EXPLANATORY STATEMENT

Veterans’ Entitlements (Exempt Lump Sum – Redress Payment) Determination 2018

(Instrument 2018 No. R83)

EMPOWERING PROVISION

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

PURPOSE

The purpose of the determination is to ensure that monetary payments made under the National Redress Scheme for Institutional Child Sexual Abuse (“National Redress Scheme”) will not be regarded as income under the income test provisions of the VEA.

The National Redress Scheme was created in response to recommendations by the Royal Commission into Institutional Responses to Child Sexual Abuse. The Royal Commission into Institutional Responses to Child Sexual Abuse listened to thousands of people about the abuse they experienced as children. The abuse happened in orphanages, Children’s Homes, schools, churches and other religious organisations, sports clubs, hospitals, foster care and other institutions.

The National Redress Scheme helps people who have experienced institutional child sexual abuse gain access to counselling and psychological services, a direct personal response from the responsible institution, and a redress payment of up to $150,000.

The amount of any redress payment will depend on the level of sexual abuse and related non-sexual abuse that a survivor suffered. The amount of the redress payment cannot be used to recover debts due to the Commonwealth, will not be subject to income tax and is exempt from income tests for government payments.

The National Redress Scheme started on 1 July 2018 and will run for 10 years. It is administered by the Department of Social Services and Department of Human Services.

This determination provides that a redress payment is an exempt lump sum for the purposes of paragraph 5H(12)(c) of the VEA.

Paragraph 5H(12)(c) of the VEA allows the Repatriation Commission 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 5H(1) of the VEA, meaning the lump sum amount is not to be taken into account in determining the amount of VEA income support payments under the VEA income test.

The attached determination will ensure that if a person or the person’s partner receives a redress payment and the person is eligible for, or in receipt of, an income support
supplement, a service pension or a veteran payment, then the amount of the redress payment received by the person or the person’s partner is an exempt lump sum.

CONSULTATION

Section 17 of the Legislation Act 2003 requires a rule-maker to be satisfied, before making a legislative instrument that any consultation the rule-maker considered appropriate and reasonably practicable, has been undertaken.

This determination was made in consultation with the Department of Social Services. The nature of consultation was by way of email correspondence.

Accordingly, it is considered that the requirements of section 17 of the Legislation Act 2003 have been met.

RETROSPECTIVITY

The determination will be taken to have commenced on 1 July 2018 and will operate from that date.

The retrospective commencement is designed to align with the commencement of the National Redress Scheme and is intended to ensure that any redress payments made to clients of the Department of Veterans’ Affairs between the date of commencement of the Scheme and the date this instrument is made are captured and will be treated as exempt income under the VEA.

The retrospective operation of the instrument will not infringe section 12 of the Legislation Act 2003 because the retrospective operation would not disadvantage any person or impose a liability on a person other than the Commonwealth.

DOCUMENTS INCORPORATED BY REFERENCE

No.

REGULATORY IMPACT

None. Office of Best Practice Regulation (OBPR) reference is 24033.

HUMAN RIGHTS STATEMENT


The attached instrument engages the right to social security contained in 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, foodstuffs, and the most basic forms of education.

Under the VEA, certain pensions are subject to a means test which assesses the income and assets of the pensioner to determine the level of pension the person is entitled to. Where a pensioner receives a lump sum, the payment is generally treated as income and would be assessed in the means test for the pension which could result in a reduced pension.

The determination will operate beneficially as a redress payment will not be taken into account when assessing a person’s eligibility or rate of pension under the VEA income test. If the redress payment is not exempted, a person in receipt of a redress payment may not be eligible for a payment under the VEA or, if they are eligible, their rate of payment might be reduced.

The right to social security is promoted by the attached instrument in that it ensures that a redress payment is not treated as income for the purposes of the means test for establishing whether certain pensions and other payments are payable.

The attached instrument is compatible with human rights because it supports a person’s right to social security.

Edel Kairouz
Assistant Secretary, as delegate of the Repatriation Commission

Rule-Maker

FURTHER EXPLANATION OF PROVISIONS

See: Attachment A
FURTHER EXPLANATION OF PROVISIONS

Section 1
This determination sets out the name of the instrument – Veterans’ Entitlements (Exempt Lump Sum – Redress Payment) Determination 2018.

Section 2
This is the commencement provision. It provides that the determination commenced on 1 July 2018.

Section 3
This section sets out the primary legislation that authorises the making of the determination, namely paragraph 5H(12)(c) of the VEA.

Section 4
This section defines terms used in section 5 of the determination.

A redress payment is defined as a redress payment made under the National Redress Scheme for Institutional Child Sexual Abuse established by the National Redress Scheme for Institutional Child Sexual Abuse Act 2018.

Section 5
This is the operative provision of the determination. It provides that if a person or the person’s partner receives a redress payment and the person is eligible for, or in receipt of, an income support supplement, a service pension or a veteran payment, then the amount of the redress payment received by the person or the person’s partner is an exempt lump sum.

The provision is made under paragraph 5H(12)(c) of the VEA for the purposes of the definition of “ordinary income” in subsection 5H(1) of the VEA.