

## EXPLANATORY STATEMENT

### ***Social Security (Personal Care Support – Italian Invalidation Attendance Allowance) 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 *Indennità di accompagnamento* (Italian Invalidation Attendance Allowance) provided by the Italian Istituto Nazionale della Previdenza Sociale (National Social Security Institute) is approved for the purposes of section 35A of the *Social Security Act 1991*.

The effect of this instrument is that people who receive payments under the *Social Security Act 1991* and also receive Italian Invalidation Attendance Allowance, will not have their Italian Invalidation Attendance Allowance taken into account for the purposes of the social security income test.

This determination replaces the previous determination for this payment to ensure that this payment continues to be exempt for social security income test purposes.

#### **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 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 Italian Invalidation Attendance Allowance as an “approved scheme” under section 35A of the Act when that payment is made to a person that is also receiving a social security payment.

Under Italian law, people who are in receipt of an invalidity pension, who are unable to care for themselves and require continuous care, may be paid an invalidity attendance allowance.

The effect of this Determination is to support recipients of social security payments who receive Italian Invalidation Attendance Allowance, so that their social security

payments will not be reduced due to the payment of the allowance. Accordingly, these payments will not be regarded as income under the social security law.

### **Explanation of the provisions**

Section 1 states that the name of the Determination is the *Social Security (Personal Care Support – Italian Invalidation Attendance Allowance) Determination 2018* (the Determination).

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 97/33*.

Section 5 provides that *Indennità di accompagnamento* (Italian Invalidation Attendance Allowance) provided by the Italian *Istituto Nazionale della Previdenza Sociale* (National Social Security Institute) is an approved scheme for the purposes of section 35A of the *Social Security Act 1991*.

### **Consultation**

This Determination extends the approval of Italian Invalidation Attendance Allowance for the purposes of section 35A of the *Social Security Act 1991*. This approval has been in place since 2 September 1997.

The Department of Human Services, the Department of Veterans' Affairs and the Department of Agriculture and Water Resources have been consulted.

The Determination is beneficial to social security recipients because it exempts Italian Invalidation Attendance Allowance 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 – Italian Invalidation Attendance Allowance) Determination 2018***

The *Social Security (Personal Care Support – Italian Invalidation Attendance Allowance) 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 Italian Invalidation Attendance Allowance 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 Italian Invalidation Attendance Allowance 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.

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## **Conclusion**

This Determination ensures that individuals receiving Italian Invalidation Attendance Allowance 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**