**EXPLANATORY STATEMENT**

Issued by the authority of the Minister for Families and Social Services

*Social Security Act 1991*

*Social Security (Approved Scholarship – Association of Mouth and Foot Painting Artists, Liechtenstein) Determination 2018*

**Purpose**

The purpose of the *Social Security (Approved Scholarship – Association of Mouth and Foot Painting Artists, Liechtenstein) Determination 2018* (the Determination) is to exempt the payment of the approved scholarship administered in Liechtenstein and awarded by the Association of Mouth and Foot Painting Artists, Liechtenstein to student members who receive these scholarships.

These scholarships are for the sole purpose of allowing student members to improve their artistic ability and are provided to pay for education, supplies and equipment. The scholarships are not intended to be used, either partly or wholly, for the purposes of meeting the student’s living expenses.

In addition to the power to make this Determination under subsection 24A of the Act, subsection 33(3) of the *Acts Interpretation Act 1901* provides that 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. Accordingly, the *Social Security Act 1991 – Notice under subsection 24A(1) – Instrument 92/92-30* will be repealed by this Determination.

**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.

Subsection 8(1) of the *Social Security Act 1991* (the Act) provides income test definitions and defines ***approved scholarship*** as ‘a scholarship in relation to which a determination under section 24A is in force’. Under section 24A of the Act, the Minister may determine in writing that a scholarship, or a class of scholarships that is:

1. awarded outside Australia; and
2. not intended to be used wholly or partly to assist recipients to meet living expenses;

is an approved scholarship, or a class of approved scholarships, as the case may be, for the purposes of the Act.

Subsection 8(8) of the Act, in turn, provides for amounts which are not income for the purposes of the Act. Accordingly, under paragraph 8(8)(zj), a payment of an approved scholarship awarded on or after 1 September 1990 is not income for the purposes of the Act and therefore not to be taken into account under the social security income test.

**Commencement**

The instrument commences on the day after it is registered.

**Consultation**

The Department has consulted with the Department of Veterans' Affairs, the Department of Agriculture and Water Resources and the Association of Mouth and Foot Painting Artists regarding this determination.

The Determination is beneficial to social security payment recipients because it exempts the provision of this scholarship from the Association of Mouth and Foot Painting Artists, Liechtenstein from the social security income test. Public consultation was therefore seen as unnecessary.

**Regulatory Impact Analysis**

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.

**Explanation of provisions**

**Section 1** of the instrument states the name of the determination is the *Social Security (Approved Scholarship – Association of Mouth and Foot Painting Artists, Liechtenstein) Determination 2018*.

**Section 2** states that the determination commences on the day after it is registered.

**Section 3** provides that the determination is made under section 24A of the *Social Security Act 1991*.

**Section 4** defines Act as the *Social Security Act 1991.*

**Section 5** provides that each instrument specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

**Section 6** provides that the scholarship awarded by the Association of Mouth and Foot Painting Artists, Liechtenstein for the sole purpose of recipients improving their artistic ability and used only for education, supplies and equipment is an approved scholarship for the purposes of the Act.

**Schedule 1 – Repeals**

**Item 1** repeals the *Social Security Act 1991 – Notice under subsection 24A(1) – Instrument 92/92-30.*

**Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

***Social Security (Approved Scholarship – Association of Mouth and Foot Painting Artists, Liechtenstein) Determination 2018***

The *Social Security (Approved Scholarship – Association of Mouth and Foot Painting Artists, Liechtenstein) Determination 2018* (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**

This Determination is made under Section 24A of the *Social Security Act 1991* (the Act) and determines that the Scholarship – Association of Mouth and Foot Painting Artists, Liechtenstein is an approved scholarship for the purposes of the Act, thereby exempting these scholarship payments received by the person from the social security income test.

The Determination ensures that people receiving assistance, which is for education, supplies and equipment, from the scholarship awarded by the Association of Mouth and Foot Painting Artists, Liechtenstein will not have this assistance assessed as income for social security purposes.

**Human rights implications**

The Determination engages the right to social security.

Section 24A of the Act allows the Minister for Families and Social Services to determine that when a person receives assistance from a scholarship this assistance is exempt from the social security income test in relation to social security payments for which the Minister for Families and Social Services is responsible. The Determination is therefore beneficial to persons who receive such a social security payment.

**Conclusion**

This Determination ensures that individuals receiving assistance, which is for education, supplies and equipment, from the scholarship awarded by the Association of Mouth and Foot Painting Artists, Liechtenstein do not have this assistance assessed for income test purposes ensuring that the receipt of the scholarship does not reduce the amount of income support payments they may receive. The Determination supports their human right to social security and is therefore compatible with human rights.

**The Hon Paul Fletcher MP, Minister for Families and Social Services**