

EXPLANATORY STATEMENT

Social Security (Personal Care Support – NSW Lifetime Care and Support Scheme – direct funding of treatment, rehabilitation and care services) Determination 2014

Summary

This Determination provides that the NSW Lifetime Care and Support Scheme - direct funding of treatment, rehabilitation and care services, established pursuant to subsection 11A(4) of the *Motor Accidents (Lifetime Care and Support) Act 2006* of New South Wales (the MA Act), is an “approved scheme” under section 35A of the *Social Security 1991* (the Act).

A person, to whom a payment is made under the NSW Lifetime Care and Support Scheme - direct funding of treatment, rehabilitation and care services, may also receive a social security payment. The effect of this Determination is that the person will not have the payment under the NSW Lifetime Care and Support Scheme - direct funding of treatment, rehabilitation and care services taken into account for the purposes of the income test under the social security law.

Background

Under the social security law, income includes any income amount earned, derived or received for a person’s own use or benefit. However, the social security law specifically excludes some amounts from being income. Paragraph 8(8)(zi) of the Act provides that a payment towards the cost of personal care support services for the person, being a payment made under a scheme approved under section 35A, is not income for the purposes of the Act.

Section 35A of the Act allows the Minister to determine in writing that a scheme for the provision of personal care support is an ‘approved scheme’ for the purposes of the Act.

Explanation of the Determination

This Determination approves the NSW Lifetime Care and Support Scheme – direct funding of treatment, rehabilitation and care services as an ‘approved scheme’ under section 35A of the Act.

The MA Act provides for the payment of reasonable expenses for the treatment and care needs of persons injured in motor accidents. The Lifetime Care and Support Authority of New South Wales (the Authority), established under the MA Act, administers the making of payments under the Lifetime Care and Support Scheme (the Scheme) provided for by that Act. A person who has suffered a major motor accident injury may be eligible to be a participant in the Scheme in respect of the injury. The Authority has advised that the intended outcome of the MA Act is that a person who has been catastrophically injured in a motor accident is not out-of-pocket in relation to any of the expenses which he or she incurs in obtaining the services that are appropriate for his or her injury. Such services support the Scheme participant in their home and in the community.

The NSW Lifetime Care and Support Scheme – direct funding of treatment, rehabilitation and care services forms a component of the Scheme established by the MA Act. Under subsection 11A(1) of the MA Act the Authority is obliged to pay for all the reasonable expenses incurred in relation to the assessed treatment and care needs of a participant in the Scheme. As an alternative to paying those expenses as and when they are incurred, the Authority may, under subsection 11A(4) of the MA Act, pay those expenses by the payment to the participant of an amount to cover those expenses over a fixed period pursuant to an agreement between the Authority and the participant for the payment of those expenses by the participant. It is such payments that are covered by this Determination.

The NSW Lifetime Care and Support Scheme does not provide income support for persons injured in motor accidents. Instead, payments are made under the Scheme to cover the reasonable expenses incurred by or on behalf of a person while a participant in the Scheme, covering such of the treatment and care needs of the participant as relate to the motor accident injury and as are reasonable and necessary in the circumstances.

The effect of this Determination is that a person who receives the benefit of a payment under the NSW Lifetime Care and Support Scheme - direct funding of treatment, rehabilitation and care services, and who also receives a social security payment, will not have the payment under the NSW Lifetime Care and Support Scheme - direct funding of treatment, rehabilitation and care services, taken into account for the purposes of the income test under social security law.

Commencement

This Determination will commence on the day after it is registered.

Revocation of Previous Instruments

This Determination revokes two previous instruments that covered similar payments made under the NSW Lifetime Care and Support Scheme. On 26 May 2011 Chris Evans, the then Minister for Tertiary Education, Skills, Jobs and Workplace Relations made the *Social Security (NSW Lifetime Care and Support Scheme – Self-purchasing of Treatment, rehabilitation and care services (DEEWR) Determination* (Federal Register Legislative Instruments F2011L01018). On 27 May 2011 Jenny Macklin, the then Minister for Families, Housing, Community Services and Indigenous Affairs made the *Social Security (NSW Lifetime Care and Support Scheme – Self-purchasing of Treatment, rehabilitation and care services (FaHCSIA) Determination* (Federal Register Legislative Instruments F2011L00980). The Authority has indicated that following amendments made to the MA Act in 2012 these instruments do not fully cover all the kinds of services that may now be provided under the NSW Lifetime Care and Support Scheme. The new determination will rectify this situation and ensure that the determination extends to all such services.

Under the current Administrative Arrangements Order the Minister for Social Services has sole responsibility for making determinations under section 35A of the Act.

Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Consultation

This Determination is made in response to a request from the Authority.

This Determination is beneficial to income support recipients because it excludes payments made under the NSW Lifetime Care and Support Scheme - direct funding of treatment, rehabilitation and care services from being taken into account as income under the social security law. Public consultation was therefore seen as unnecessary.

Regulatory Impact

This Determination does not require a Regulatory Impact Statement, as it is not regulatory in nature, does not impact on business activity and will have no, or minimal compliance costs.

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 (Personal Care Support – NSW Government Lifetime Care and Support Scheme – direct funding of treatment, rehabilitation and care services) Determination 2014*

The *Social Security (Personal Care Support – NSW Government Lifetime Care and Support Scheme – direct funding of treatment, rehabilitation and care services) Determination 2014* (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 Determination is made under section 35A of the *Social Security Act 1991* (the **Act**) and determines that the New South Wales Government's Lifetime Care and Support Scheme – direct funding of treatment, rehabilitation and care services is an approved personal care support scheme for the purposes of the Act, thereby exempting payments received by a person under the scheme for personal care support services from the social security income test.

The Lifetime Care and Support Authority of NSW (the Authority) administers the making of payments under the NSW Lifetime Care and Support Scheme. A person who has suffered a major motor accident injury may be eligible to be a participant in the Scheme in respect of the injury. The intended outcome of the Scheme is that a person is not out-of-pocket in relation to any of the expenses which he or she incurs in obtaining the services which are appropriate for his or her injury.

As an alternative to the Authority paying for the participant's expenses as and when they are incurred, the Authority may pay an amount to the participant to cover those expenses over a fixed period, pursuant to an agreement between the Authority and the participant for the payment of those expenses by the participant.

The Determination ensures that people receiving direct funding under the Lifetime Care and Support Scheme – direct funding of treatment, rehabilitation and care services for the cost of personal care support services will not have this funding assessed as income for social security purposes.

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 for Social Services 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 Social Services 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 for personal care support services from the approved personal care support scheme do not have this funding assessed for income test purposes. The Determination supports their human right to social security and is compatible with the applicable rights and freedoms.

The Hon Kevin Andrews MP, Minister for Social Services