

EXPLANATORY STATEMENT

Employment and Workplace Relations Exempt Lump Sum (South Australian Fishery 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 South Australian Government to certain commercial fishery licence holders to exit the River Murray fishing industry, 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 not included in 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 South Australian Government to certain commercial fishery licence holders to exit the River Murray fishing industry, is an exempt lump sum for the purposes of paragraph 8(11)(d).

As a result of a restructure of the River Murray fishery, the use of gill nets by commercial fishery licence holders was banned, and the number of commercial fishery licences was reduced. Some of these licence holders were paid an ex gratia payment to give up their licence and exit the River Murray fishing industry. 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 South Australian 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 South Australian ex gratia payments are similar to other exit payments that have previously been exempted from the social security income test.

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 13 January 2005 but it can have effect in relation to amounts received, or assistance provided, before that date. This means that

amounts or other assistance received by a person before 13 January 2005 can still be exempt from the social security income test in accordance with this instrument.

Section 3 contains interpretation provisions. In particular, the term “ex gratia payment” is defined as a payment made by the South Australian Government in accordance with the “River Murray fishery licence holders restructure adjustment package”. This includes ex gratia payments made to River Murray licence holders to completely relinquish their commercial fishing licences, ie. to exit the River Murray fishing industry. Specifically, the term “ex gratia payment” in this instrument does not include payments made to River Murray licence holders who elect to remain holders of a limited commercial River Murray fishery non-native license. The instrument is only intended to extend to ex-River Murray commercial licence holders who have exited the River Murray fishing industry in accordance with the restructure adjustment package referred to in this definition.

The term “River Murray fishery licence holders restructure adjustment package” is also defined in **section 3** as a process by which the South Australian Government offers monetary compensation to certain River Murray commercial fishery licence holders to exit the River Murray fishery.

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 an “ex gratia payment” as defined in **section 3** of the instrument, and they are also in receipt of a social security payment, then any amount received by the person as an ex gratia payment is an exempt lump sum.

Section 5 specifies that an amount, or class of amounts, 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 or class of amounts will be regarded as an exempt lump sum from the date that the amount was received by the person. Any ex gratia payment received by a person to whom this instrument applies will be exempt from the social security income test regardless of when that payment was received by the person. This may be either before or after the commencement of this instrument (see **section 2**).

Consultation

This instrument was made at the request of Primary Industries and Resources South Australia.

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 South Australian ex gratia payments for all social security payments under the Act.

This instrument is beneficial to customers because it exempts South Australian ex gratia payments from the social security income test. In addition, this instrument only affects a small group of ex-River Murray commercial fishers. 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 13 January 2005 in relation to social security payments within the Family and Community Services portfolio (the *Social Security Exempt Lump Sum Determination No. 1 of 2005*). However, that instrument can also have effect in relation to amounts received before 13 January 2005. Similarly, this current instrument will have effect from 13 January 2005, but it is expressly stated that this instrument can also have effect in relation to amounts received before 13 January 2005. This will ensure that recipients of South Australian ex gratia payments are treated beneficially by exempting their ex gratia payment from the income test from the date that they received it, regardless of whether this was before or after 13 January 2005. This instrument is entirely beneficial and does not disadvantage social security recipients in any way.