EXPLANATORY STATEMENT


Summary

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. Paragraph 8(11)(d) of the Social Security Act 1991 (the Act) allows the Secretary of the Department of Social Services (DSS) 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 not included in the definition of ‘ordinary income’ under subsection 8(1) of the Act, so any such amount would not be taken into account under the social security income test.

The NSW Government has established a $250 million industry adjustment assistance package to help eligible taxi and hire car licence holders adjust to the point to point transport industry changes. Transitional assistance payments for eligible taxi licence holders are the first stage of the industry adjustment assistance package. The Point to Point Transport (Taxis and Hire Vehicles) Regulation 2016 (NSW) provides for $20,000 transitional assistance payments to be made to a person for each eligible ordinary licence, for up to two licences. Where a person holds more than two licences, the maximum payment is $40,000. The Point to Point Transport (Taxis and Hire Vehicles) Regulation 2016 is available at: http://www.legislation.nsw.gov.au.

This Determination provides that a Taxi Reform Transitional Assistance Payment is an exempt lump sum for the purpose of paragraph 8(11)(d) of the Act.

The effect of this Determination is that such a payment will not be regarded as income under the Act, so that if a social security recipient receives such a payment, it will be exempt from the social security income test. The Determination has retrospective effect but it is beneficial in nature so does not adversely impact on any individual.

Explanation of Provisions

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

Section 2 provides that the Determination commences on 8 July 2016. The Determination has retrospective effect, but it is beneficial in nature so does not adversely impact on any individual.
Section 3 provides that the authority for making this Determination is paragraph 8(11)(d) of the Social Security Act 1991.

Section 4 contains definitions of certain terms used in the Determination. The reference to the Point to Point Transport (Taxis and Hire Vehicles) Regulation 2016 in the definition of Taxi Reform Transitional Assistance Payment is a reference to that regulation as amended from time to time.

Section 5 specifies that a payment made to a person as a Taxi Reform Transitional Assistance Payment, is an exempt lump sum for the purposes of paragraph 8(11)(d) of the Social Security Act 1991. Such an amount will be regarded as an exempt lump sum from the date the payment is received by the person.

Consultation

This determination was made at the request of Transport for NSW, from the NSW Government.

The Department of Human Services, the Department of Veterans' Affairs and the Department of Agriculture and Water Resources have been consulted in relation to this matter.

This determination will be beneficial to persons affected as it exempts payments made under the Point to Point Transport (Taxis and Hire Vehicles) Regulation 2016 from the social security income test. As a result, public consultation was considered unnecessary.

Regulatory Impact Analysis

The Determination does not require a Regulatory Impact Statement. The Determination is not regulatory in nature, will not impact on business activity and will have no, or minimal, compliance costs or competition impact.
Statement of Compatibility with Human Rights

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


The effect of the Determination is that a person who receives a taxi reform transitional assistance payment from the NSW Government under the Point to Point Transport (Taxis and Hire Vehicles) Regulation 2016 (NSW) will not have that payment assessed as income under the social security law.

Human rights implications

This Determination is made under Section 8(11) of the Social Security Act 1991 (the Act) and determines that taxi reform transitional assistance payments from the Transport for NSW (on behalf of the NSW Government) under the Point to Point Transport (Taxis and Hire Vehicles) Regulation 2016 (NSW) will not be assessed under the social security income test for the purposes of the Act, thereby exempting such payments from the social security income test.

The Determination ensures that people receiving payments under the Point to Point Transport (Taxis and Hire Vehicles) Regulation 2016 (NSW) will not have these payments assessed as income for social security purposes.

The Determination engages the right to social security.

The right to social security

The Determination will operate beneficially as a payment under the Point to Point Transport (Taxis and Hire Vehicles) Regulation 2016 (NSW) will not be taken into account when assessing a person’s eligibility for, or rate of social security entitlements under the social security income test. If such payments were not exempted, a person in receipt of a payment under the Point to Point Transport (Taxis and Hire Vehicles) Regulation 2016 (NSW) may not be eligible for a social security payment or, if they are eligible, their rate of payment might be reduced. The Determination is therefore consistent with the promotion of the right to social security.

The exemption of payments under the Point to Point Transport (Taxis and Hire Vehicles) Regulation 2016 (NSW) from the income test on receipt does not alter the fact that any ongoing income generated by the lump sum is counted under the income test, and any assessable asset produced from the lump sum is counted under the social security assets test. This is consistent with the treatment of other lump sum payments exempted under paragraph 8(11)(d) of the Act.
Conclusion

This Determination supports a person’s human right to social security.

Anita Davis, Acting Branch Manager, International and Means Test Policy Branch, as a delegate of the Secretary of the Department of Social Services.