EXPLANATORY STATEMENT

Veterans’ Entitlements Income (Exempt Lump Sum – Tasmanian Government Stolen Generations of Aboriginal Children) Determination

Instrument No. R11/2008

Paragraph 5H(12)(c) of the Veterans’ Entitlements Act 1986

The Purpose and Operation of the Attached Instrument
A payment is deemed not to be ordinary income for means-testing under the Veterans’ Entitlements Act 1986 (VEA) once it is stated to be an exempt lump sum by a determination under paragraph 5H(12)(c) of the VEA. The amount specified in the attached Determination at Part 2 of the Schedule as an exempt lump sum is an exempt lump sum for the purposes of the definition of ‘ordinary income’ in subsection 5H(1) of the VEA.

The attached instrument provides for the exemption of these payments from the income assessment of the person’s or the person’s partner’s service pension or income support supplement.

Background
The Stolen Generations of Aboriginal Children Act 2006 (Tas) (the Tasmanian Act) was passed unanimously by all members of the Tasmanian State Parliament in November 2006. The Tasmanian Act enables payments to be made to living members of the stolen generations of Aborigines removed from their families as children by the State Government. Further, the Tasmanian Act enables children from deceased members of the stolen generations to apply for a payment.

The State of Tasmania determined who was eligible for an ex-gratia payment in accordance with its own criteria, including the criteria noted above. The Stolen Generations Fund was to be administered by the Tasmanian Department of Premier and Cabinet with a sum of five (5) million dollars to be paid into the fund from the Tasmanian Consolidated Fund. An Assessor was appointed to decide all applications for ex-gratia payments made under the Tasmanian Act and which were paid from the Fund.

Under the Tasmanian Act, a Stolen Generations Fund (the Fund) of five (5) million dollars was established for payment to members of the stolen generations. The criteria for payment to be made from the fund include:

- Children of deceased members of the stolen generations were eligible for a payment of up to $5,000.00 with a maximum of $20,000.00 to be paid per eligible family group of children. The Tasmanian Department of Premier and Cabinet has advised that twenty two applicants satisfied the criteria for children of a deceased member of the stolen generations and a total payment of $100,000.00 was made to this group.
As provided under the Tasmanian Act, the balance of the Fund was then equally shared among other successful applicants. The Tasmanian Department of Premier and Cabinet has advised that one hundred and four persons were considered eligible and each claimant received a payment of $58,333.33.

These payments are designed to acknowledge the hurt and distress suffered by eligible Aboriginal persons who have been admitted or declared a ward of the State or Child of the State under relevant Tasmanian legislation or have been removed from his/her family with the active intervention of a State Agency without the approval or following undue pressure or duress. The ex-gratia payment does not represent a receipt of money for services rendered directly or indirectly.

The Secretary of the Tasmanian Department of Premier and Cabinet has already issued the payments to eligible persons from the Fund. Some persons receiving payments were in receipt of income support and included Age Pensioners and students as well as persons of working age.

The effect of this instrument is that people who are in receipt of an income support pension under the VEA will not have their income support payment reduced because of receiving a one-off **ex-gratia payment** of up to $5,000 (with a maximum of $20,000 per family group of children) or a sum of money paid out of the Stolen Generations Fund by the Secretary of the Tasmanian Department of Premier and Cabinet under the Tasmanian Act because an **ex-gratia payment** will not be regarded as income for the purposes of the VEA income test.

**Consultation**
In the interest of consistency of approach, the Department has worked closely with the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) to ensure that the attached instrument has the same effect as a similar instrument executed under the social security law.

The attached instrument is beneficial to eligible Department of Veterans' Affairs income support recipients because it exempts from the VEA income test an **ex-gratia payment** made by the Secretary of the Tasmanian Department of Premier and Cabinet under the Tasmanian Act. Public consultation was therefore seen as unnecessary.