

By extending the immunisation requirements and encouraging families to have their children immunised, this Bill promotes the right to physical and mental health. Vaccination is recognised in health policy and medical research to be the most effective method of preventing infectious diseases and providing protection both to individuals who receive vaccinations and to the wider community. Encouraging vaccination aims to extend the benefit of vaccination within the Australian community.

The right to freedom of thought, conscience and religion

Article 18 of the International Covenant on Civil and Political Rights provides that everyone shall have the right to freedom of thought, conscience and religion. This right may be engaged by extending the immunisation requirements, as families will no longer be eligible to receive child care benefit, child care rebate or the family tax benefit Part A supplement where they have a conscientious or religious belief that prevents them from immunising their children.

However, article 18 also provides that these freedoms may be subject to limitations as prescribed by law and which are necessary to protect public health or the fundamental rights and freedoms of others. The objection to vaccination can limit the rights of others to physical and mental health. As the most effective method of preventing infectious diseases, vaccination provides a necessary protection of public health.

Further, these families continue to have the right to uphold their conscientious or religious belief by electing not to receive child care benefit, child care rebate or the family tax benefit Part A supplement.

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. This Bill engages these rights by removing eligibility to receive child care benefit, child care rebate and family tax benefit Part A supplement for vaccine objectors.

However, this limitation is necessary and proportionate to the legitimate aim of promoting the right to physical and mental health. Additionally, families affected by this measure are still eligible to receive fortnightly payments of family tax benefit to assist with the costs of raising children.

Conclusion

This Bill is compatible with human rights because it advances the protection of the right to physical health, and, to the extent that it may also limit human rights, those limitations are reasonable, necessary and proportionate.

**[Circulated by the authority of the Minister for Social Services,
the Hon Scott Morrison MP]**