

## EXPLANATORY STATEMENT

### Social Security (Exempt Lump Sum) (HILDA Survey Lump Sum Participant Payment) Determination 2014

#### Summary

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. The effect of this Determination is that a payment, made to participants in the Household, Income and Labour Dynamics in Australia (HILDA) Survey by the Melbourne Institute of Applied Economics and Social Research (University of Melbourne), on behalf of DSS (the HILDA Survey Lump Sum Participant Payment), is an exempt lump sum under paragraph 8(11)(d) of the Act.

This Determination revokes the earlier Determination, *Social Security Exempt Lump Sum Determination No. 3 of 2001* (Federal Register of Legislative Instruments F2007B00276), which provided for a similar exemption for participants in the HILDA Survey, but for specific amounts of \$20 paid to an eligible person, and \$50 paid to an eligible household. These dollar amounts are no longer current. Current dollar amounts are listed on page 2.

This Determination allows for the modest “thank you” payment for participation in the HILDA Survey to continue to be exempt from the social security income test at the current and any future rate of payment.

#### Background

Under social security law, an income test and assets test applies when determining a person’s eligibility for a social security payment. The test that results in the lower rate of payment is the one that is applied to the person. Any income amount earned, derived or received for a person’s own use or benefit is generally assessable as income under the income test.

Some amounts that would otherwise be income are able to be specifically exempted under provisions in the Act.

Paragraph 8(11)(d) of the Act allows the DSS 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 excluded from the definition of “ordinary income” under subsection 8(1) of the Act, meaning the lump sum amount is not to be taken into account under the social security income test. The exemption of the HILDA Survey Lump Sum Participant Payment from the assessment of a person’s income could beneficially impact that person’s eligibility for a social security payment and, if they are eligible, the rate of the payment they are entitled to receive.

The exemption of the HILDA Survey Lump Sum Participant Payment from the income test does not mean that any ongoing income generated by the lump sum is exempt from the income test, nor does it mean that any asset produced from the lump sum is exempt from 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.

## **Household, Income and Labour Dynamics in Australia (HILDA) Survey**

The Household, Income and Labour Dynamics in Australia (HILDA) Survey is a household-based panel study which began in 2001 that collects data on an annual basis on a wide range of topics falling within three broad areas:

- Income dynamics – with a particular focus on how households respond to policy changes aimed at improving financial incentives, and interactions between changes in family status and poverty;
- Labour market dynamics – with a focus on low-to-middle income households, female participation, and work to retirement transitions; and
- Family dynamics – focusing on family formation, well-being and separation, along with post-separation arrangements for children and links between income support and family formation and dissolution.

Interviews are conducted annually with adult members of each household. Participation is voluntary. The panel household members can be followed over time.

DSS relies on accurate research data (including data made available through the HILDA Survey) to inform its business decisions. Academics and other researchers can apply to use the HILDA general release datasets for their research. Information on the HILDA Survey is available on the internet at: <http://www.melbourneinstitute.com/hilda/>

The HILDA Survey was initiated, and is funded, by the Australian Government through DSS. Responsibility for the design and management of the HILDA Survey rests with the University of Melbourne.

## **HILDA Survey Lump Sum Participant Payment**

The HILDA Survey Lump Sum Participant Payment is made by the University of Melbourne on behalf of DSS and is a one-off payment which is currently \$35 per individual participant and an additional \$35 per fully participating household (which is split between the household members). A single person household can receive both \$35 payments. The amounts are determined in negotiation between the University of Melbourne and DSS. An increase of around \$5 per payment is generally agreed every 3 or 4 years.

## **Effect of determination**

This Determination is a legislative instrument.

The Secretary of the Department of Veterans' Affairs is also making a similar instrument in relation to the payments that the Minister for Veterans' Affairs has responsibility for under the Administrative Arrangements Order. This will ensure that a HILDA Survey Lump Sum Participant Payment will continue to be an exempt lump sum for the purposes of the *Veterans' Entitlements Act 1986*.

## **Explanation of Provisions**

**Section 1** of the Determination states the name of the Determination and how it is to be cited.

**Section 2** states that the Determination commences on the day after it is registered on the Federal Register of Legislative Instruments.

**Section 3** states that the previous relevant determination, the *Social Security Exempt Lump Sum Determination No. 3 of 2001* (Federal Register of Legislative Instruments F2007B00276), is revoked.

**Section 4** contains interpretation provisions.

**Section 5** states that for paragraph 8(11)(d) of the Act a HILDA Survey Lump Sum Participant Payment is an exempt lump sum.

## **Consultation**

The Department of Veterans' Affairs was consulted regarding this exemption.

## **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*

### ***Social Security (Exempt Lump Sum) (HILDA Survey Lump Sum Participant Payment) Determination 2014***

The Legislative Instrument 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 a person who receives a payment made to participants in the Household, Income and Labour Dynamics in Australia (HILDA) Survey by the Melbourne Institute of Applied Economics and Social Research, University of Melbourne, on behalf of the Australian Government Department of Social Services (HILDA Survey Lump Sum Participant Payment) will not have that payment assessed as income under the social security law.

#### *Human rights implications*

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

The changes made by the Determination will operate beneficially as a HILDA Survey Lump Sum Participant Payment will not be taken into account when assessing a person's eligibility or rate of social security entitlements under the social security income test. If the HILDA Survey Lump Sum Participant Payment is not exempted, a person in receipt of the payment may not be eligible for a social security payment or if they are eligible, their rate of payment might be reduced.

The exemption provided by the Determination will ensure that receipt of a HILDA Survey Lump Sum Participant Payment will not be taken into account when assessing a person's eligibility or rate of social security entitlements under the social security income test and is therefore consistent with the promotion of the right to social security.

### *Conclusion*

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

**Ian Joyce, A/g Branch Manager, Seniors and Means Test Branch, as a delegate of the Secretary of the Department of Social Services.**