

EXPLANATORY STATEMENT

Issued by the authority of the Secretary of the Department of Social Services

Social Security Act 1991

*Social Security (Exempt Lump Sum – NSW Taxi Licence Deregulation)
Determination 2023*

Purpose

Paragraph 8(11)(d) of the *Social Security Act 1991* (**Act**) allows the Secretary of the Department of Social Services, or their delegate, to determine by legislative instrument that an amount, or class of amounts, received by a person is an exempt lump sum under social security law, and do not count under the income test.

The *Social Security (Exempt Lump Sum – NSW Taxi Licence Deregulation) Determination 2023* (**Determination**) provides that a payment of a NSW taxi transitional assistance payment is an exempt lump sum for the purposes of paragraph 8(11)(d) of the Act.

Background

Income earned, derived or received for a person's own use or benefit is generally assessable as income under social security law. An amount, or class of amounts, received by a person may be specifically exempt under paragraph 8(11)(d) of the Act. This paragraph allows the Secretary or their delegate to determine that an amount or class of amounts is an exempt lump sum.

An exempt lump sum is excluded from the definition of 'ordinary income' under subsection 8(1) of the Act, meaning the exempt lump sum amount is not taken into account as part of the social security income test.

The exemption of a lump sum payment from the income test does not alter the fact that any ongoing income generated, or any assessable asset produced, by the lump sum is counted under the social security income or assets tests.

NSW Government further financial assistance scheme for taxi licence owners

On 16 December 2022, the NSW Government published the *Point to Point Transport (Taxis and Hire Vehicles) Amendment Regulation 2022*. The amendment regulation amends the *Point to Point Transport (Taxis and Hire Vehicles) Regulation 2017* (NSW) (**the Regulations**), and establishes the detail of a financial assistance scheme for eligible taxi licence owners to adapt to the deregulation of taxi licence supply.

Under the financial assistance scheme, persons eligible for payments are owners:

- (a) of a NSW ordinary taxi licence as defined in the *Point to Point Transport (Taxis and Hire Vehicles) Act 2016* (NSW) except for owners of short-term, nexus, paired (wheelchair accessible taxi), or annual licences; and
- (b) who have owned an eligible licence on 21 September 2022 and continue to own that licence at the start of the transition period, being 1 February 2023.

Eligible licence owners will be able to submit applications for further transitional assistance through the Transport for NSW website, and receive payments in connection with the cancellation of their ordinary taxi licences. Payments will be between \$40,000 and \$195,000 for each licence, depending on the operating area for the licence.

The Determination provides that amounts paid in relation to this financial assistance scheme are exempt lump sums for the purposes of paragraph 8(11)(d) of the Act

The eligibility requirements and detail on the payments can be found in the amendment regulation on the Legislation NSW website – <https://legislation.nsw.gov.au/view/pdf/asmade/sl-2022-807>.

Commencement

The Determination commences on the day after it is registered.

Consultation

The Department of Social Services consulted the following agencies on the intention to make this legislative instrument:

- The Government of New South Wales, Transport for New South Wales;
- The Department of Agriculture, Fisheries and Forestry; and
- The Department of Veterans' Affairs.

The Government of New South Wales, Transport for New South Wales were also consulted on the text of the instrument.

Regulation Impact Statement (RIS)

The Office of Impact Analysis (**OIA**) has advised that the Determination does not require a Regulation Impact Statement (OIA Reference: OBPR23-04165) as it considers the proposal is unlikely to have a more than minor regulatory impact.

Availability of independent review

The Determination specifies that lump sum payments made under the Guidelines are exempt from the social security income test.

A decision on the assessment of an individual's income as part of the social security income test, which may involve a payment covered by this Determination, is subject

to internal and external review under the Act and Parts 4 and 4A of the *Social Security (Administration) Act 1999*.

The Determination is a legislative instrument for the purposes of the *Legislation Act 2003* and is subject to disallowance.

Explanation of the provisions

Section 1 states that the name of the Determination is the *Social Security (Exempt Lump Sum – NSW Taxi Licence Deregulation) Determination 2023*.

Section 2 sets out that the Determination commences on the day after it is registered on the Federal Register of Legislation.

Section 3 provides that the authority for making the Determination is paragraph 8(11)(d) of the Act.

Section 4 lists definitions of terms used in the Determination.

NSW taxi transitional assistance payment means a lump sum payment made to a person in accordance with the *Point to Point Transport (Taxis and Hire Vehicles) Regulation 2017* (NSW) for further transitional assistance funds.

further transitional assistance funds has the same meaning as in Schedule 3 to the *Point to Point Transport (Taxis and Hire Vehicles) Act 2016* (NSW), which is money for the purposes of payments, in connection with the cancellation of ordinary taxi licences, to persons who meet the criteria for eligibility established under Schedule 3 to the Act.

Section 5 states that for the purposes of paragraph 8(11)(d) of the Act, the gross amount of a NSW taxi transitional assistance payment made under the Regulations is an exempt lump sum.

Section 6 means that the determination will apply to the calculation of the rate of social security payment payable for days on or after 1 February 2023. Together with section 5, this provision has some beneficial prospective operation. As the retrospectivity is only beneficial, it is consistent with subsection 12(2) of the *Legislation Act 2003*.

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 – NSW Taxi Licence Deregulation) Determination 2023

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 effect of the *Social Security (Exempt Lump Sum – NSW Taxi Licence Deregulation) Determination 2023* (**Determination**) is that a person who receives a payment under the *Point to Point Transport (Taxis and Hire Vehicles) Regulation 2017* (NSW) (**Regulations**) for further transitional assistance will not have that payment assessed as income under the social security law.

Human rights implications

The Determination engages the right to social security under Article 9 of the International Covenant on Economic, Social and Cultural Rights. 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, foodstuff, and the most basic forms of education.

The Determination will operate beneficially as payments under the Regulations 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 payments under the Regulations are not exempted, a person in receipt of that payment 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 the Regulations 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, 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 under paragraph 8(11)(d) of the *Social Security Act 1991*.

Conclusion

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

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