

EXPLANATORY STATEMENT

Social Security (South Australian 'Individualised Funding') (FaHCSIA) Determination 2013

The *Social Security (South Australian 'Individualised Funding') (FaHCSIA) Determination 2013* (the **Determination**) is made under section 35A of the *Social Security Act 1991* (the **Act**).

Background

Under the social security law, all income earned, derived or received for a person's own use or benefit, is treated as income. The only exceptions are items specifically exempted from the social security income test.

Section 35A of the Act allows the Minister for Families, Community Services and Indigenous Affairs and Minister for Disability Reform 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 under paragraph 8(8)(zi) of the Act in relation to the person who is receiving care.

The program known as 'Individualised Funding' has been established by the South Australian Department for Communities and Social Inclusion to enable people with disability to have control and choice about the supports they receive from the South Australian Government. The program is intended to improve the lives of people with disability through greater choice and control in the supports they need and in achieving their goals and aspirations. The program will be available to people with disability from January 2013.

Purpose

The purpose of the Determination is to determine that the Government of South Australia's 'Individualised Funding' program is an approved personal care support scheme for the purposes of the Act.

This means that payments made under the Individualised Funding program towards the cost of personal care support services for a person, will be exempt from the social security income test in relation to social security payments for which the Minister for Families, Community Services and Indigenous Affairs and Minister for Disability Reform is responsible.

A similar instrument is being considered by the Minister for Employment and Workplace Relations and the Minister for Tertiary Education, Skills, Science and Research in relation to social security payments for which those Ministers are responsible.

The Determination is a legislative instrument and commences the day after it is registered.

Explanation of the Provisions

Section 1 states the name of the Determination.

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

Section 3 provides that 'Individualised Funding', being the program of that name established by the South Australian Department for Communities and Social Inclusion, is an approved scheme for the purposes of the Act.

Consultation

Consultation on the Determination was undertaken with the South Australian Department for Communities and Social Inclusion as well as the Department of Education, Employment and Workplace Relations, and Department of Industry, Innovation, Science, Research and Tertiary Education.

Regulatory Impact Analysis

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*

This Legislative Instrument is the *Social Security (South Australian 'Individualised Funding') (FaHCSIA) Determination 2013*

The *Social Security (South Australian 'Individualised Funding') (FaHCSIA) Determination 2013* 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 *Social Security (South Australian 'Individualised Funding') (FaHCSIA) Determination 2013* (the **Determination**) is made under section 35A of the *Social Security Act 1991* (the **Act**) and determines that the Government of South Australia's 'Individualised Funding' program is an approved personal care support scheme for the purposes of the Act, thereby exempting Individualised Funding from the social security income test.

The Individualised Funding program has been established by the South Australian Department for Communities and Social Inclusion to enable people with disability to have control and choice about the supports they receive from the South Australian Government. The program will be available to people with disability from January 2013.

The Determination ensures that people receiving Individualised Funding from the Government of South Australia will not have this funding assessed as income for social security purposes thereby ensuring that recipients retain the full value of the Individualised Funding.

Human rights implications

The Determination engages the human right: Right to social security.

The right to social security

Section 35A of the Act allows the Minister of FaHCSIA to determine that when a person receives funding provided by a personal care support scheme this funding is exempt from the social security income test in relation to social security payments for which the Minister for Families, Community Services and Indigenous Affairs and the Minister for Disability Reform is responsible. The determination is therefore beneficial to persons who receive such a social security payment.

Conclusion

The Determination under section 35A of the Act ensures that individuals receiving funding from a personal care support scheme do not have this funding assessed for income test purposes. The Determination supports their human right to social security.

**The Hon Jenny Macklin MP, Minister for Families, Community Services
and Indigenous Affairs and Minister for Disability Reform**