

EXPLANATORY STATEMENT

Employment and Workplace Relations Exempt Lump Sum (Tasmanian Child Abuse Payment) Determination 2005

Summary

Paragraph 8(11)(d) of the *Social Security Act 1991* (the Act) allows Secretaries to determine that an amount, or class of amounts, is an exempt lump sum for the purposes of the Act. This instrument determines that an ex gratia payment made by the Tasmanian Government to a person abused as a child while in Tasmanian State care, is an exempt lump sum under paragraph 8(11)(d).

The effect of this instrument is that such an ex gratia payment will not be regarded as income under the Act, so that if a social security customer receives such a payment, it will be exempt from the social security income test.

Background

Under the social security law all income earned, derived or received for a person's own use or benefit, is counted as income. The only exceptions are items specifically exempted under the social security law. Paragraph 8(11)(d) of the Act allows Secretaries 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, so any such amount would not be taken into account under the social security income test.

This instrument determines that an ex gratia payment made by the Tasmanian Government to a person who was abused as a child while in Tasmanian State care, is an exempt lump sum for the purposes of paragraph 8(11)(d).

In 2004 the Tasmanian Government agreed to make ex gratia payments to people abused as children while they were in Tasmanian State care. Some of these people may also be in receipt of a social security payment. The effect of this instrument is that these customers will not have their social security payments reduced because of the Tasmanian ex gratia payment that they receive, because these payments will not be regarded as income for the purposes of the social security income test.

These Tasmanian ex gratia payments are similar to five other types of payments that have been exempted from the social security income test since 1998.

Explanation of the provisions

Part 1

Section 1 of the instrument states the name of the instrument.

Section 2 states that the instrument commences on 15 December 2004.

Section 3 contains interpretation provisions. In particular, the term "compensation payment" is defined as an ex gratia payment made by the Tasmanian State Government for the purposes of child abuse suffered by a person while in Tasmanian State care.

The term “Tasmanian State care” is defined in **section 3** as care provided by an institution responsible for the provision of child welfare services. Such an institution must be, or must have been, either administered by the Tasmanian State Government or funded by the Tasmanian State Government.

Part 2

Subsection 4(1) states that paragraph 8(11)(d) of the Act allows the Secretary to determine that an amount, or class of amounts, received by a person is an exempt lump sum.

Subsection 4(2) provides that if a person has received a “compensation payment” and they are also in receipt of a social security payment, then any amount received by the person as a compensation payment is an exempt lump sum.

Section 5 specifies that an amount received by a person referred to in **subsection 4(2)** is an exempt lump sum for the purposes of paragraph 8(11)(d) of the Act. Such an amount will be regarded as an exempt lump sum from the date that the amount was received by the person, provided that this date is after the commencement of this instrument (ie. after 15 December 2004).

Consultation

The Department of Prime Minister and Cabinet have advised that the Prime Minister’s office supports exempting these payments in accordance with this instrument.

The Department of Family and Community Services and the Department of Education, Science and Training were also consulted to ensure a co-ordinated and consistent approach to the administration of these Tasmanian ex gratia payments for all social security payments under the Act.

This instrument is beneficial to customers because it exempts Tasmanian ex gratia payments from the social security income test. Public consultation was therefore seen as unnecessary.

Retrospectivity

A delegate of the Secretary of the Department of Family and Community Services signed a similar instrument on 15 December 2004 in relation to social security payments within the Family and Community Services portfolio (the *Social Security Exempt Lump Sum Determination No. 8 of 2004*). This instrument will also have effect from 15 December 2004 to ensure that Tasmanian ex gratia payments are treated consistently for all social security payments under the Act from the same date. This retrospective commencement is beneficial to social security recipients in that it exempts their ex gratia payment from the income test from 15 December 2004. This instrument is entirely beneficial and does not disadvantage social security recipients in any way.