

EXPLANATORY STATEMENT

Social Security Exempt Lump Sum (Compensation paid by Aviva Australia) (FaCSIA) Determination 2007

Summary

Paragraph 8(11)(d) of the *Social Security Act 1991* (the Act) allows the Secretaries of the Department of Families, Community Services and Indigenous Affairs (FaCSIA), the Department of Employment and Workplace Relations and the Department of Education, Science and Training to determine that an amount, or class of amounts, is an exempt lump sum for the purpose of the Act.

This instrument provides that, for the purpose of social security payments for which the Minister for Families, Community Services and Indigenous Affairs is responsible, a 'compensation payment' is a one-off compensation payment paid by Aviva Australia to certain people whose social security payments were affected (directly or indirectly) as a result of Aviva Australia incorrectly recording the purchase price for one or more of for the following income stream products:

- i. the Navigator Personal Retirement Plan - Allocated Pension;
- ii. the Navigator Personal Retirement Plan - Growth Pension;
- iii. the PremiumChoice Retirement Service - Allocated Pension.

This 'compensation payment' is to meet any shortfall in income support payments, or repayment of debts to Centrelink for overpayments made as a result of the incorrect purchase price being assessed.

This instrument determines that a compensation payment, as defined, paid to a person is an exempt lump sum under paragraph 8(11)(d) of the Act. The compensation payment is designed to rectify a situation whereby Aviva Australia incorrectly recorded the purchase price amount on a number (approximately 500) of its customers' pension accounts resulting in an erroneous calculation of the customers' purchase price, thus incorrectly affecting these customers' income support payments. The customers did not contribute in any way to this error occurring and Aviva Australia will be responsible for identifying the affected members and advising them to provide all appropriate documentation to Centrelink for correct processing. The compensation payment does not represent receipt of money for services rendered directly or indirectly.

The effect of this instrument is that a compensation payment made by Aviva Australia will not be regarded as income under the Act. Consequently, if a recipient of a FaCSIA administered social security payment receives a compensation payment made by Aviva Australia, it will be exempt from the income test under the social security law.

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. Paragraph 8(11)(d) of the Act allows the responsible Secretary to determine that an amount, or class of amounts, 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.

This instrument determines that a compensation payment made by Aviva Australia is an exempt lump sum for the purposes of paragraph 8(11)(d) of the Act.

The effect of this instrument is that for customers receiving a compensation payment made by Aviva Australia, the amount will not be assessed as income under the social security law.

Explanation of Provisions

Part 1

Section 1 of the instrument states the name of the instrument.

Section 2 states that the instrument commences on the day after registration with the Federal Register of Legislative Instruments.

Section 3 contains interpretation provisions.

The term *compensation payment* is defined as: a one-off compensation payment paid by Aviva Australia to certain people whose social security payments were affected (directly or indirectly) as a result of Aviva Australia incorrectly recording the purchase price for one or more of the following income stream products:

- i. the Navigator Personal Retirement Plan - Allocated Pension;
- ii. the Navigator Personal Retirement Plan - Growth Pension;
- iii. the Premium Choice Retirement Service - Allocated Pension.

This compensation payment is to meet any shortfall in income support payments, or for repayment of debts to Centrelink for overpayments as a result of the incorrect purchase price being assessed by Aviva Australia.

Part 2

Subsection 4(1) states that paragraph 8(11)(d) of the Act allows the Secretary to determine that an amount, or class of amounts, received by a person is an exempt lump sum.

Subsection 4(2) provides that if a person receives a compensation payment as defined in section 3, then the compensation payment received by the person is an exempt lump sum.

Section 5 specifies that a compensation payment received by a person referred to in **subsection 4(2)** will be regarded as an exempt lump sum from the date that the amount was received by the person, provided that date is on or after the commencement of this instrument.

Consultation

The Department of Employment and Workplace Relations and the Department of Education, Science and Training were consulted during the preparation of this determination. This was done to ensure a co-ordinated and consistent approach to the income test treatment of this one-off payment for all social security payments under the Act.

This instrument is beneficial to income support customers because it exempts from the income test a compensation payment made by Aviva Australia. Public consultation was therefore seen as unnecessary.

Business Cost Calculator Figure

This exemption does not require a Regulatory Impact Statement (RIS) and/or a Business Cost Calculator Figure. This exemption is not regulatory in nature, will not impact on business activity and will have no, or minimal, compliance costs or competition impact. It is not expected that any compliance costs will be incurred by business (against the nine categories listed) as a result of this exemption.