

EXPLANATORY STATEMENT

Social Security (Personal Care Support - Queensland Your Life Your Choice Self-Directed Support: Host Providers and Direct Payment) (FaHCSIA) Determination 2013

This Determination provides that the Queensland Government's Your Life Your Choice Self-Directed Support: Host Providers and Direct Payment is an 'approved scheme' under section 35A of the *Social Security Act 1991* (the Act).

Background

Under the social security law, income includes any income amount earned, derived or received for a person's own use or benefit. However, the social security law specifically excludes some amounts from being recognised as income for the purposes of social security law. Paragraph 8(8)(zi) of the Act provides that a payment towards the cost of personal care support services for the person, being a payment made under a scheme approved under section 35A, is not income for the purposes of the Act.

Section 35A of the Act allows the relevant Minister to determine that a scheme for the provision of personal care support is an 'approved scheme' for the purposes of the Act.

The scheme known as Your Life Your Choice Self-Directed Support: Host Providers and Direct Payment has been established under the Your Life Your Choice Self-Directed Support Framework by the Queensland Department of Communities, Child Safety and Disability Services to allow a person with a disability to purchase disability services and supports with their disability funding under the direct payment model or the host provider model. Under the direct payment model, a person with a disability would receive direct payments from the Queensland Department of Communities, Child Safety and Disability Services to spend on disability services and supports. Under the host provider model, it is possible for the person with a disability to receive payments from the host provider to spend on disability services and supports. These payments are not intended as income, or to be used as an income source for the person. It is expected that payments to individuals under the direct payment model may commence from 1 July 2013.

Purpose

The purpose of the Determination is to determine that the Queensland Government's Your Life Your Choice Self-Directed Support: Host Providers and Direct Payment is an approved personal care support scheme for the purposes of the Act.

A person for whom a payment is made under the scheme may also receive a social security payment. The effect of this Determination is that the person will not have the payment received taken into account for the purposes of the income test under the social security law to the extent that the payment is for the cost of personal care support services for the person. This would ensure that the receipt of payments for personal care support services under the scheme would not have the unintended effect of reducing a person's entitlement to any social security payment because of the operation of the income test.

This Determination has effect in relation to social security payments within the portfolio responsibility of the Minister for Families, Community Services and Indigenous Affairs and Minister for Disability Reform.

Explanation of the Provisions

Section 1 states the name of the Determination.

Section 2 provides that the Determination commences on the day after registration.

Section 3 provides that the Your Life Your Choice Self-Directed Support: Host Providers and Direct Payment, being a scheme of that name established by the Queensland Department of Communities, Child Safety and Disability Services is an approved scheme for the purposes of the Act.

Consultation

This Determination was made in response to a request from the Queensland Department of Communities, Child Safety and Disability Services.

Consultation on the Determination was undertaken with the Department of Education, Employment and Workplace Relations, and Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education.

Public consultation was considered to be unnecessary as this determination is purely beneficial in character.

Regulatory Impact Analysis

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

This Legislative Instrument is the *Social Security (Personal Care Support – Queensland Your Life Your Choice Self-Directed Support: Host Providers and Direct Payment) (FaHCSIA) Determination 2013*

The *Social Security (Personal Care Support – Queensland Your Life Your Choice Self-Directed Support: Host Providers and Direct Payment) (FaHCSIA) Determination 2013* 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 *Social Security (Personal Care Support – Queensland Your Life Your Choice Self-Directed Support: Host Providers and Direct Payment) (FaHCSIA) Determination 2013* (the **Determination**) is made under section 35A of the *Social Security Act 1991* (the **Act**) and determines that the Queensland Government's Your Life Your Choice Self-Directed Support: Host Providers and Direct Payment is an approved personal care support scheme for the purposes of the Act, thereby exempting payments received by a person under the scheme from the social security income test.

The Your Life Your Choice Self-Directed Support: Host Providers and Direct Payment has been established under the Your Life Your Choice Self-Directed Support Framework by the Queensland Government Department of Communities, Child Safety and Disability Services to allow a person with a disability to purchase disability services and supports with their disability funding under the direct payment model or the host provider model. Payments to individuals under the direct payment model are expected to commence from 1 July 2013.

The Determination ensures that people receiving funding under the direct payment model or the host provider model will not have this funding assessed as income for social security purposes.

Human rights implications

The Determination engages the human right: Right to social security.

The right to social security

Section 35A of the Act allows the Minister for Families, Community Services and Indigenous Affairs and the Minister for Disability Reform to determine that when a person receives funding provided by 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, Community Services and Indigenous Affairs and the Minister for Disability Reform is responsible. The determination is therefore beneficial to persons who receive such a social security payment.

Conclusion

The Determination under section 35A of the Act ensures that individuals receiving funding from a personal care support scheme do not have this funding assessed for income test purposes. The Determination supports their human right to social security.

**The Hon Jenny Macklin MP, Minister for Families, Community Services
and Indigenous Affairs, Minister for Disability Reform**