

EXPLANATORY STATEMENT

Social Security (Personal Care Support – Disability support schemes operated by the Western Australian Department of Communities) Determination 2018

Summary

Section 35A of the ***Social Security Act 1991*** (the Act) allows the Minister 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 payments made directly to individuals for disability and support services provided by the Western Australian Department of Communities (the Department of Communities) is an ‘approved scheme’ under section 35A.

The effect of this instrument is that people who receive direct payments for disability services and supports from the Department of Communities, and who also receive an Australian social security payment, will not have this assistance 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 counted as income. The only exceptions are items specifically exempted under the social security law.

In particular, section 35A of the Act allows the Minister 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 provision of direct payments to individuals for disability services and supports by the Department of Communities as an “approved scheme” under section 35A of the Act.

The effect of this Determination is that the recipient will not have their social security payments reduced due to receipt of direct payments for disability services and supports from the Department of Communities. Accordingly, these payments will not be regarded as income under the social security law.

This Determination revokes the *Social Security Act 1991 – Notice under section 35A – Instrument 96/3* (1995 Determination). This instrument provides that the Western Australian *Individual Family and Carer Support Scheme* is an ‘approved scheme’ and therefore payments made under the scheme are exempt from the income test. The *Individual Family and Carer Support Scheme* was implemented in 1995 by the Western Australian Disability Services Commission and provides personal care

Explanatory Statement - *Social Security (Personal Care Support – Disability support schemes operated by the Western Australian Department of Communities) Determination 2018*

support in the form of payments directly to individuals for disability services and supports. The Disability Services Commission became part of the Department of Communities on 1 July 2017. The *Disability support schemes operated by the Western Australian Department of Communities* will also provide these types of payments, as it is broader in scope than the scheme previously provided under the 1995 Determination.

Explanation of the provisions

Section 1 states that the name of the determination is the *Social Security (Personal Care Support – Disability support schemes operated by the Western Australian Department of Communities) Determination 2018*.

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

Section 3 provides that the authority for making this Determination is section 35A of the *Social Security Act 1991*.

Section 4 revokes the *Social Security Act 1991 – Notice under section 35A – Instrument 96/3*.

Section 5 provides that the *Disability support schemes operated by the Western Australian Department of Communities* is an approved scheme for the purposes of section 35A of the *Social Security Act 1991*.

Consultation

This Determination was made in respect to a request from the Western Australian Department of Communities, Disability Services.

The Department has consulted with the Department of Veterans' Affairs, the Department of Agriculture and Water Resources and the Western Australian Department of Communities regarding this Determination.

The Determination is beneficial to social security payment recipients because it exempts the provision of payments for disability supports and services received as part of the *Disability support schemes operated by the Western Australian Department of Communities* 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.

Explanatory Statement - *Social Security (Personal Care Support – Disability support schemes operated by the Western Australian Department of Communities) Determination 2018*

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 – Disability support schemes operated by the Western Australian Department of Communities) Determination 2018***

The *Social Security (Personal Care Support – Disability support schemes operated by the Western Australian Department of Communities) 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 is made under Section 35A of the *Social Security Act 1991* (the Act) and determines that the *Disability support schemes operated by the Western Australian Department of Communities* 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 assistance from the *Disability support schemes operated by the Western Australian Department of Communities* will not have this assistance assessed as income for social security purposes.

Human Rights Implications

The Determination engages the right to social security.

Section 35A of the Act allows the Minister for Social Services to determine that when a person receives assistance provided by a personal care support scheme this assistance 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.

Explanatory Statement - *Social Security (Personal Care Support – Disability support schemes operated by the Western Australian Department of Communities) Determination 2018*

Conclusion

This Determination ensures that individuals receiving assistance under the *Disability support schemes operated by the Western Australian Department of Communities* do not have assistance 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 Dan Tehan MP, Minister for Social Services

Explanatory Statement - *Social Security (Personal Care Support – Disability support schemes operated by the Western Australian Department of Communities)*
Determination 2018