

EXPLANATORY STATEMENT

Social Security (Personal Care Support Scheme - Pflegegeld) Determination 2017

Summary

Section 35A of the **Social Security Act 1991** (the Act) allows Ministers to determine, in writing, that a scheme for the provision of personal care support is an 'approved scheme' for the purposes of the Act. This instrument determines that the Austrian *Pflegegeld* scheme of personal care support is an 'approved scheme' under section 35A.

The effect of this instrument is that people who receive a *Pflegegeld* payment, and who also receive an Australian social security payment, will not have their *Pflegegeld* payments taken into account for the purposes of the social security income test.

Background

Under the social security law all income earned, derived or received for a person's own use or benefit, is generally counted as income. The only exceptions are items specifically exempted under the social security law.

In particular, section 35A of the Act allows Ministers to determine that a scheme for the provision of personal care support is an 'approved scheme' for the purposes of the Act. Payments made under an 'approved scheme' are exempt from the income test in relation to the person who is receiving care under paragraph 8(8)(zi) of the Act.

Explanation of the instrument

This Determination approves the Austrian *Pflegegeld* scheme as an 'approved scheme' under section 35A of the Act.

The Austrian Government makes payments under the *Pflegegeld* scheme to people with disabilities to pay specifically for their personal care support. *Pflegegeld* payments do not provide income support for people with disabilities. Instead, *Pflegegeld* payments help these people to live independent lives outside of a public institution by contributing toward the cost of their long term personal care support.

Some *Pflegegeld* recipients may also receive an Australian social security payment, such as disability support pension. The effect of this instrument is that these people will not have their social security payments reduced because of the *Pflegegeld* payments that they receive, because their *Pflegegeld* payments will not be regarded as income in accordance with paragraph 8(8)(zi) of the Act.

Payments made under approved personal care support schemes are only exempt in relation to the person receiving care. As payments made under approved schemes are not exempt in relation to the person providing care, payments made directly to a carer are not affected by this instrument.

Explanation of the provisions

Section 1 of the Determination states the name of the determination.

Section 2 provides that the Determination commences on the day after it is registered.

Section 3 revokes the *Social Security (Personal Care Support Scheme – Pflegegeld) Determination 2004*.

Subsection 4(1) provides that the *Pflegegeld* scheme is an approved scheme for the purposes of the Act.

Subsection 4(2) provides a definition of *Pflegegeld*. It defines *Pflegegeld* as a scheme that was established by the Republic of Austria with effect from 1 July 1993 under which an allowance for long-term care is paid to certain disabled persons.

Consultation

This instrument is beneficial to customers because it exempts Austrian *Pflegegeld* payments from the social security income test. Public consultation was therefore seen as unnecessary.

Regulatory Impact Statement

This Determination does not require a Regulatory Impact Statement, as it is not regulatory in nature, does not impact on business activity and will have no, or minimal compliance costs.

Statement of Compatibility with Human Rights

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

This Legislative Instrument is the ***Social Security (Personal Care Support Scheme – Pflegegeld) Determination 2017***

The *Social Security (Personal Care Support Scheme – Pflegegeld) Determination 2017* (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 is made under Section 35A of the *Social Security Act 1991* (the Act) and determines that the Personal Care Support Scheme – *Pflegegeld* is an approved personal care support scheme for the purposes of the Act, thereby exempting payments received by a person under this scheme for personal care support services from the social security income test.

The determination ensures that people receiving payments from the Personal Care Support Scheme – *Pflegegeld* will not have these payments assessed as income for social security purposes.

Human rights implications

The Determination engages the right to social security.

The right to social security

Section 35A of the Act allows the Minister for Social Services to determine that when a person receives funding provided by a personal care support scheme this funding is exempt from the social security income test in relation to social security payments for which the Minister for Social Services is responsible. The Determination is therefore beneficial to persons who receive such a social security payment.

Conclusion

This Determination ensures that individuals receiving assistance under the Personal Care Support Scheme – *Pflegegeld* do not have payments under this scheme assessed for income test purposes. The Determination supports their human right to social security and is therefore compatible with human rights.

The Hon Christian Porter MP, Minister for Social Services