

## **EXPLANATORY STATEMENT**

### *Social Security (Exempt Lump Sum – Disability Support Pension Compensation Grant Program) Determination 2020*

#### **Purpose**

Paragraph 8(11)(d) of the *Social Security Act 1991* (the **Act**) allows the Secretary of the Department of Social Services (**DSS**) to determine, by legislative instrument, that an amount or class of amounts received by a person is an exempt lump sum for the purposes of the Act.

The Secretary of DSS has delegated the power to determine an exempt lump sum or class of exempt lump sums to Branch Managers within DSS.

The effect of the *Social Security (Exempt Lump Sums – Disability Support Pension Compensation Grant Program) Determination 2020* (the **instrument**) is that a payment made to individuals under the Disability Support Pension (**DSP**) Compensation Grant Program is an exempt lump sum.

#### **Background**

Under the social security law, an income test is used to determine a person's eligibility for a social security payment and, if they are eligible, the rate of a social security payment that is payable. Income received for a person's own use or benefit is generally assessable. However, some amounts that would otherwise be income are specifically exempted.

Paragraph 8(11)(d) of the Act allows the Secretary of DSS 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 DSP Compensation Grant Program provides financial support to athletes whose DSP payments have been affected due to their travel outside Australia to attend training or a competition in order to prepare as a competitor for the Summer and Winter Paralympic Games. This scheme recognises that athletes may have international sporting commitments that may require them to be absent from Australia for a period exceeding the maximum portability period of their payments.

#### **Portability rules for DSP recipients**

Under Item 2 of subsection 1217(4) of the Act, DSP recipients are ordinarily permitted to travel overseas for up to 28 days in a rolling 12 month period without affecting their payments. Some DSP recipients may also be eligible to seek an approved temporary absence under Item 2AA of subsection 1217(4) of the Act, which would allow them to travel for up to four weeks each year. This portability arrangement can be used instead of the recipient's ordinary portability period, or applied to extend a recipient's maximum portability period if a recipient is absent from Australia for more than 4 weeks.

Athletes receiving DSP will generally be granted an approved temporary absence to train for and compete in the Paralympic Games on the basis that their absence is for a 'humanitarian purpose'. The *Social Security Regulation 2012*, as amended by the *Social Security Amendment Regulation 2016 (No. 1)*, extends the meaning of a 'humanitarian purpose' under section 1212B of the Act to include participating in the Paralympic Games as a competitor or attending an event as an athlete, where the attendance is necessary to prepare or qualify as a competitor, within the 12 months leading up to the Games.

However, if an athlete is required to travel overseas to train or compete, in excess of the portability period for their DSP payments, their payments will be suspended after their maximum portability period has lapsed.

### DSP Compensation Grant Program

Under the DSP Compensation Grant Program, a person may claim an amount of funding that represents the amount of DSP payments they have forgone as a result of exceeding their travel allowance due to international sporting commitments. Each eligible person may claim one payment for each of financial year 2019/20 to financial year 2022/23, in respect of affected DSP payments in the financial year 2018/19 to financial year 2021/22. However, the final grant amount offered to a successful applicant is wholly discretionary and may not reflect the amount claimed.

The Australian Institute of Sport (**AIS**) will process applications and administer the payments on behalf of the Australian Sports Commission. The AIS has published guidelines in relation to how applications will be assessed.

As a person who is eligible for DSP Compensation Grant Program payments will also be a DSP recipient, this instrument provides that if a DSP recipient receives such a payment, it will be exempt from the social security income test.

For completeness, the exemption of payments in relation to the DSP Compensation Grant Program from the income test on receipt does not alter the fact that any ongoing income generated by the lump sum is not exempt from the income test. This is consistent with the treatment of other lump sum payments under paragraph 8(11)(d) of the Act.

### **Commencement**

The instrument commences on the day after it is registered.

### **Consultation**

The AIS is the agency responsible for administering payments under the DSP Compensation Grant Program, and was consulted during the preparation and drafting of this instrument.

The Department of Agriculture and the Department of Veterans' Affairs were notified of this instrument as this income test exemption may affect payments administered by those agencies. Public consultation was not undertaken due to the beneficial nature of the instrument.

## Regulation Impact Statement (RIS)

This instrument does not require a Regulatory Impact Statement. This instrument is not regulatory in nature will not impact on business activity and will have no, or minimal, compliance costs or competition impact (OBPR ID: 26235).

## Explanation of the provisions

### Section 1

This section states the name of the instrument.

### Section 2

This section states that the instrument commences on the day after registration.

### Section 3

This section states that the instrument is made under paragraph 8(11)(d) of the Act.

### Section 4

This section provides definitions for terms used in the instrument.

There is a note in this section that indicates the expression *exempt lump sum*, as used in this instrument, is defined in subsection 8(11) of the Act.

In the instrument:

**Act** means the *Social Security Act 1991*.

**ASC** means the Australian Sports Commission.

**Disability Support Pension Compensation Grant Program** means the program under which a payment is made by the ASC to a person in respect of an amount of DSP the person has not received as a result of travelling overseas to attend training or a competition in order to prepare as a competitor for the international athletic competition known as the Paralympic Games.

**relevant amount** means, in relation to a person, an amount received by the person from the ASC under the Disability Support pension Compensation Grant Program.

### Section 5

This section states that payments made under the DSP Compensation Grant Program are a class of amounts determined by a delegate of the Secretary of DSS to be an exempt lump sum for the purposes of social security law. This means that a DSP Compensation Grant Program payment will not be considered 'income' for the purposes of the social security income test.

## **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 – Disability Support Pension Compensation Grant Program) Determination 2020**

The Social Security (Exempt Lump Sum – Disability Support Pension Compensation Grant Program) Determination 2020 (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**

Under the Disability Support Pension (DSP) Compensation Grant Program, eligible recipients will be provided a one-off payment by the Australian Institute of Sport (AIS) where their DSP has been affected due to their travel outside Australia to attend training or a competition in preparation for the Paralympic Games. This instrument ensures that recipients of a payment under this program will not have their payments assessed as income under the social security law.

#### **Human rights implications**

The instrument 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 instrument also engages with the rights of persons with disabilities under a number of Articles, including Articles 3, 25, 27, 30 in the Convention on the Rights of Persons with Disabilities (CRPD). The CRPD recognises the barriers that persons with disabilities may face in realising their rights. While the rights under all human rights treaties apply to everyone, including persons with disabilities, the CRPD applies human rights specifically to the context of persons with disabilities. The DSP Compensation Grant Program promotes the rights of people with disabilities in Australia by providing support to help them realise their aspirations, and to participate in the social and economic life of the community.

The instrument will operate beneficially as payments in relation to the DSP Compensation Grant Program 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 these payments were not exempted, a person in receipt of these payments may not be eligible for social security payment or, if they are eligible, their rate of payment might be reduced. This also advances the protection of the rights of persons with disabilities in Australia by supporting their ability to participate in, and

contribute to, social and economic life to the extent of their ability. The instrument is therefore consistent with the promotion of the right to social security and specific rights afforded to people with disabilities.

The exemption of payments in relation to the DSP Compensation Grant Program from the income test on receipt does not alter the fact that any ongoing income generated by the lump sum is not exempt from the income test. This is consistent with the treatment of other lump sum payments under paragraph 8(11)(d) of the Act.

### **Conclusion**

The instrument is compatible with human rights as it supports a person's right to social security.

**Andrea Wallace-Green, Acting Branch Manager, Older Australians Branch,  
Pensions Group, as delegate of the Secretary of the Department of Social  
Services**