

## **EXPLANATORY STATEMENT**

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

*Social Security Act 1991*

*Social Security (Lifetime Support Authority of South Australia's Self-Directed Supports Program) Determination 2018*

### **Purpose**

The purpose of this instrument is that participants who receive direct payments from the *Lifetime Support Authority of South Australia's Self-Directed Supports Program*, and who also receive an Australian social security payment, will not have this assistance taken into account for the purposes of the social security income test.

Section 35A of the *Social Security Act 1991* (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. This instrument determines that payments made directly to provide for no-fault lifetime care and support of people who have been catastrophically injured in a motor vehicle accident in South Australia by the *Lifetime Support Authority of South Australia's Self-Directed Supports Program* is an 'approved scheme' under section 35A.

### **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.

In particular, section 35A of the Act allows the Minister 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 in relation to the person who is receiving care under paragraph 8(8)(zi) of the Act.

### **Commencement**

The instrument commences on the day after it is registered.

## **Consultation**

This instrument is made in respect to a request from the Hon Stephen Wade MLC, the Minister for Health and Wellbeing in South Australia.

The Department has consulted with the Department of Veterans' Affairs and the Department of Agriculture and Water Resources regarding this instrument.

Public consultation was considered unnecessary because the instrument is beneficial to social security payment recipients by exempting payments under the *Lifetime Support Authority of South Australia's Self-Directed Supports Program* from the social security income test.

## **Regulatory Impact Statement**

This instrument 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 the provisions**

### Section 1

Section 1 provides how the instrument is to be cited, that is, as the *Social Security (Lifetime Support Authority of South Australia's Self-Directed Supports Program) Determination 2018*.

### Section 2

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

### Section 3

Section 3 provides that the authority for making this instrument is section 35A of the *Social Security Act 1991*.

### Section 4

Section 4 provides that the *Lifetime Support Authority of South Australia's Self-Directed Supports Program* is an approved scheme for the purposes of paragraph 8(8)(zi) of the Act and that this program is established under the *Motor Vehicle Accidents (Lifetime Support Scheme) Act 2013* (SA).

## **Statement of Compatibility with Human Rights**

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

### **Social Security (Lifetime Support Authority of South Australia's Self-Directed Supports Program) Determination 2018**

The 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 Determination is made under section 35A of the *Social Security Act 1991* (the Act) and determines that the *Lifetime Support Authority of South Australia's Self-Directed Supports Program* is an approved personal care support scheme for the purposes of the Act, thereby exempting payments received by the person from the Program from assessment under the social security income test.

The Lifetime Support Authority of South Australia's Self-Directed Supports Program provides:

- direct payments to individuals for all necessary and reasonable expenses incurred for the assessed treatment, care and support needs of people who are catastrophically injured in a motor vehicle accident in South Australia, and
- as an alternative to paying treatment, care and support expenses, an amount over a fixed period under an agreement with the participant.

#### **Human rights implications**

The Determination engages the right to social security.

Section 35A of the Act allows the Minister for Families and Social Services to determine that when a person receives funding from 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 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 funding from the *Lifetime Support Authority of South Australia's Self-Directed Supports Program*, as an approved personal care support scheme, do not have this assistance assessed for income test purposes, and thus ensures that the amount of income support payments they may receive is not reduced. 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**