

EXPLANATORY STATEMENT

Issued by the authority of the Secretary of the Department of Social Services

Social Security Act 1991

Social Security (Exempt Lump Sum – Youpla Support Program) Determination 2024

Purpose

The *Social Security (Exempt Lump Sum – Youpla Support Program) Determination 2024* (Determination) ensures that an amount paid to an eligible person under the Youpla Support Program (Program) is an exempt lump sum under paragraph 8(11)(d) of the *Social Security Act 1991* (the Act).

A payment under the Program is a resolution payment made by the Australian Government to support eligible persons affected by the collapse and liquidation of the Youpla Group of companies.

By determining that a payment made under the Program is an exempt lump sum under the Act, the amount of the payment will not be assessed as income for the purposes of the recipient's social security payment.

Background

Exempt lump sums

An income amount earned, derived or received for a person's own use or benefit is generally assessed as income under the social security law. However, paragraph 8(11)(d) of the Act allows the Secretary of the Department of Social Services, or their delegate, to determine that an amount, or class of amounts, received by a person is an exempt lump sum for the purposes of the Act. An exempt lump sum is excluded from the definition of 'ordinary income' in subsection 8(1) of the Act. This means the amount is not taken into account under the social security income test.

The exemption of a lump sum payment from the income test does not affect the assessment of any ongoing income generated by the lump sum, nor any assessable asset produced from the lump sum. These will be counted under the social security income and assets tests respectively. This is consistent with the treatment of other amounts as exempt lump sums under paragraph 8(11)(d) of the Act.

Youpla Support Program

The Youpla Group of companies, including the four funeral funds of the Youpla Group (Aboriginal Community Benefit Fund Pty Ltd, Aboriginal Community Benefit Fund No 2 Pty Ltd, ACBF Funeral Plans Pty Ltd and Community Funeral Plans Pty Ltd), were placed into liquidation between March and April 2022 by its directors, causing uncertainty and distress for its members. At the date of liquidation, the Youpla Group was providing funeral cover for fund members who are almost all First Nations people.

The Youpla Group's entry into liquidation triggered a need for temporary arrangements to be put in place to enable the families of deceased Youpla Group fund members to mourn their loved ones and conduct Sorry Business with dignity, while the Government developed an enduring resolution.

The interim Youpla Group Funeral Benefits Program was established in September 2022 by the Australian Government to provide support to Youpla Group fund members and their families through a grant payment. Payments under the interim program are exempt from the social security income test by the *Social Security (Exempt Lump Sum – Youpla Group Funeral Benefits Program Payments) Determination 2022*. The interim program has been administered by the Department of the Treasury, and will accept applications until 30 June 2024.

The Program replaces the interim Youpla Group Funeral Benefits Program, and is administered by the National Indigenous Australians Agency. The Program commences on 1 July 2024 and will accept applications until 1 July 2026. The Program will deliver resolution payments to eligible persons, which will be assessed at 60 per cent of the premiums paid by the eligible person to the Youpla Group, up to the policy limit. Resolution payments can be received as either a funeral bond or cash payment. A person may be eligible for a resolution payment under the Program if they paid for a Youpla Group funeral policy which was active on or after 1 August 2015.

Commencement

The Determination commences on 1 July 2024.

Impact Analysis

The Department of Social Services consulted with the Office of Impact Analysis who confirmed an Impact Analysis is not required (OIA24-06426). The Determination is not regulatory in nature, will not impact on business activity and will have no, or minimal, compliance costs or competition impact.

Consultation

The Department of Social Services consulted with the National Indigenous Australians Agency on the text of this Determination.

The Department of Agriculture, Fisheries and Forestry and the Department of Veterans' Affairs were consulted on the intention to make this Determination, given the potential effect on income support recipients.

Availability of independent review

A decision on the assessment of an individual's income as part of the social security income test, which may involve a payment covered by this Determination, is subject to internal and external merits review under Parts 4 and 4A of the *Social Security (Administration) Act 1999*.

The Determination is a legislative instrument for the purposes of the *Legislation Act 2003* and is subject to disallowance.

Explanation of the provisions

Section 1 states that the name of the Determination is the *Social Security (Exempt Lump Sum – Youpla Support Program) Determination 2024*.

Section 2 specifies that the Determination commences on 1 July 2024.

Section 3 provides that the Determination is made under paragraph 8(11)(d) of the *Social Security Act 1991*.

Section 4 defines terms used in the Determination.

'**Act**' is defined as the *Social Security Act 1991*.

'**Youpla Support Program**' is defined as the program under which payments are made to eligible persons in respect of eligible funeral insurance policies issued by a company in the group of companies known as the Youpla Group, in circumstances where the policy has been affected by the collapse and liquidation of those companies. This is the Australian Government program referred to in item 650 of Part 4 of Schedule 1AB to the *Financial Framework (Supplementary Powers) Regulations 1997*. This program is to commence on 1 July 2024, and will make payments to eligible persons affected by the collapse and liquidation of the Youpla Group of companies, in relation to eligible funeral insurance policies.

Section 5 prescribes that, for the purposes of paragraph 8(11)(d) of the *Social Security Act 1991*, the amount of a payment made under the Youpla Support Program is an exempt lump sum.

The effect of section 5 is that payments made to eligible persons under the Youpla Support Program will not be assessed as income under the Act. This means that the amount of the payment will not have any impact on a recipient's social security payments, in terms of the social security income test.

Statement of Compatibility with Human Rights

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

Social Security Act 1991

Social Security (Exempt Lump Sum – Youpla Support Program) Determination 2024

The *Social Security (Exempt Lump Sum – Youpla Support Program) Determination 2024* (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

The effect of the Determination is that an amount paid to an eligible person under the Youpla Support Program is an ‘exempt lump sum’ under paragraph 8(11)(d) of the *Social Security Act 1991* (the Act). This means the amount of the payment will not be assessed as income for the purposes of the recipient’s social security payment.

Human rights implications

Right to social security

The Determination engages the right to social security under Article 9 of the International Covenant on Economic, Social and Cultural Rights.

The right to social security requires that a system be established under domestic law, and that public authorities must take responsibility for the effective administration of the system. The social security scheme must provide a minimum essential level of benefits to all individuals and families that will enable them to acquire at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education.

Under the Act, social security payments are subject to a means test which assesses the person’s income and assets to determine their eligibility for the payment, and their rate of payment. The Determination will operate beneficially as a payment made under the Youpla Support Program will not be taken into account under the social security income test. If the payment is not exempted, a person in receipt of that payment may not be eligible for a social security payment, or if they are eligible, their rate of payment may be reduced. Therefore, the Determination is consistent with promoting the right to social security.

Rights of Indigenous Peoples

The Determination also engages the rights of Indigenous Peoples in Article 12 of the United Nations Declaration on the Rights of Indigenous Peoples.

Article 12 provides that Indigenous Peoples have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.

The Youpla Support Program is intended to support an estimated 13,700 payers of policies under the Youpla Group who are almost all First Nations people. Sorry Business is of the deepest cultural importance to First Nations people. The Determination ensures that indigenous people have the support required to allow the families of deceased Youpla Group fund members to mourn their loved ones and conduct Sorry Business with the dignity that had been intended.

Conclusion

The Determination is compatible with human rights as it supports a person's right to social security, and the rights of Indigenous Peoples.

Gillian Beer
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