EXPLANATORY STATEMENT

Social Security (Exempt Lump Sum) (Stolen Wages Reparation Scheme WA) (DIISRTE) Determination 2012

Summary

Paragraph 8(11)(d) of the Social Security Act 1991 (the Act) allows the Secretary of the Department of Industry, Innovation, Science, Research and Tertiary Education (DIISRTE) to determine that an amount received by a person is an exempt lump sum for the purposes of the social security law.

The effect of this Determination is that, for the purpose of social security payments for which the Minister for Tertiary Education, Skills, Science and Research is responsible, a one-off lump sum ex gratia payment of $2,000 made by the Western Australian Department of Indigenous Affairs under the Stolen Wages Reparation Scheme WA (the Scheme), which was announced by the Government of Western Australia on 7 March 2012, is an ‘exempt lump sum’ under subsection 8(11) of the Act.

By determining that a payment made under the Scheme is an exempt lump sum for the purposes of the social security law, the payment will not be considered as income when assessing a person’s qualification for, and the payability of, a social security payment.

Background

Under the social security law, all income earned, derived or received for a person’s own use or benefit, is generally assessable as income. However, some amounts, that would otherwise be income, are specifically exempted from the social security income test. Paragraph 8(11)(d) of the Act allows the Secretary 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. As a result, any such amount is not to be taken into account under the social security income test.

On 7 March 2012 the Government of Western Australia announced the Scheme which provides for the payment of a one-off lump sum ex gratia payment of $2,000 to eligible individuals. Eligibility for the ex gratia payment will be assessed by the Western Australian Department of Indigenous Affairs. Individuals eligible for the Scheme include:

- Aboriginal or Torres Strait Islanders born prior to 1958;
- Were 14 years or older when they were residents of a Government Native Welfare settlement;
• Had all or part of their income controlled by the Western Australian State Government; and

• Have never been repaid any of the outstanding monies owed by the State Government.

The ex gratia payment is not a payment of money for services rendered directly or indirectly. Rather, the ex gratia payment is compensatory in nature and will be paid as an expression of regret on behalf of the Western Australian State Government for past mistreatment experienced by these individuals from 1905 to 1972.

The application process for the Scheme is administered by the Western Australian Department of Indigenous Affairs on behalf of the State Government of Western Australia. The applications process for the Scheme started on 7 March 2012 and will remain open until 6 September 2012. Payments from the Scheme are to be made to individuals once the Western Australian Department of Indigenous Affairs assessors have approved the application.

This instrument determines that a one-off lump sum ex gratia payment of $2,000 made by the Western Australian Department of Indigenous Affairs to a person under the Scheme, will not be regarded as income under the Act. Consequently, if a recipient of a DIISRTE administered social security payment receives a payment made under the Scheme, that payment will be exempt from the income test under the social security law.

The Secretary of the Department of Education, Employment and Workplace Relations (DEEWR) will make a complementary Determination in relation to social security payments that the Minister for Employment and Workplace Relations has responsibility for under the Administrative Arrangements Order.

The Secretary of the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) will make a complementary Determination in relation to social security payments that the Minister for Families, Community Services and Indigenous Affairs and Minister for Disability Reform has responsibility for under the Administrative Arrangements Order.

The Secretary of the Department of Veterans’ Affairs (DVA) will make a complementary Determination in relation to income support payments that the Minister for Veterans’ Affairs has responsibility for under the Administrative Arrangements Order.
Explanation of Provisions

Section 1 of the Determination states the name of the Determination.

Section 2 states that the Determination commences on the day after it is registered.

Section 3 contains interpretation provisions.

Section 4 states that if a person receives a Stolen Wages Reparation Scheme WA payment, the amount of that payment received by the person is an exempt lump sum for the purposes of paragraph 8(11)(d) of the Act, from the date that the amount was received.

Consultation

The Department has consulted with DEEWR, FaHCSIA and DVA regarding this exemption. This was done to ensure a co-ordinated and consistent approach to the income test treatment of this one-off payment for all social security payments under the Act and income support payments under the Veterans’ Entitlements Act 1986.

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


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 Determination is a class determination under subsection 8(11) of the Act to ensure that one-off ex gratia payments to individuals made by the Western Australian Department of Indigenous Affairs under the Stolen Wages Reparation Scheme WA will not be assessed as income for social security purposes thereby ensuring that recipients retain the full value of the ex gratia payments.

Human rights implications

The Determination engages the human right: Right to social security

Paragraph 8(11)(d) of the Act allows the Secretary of DIISRTE to determine that an amount received by a person is an exempt lump sum for the purposes of the social security law for payments for which the Minister for Tertiary Education, Skills, Science and Research is responsible.

Conclusion

The Determination under subsection 8(11) of the Act ensures that individuals receiving a one-off ex gratia payment made by the Western Australian Department of Indigenous Affairs under the Stolen Wages Reparation Scheme WA do not have those ex gratia payments assessed for income test purposes.

The Determination supports their human right to social security.