**EXPLANATORY STATEMENT**

*Social Security Act 1991*

*Social Security (Exempt Lump Sum – New South Wales Additional Assistance Hire Vehicle Payment) Determination 2017*

**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 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. The *Social Security (Exempt Lump Sum – Taxi Reform Transitional Assistance Payment) Determination 2016* was made as part of the first stage of the industry adjustment assistance package. The Additional Assistance Hire Vehicle Payment forms the second stage of the package. As part of the industry reforms, hire vehicle licences are no longer required in order to provide a hire vehicle service. Therefore the Additional Assistance Hire Vehicle Payment is essentially a licence buy-back scheme. The New South Wales Government has dedicated up to $10 million to reimburse eligible hire vehicle licence holders for their perpetual hire vehicle licence.

This Determination provides that an Additional Assistance Hire Vehicle Payment is an exempt lump sum for the purpose of paragraph 8(11)(d) of the Act.

The effect of this Determination is such that 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.

**Explanation of the provisions**

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

**Section 2** provides that the Determination commences on 1 November 2017, being the first day on which an application for a payment can be made.

**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, including the definition of an Additional Assistance Hire Vehicle Payment. This is defined as a payment made by the New South Wales Government under Schedule 3 of the *Point to Point Transport (Taxis and Hire Vehicles) Act 2016 No 34* (NSW). The *Point to Point Transport (Taxis and Hire Vehicles) Act 2016 No 34* (NSW) is available at: http://www.legislation.nsw.gov.au.

These payments are one off payments to holders of a hire vehicle licence who have been affected as a result of structural changes in the taxi and hire vehicle service industry. A minimum payment of $30,000 will be made for perpetual hire vehicle licences outside of Sydney, and $80,000 for licences within Sydney. Single licence payments could be as high as $235,000 with total payments for all licences held by an individual party as high as $418,000.

**Section 5** specifies that a payment made to a person as an Additional Assistance Hire Vehicle 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 the New South Wales Government Transport for NSW.

The Departments of Human Services, Veterans’ Affairs and Agriculture and Water Services have been consulted about this determination.

This Determination will be beneficial to persons affected as it exempts a New South Wales Additional Assistance Hire Vehicle Payment from the social security income test. As a result, public consultation was considered unnecessary.

**Regulation Impact Statement (RIS)**

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 – New South Wales Additional Assistance Hire Vehicle Payment) Determination 2017***

The effect of the Determination is that a person who receives a hire vehicle additional assistance payment from the NSW Government under Schedule 3 of the NSW *Point to Point Transport (Taxis and Hire Vehicles) Act 2016* 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 additional assistance hire vehicle payments from the Transport for NSW (on behalf of the NSW Government) under Schedule 3 of the *Point to Point Transport (Taxis and Hire Vehicles) Act 2016 No 34* (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 Schedule 3 of the *Point to Point Transport (Taxis and Hire Vehicles) Act 2016 No 34* (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 Schedule 3 of the *Point to Point Transport (Taxis and Hire Vehicles) Act 2016 No 34* (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 Schedule 3 of the *Point to Point Transport (Taxis and Hire Vehicles) Act 2016 No 34* (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 Schedule 3 of the *Point to Point Transport (Taxis and Hire Vehicles) Act 2016 No 34* (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, Branch Manager, Payability and Integrity, as a delegate of the Secretary of the Department of Social Services.**