

EXPLANATORY STATEMENT

Employment and Workplace Relations Exempt Lump Sum (Queensland Indigenous Reparation 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 a payment made by the Queensland Government under the Indigenous Wages and Savings Reparation Process, 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 a payment made by the Queensland Government under the Indigenous Wages and Savings Reparations Process, is an exempt lump sum for the purposes of paragraph 8(11)(d).

Under the Indigenous Wages and Savings Reparations Process, the Queensland Government compensates indigenous people whose wages and salaries were controlled under the Queensland Protection Acts. Such people were paid lower wage rates than other workers, were forced to make compulsory savings, and had to seek the Government's permission to access their own money. A previous instrument made in 2003 (the *Social Security Exempt Lump Sum Determination Number 2 of 2003*) excluded payments made under this process in respect of the period 1897 to 1965. However, some affected people actually received these payments in respect of a period up to 1986. This instrument extends to payments relating until up to 1986 to ensure that everyone who received these payments are treated consistently.

The effect of this instrument is that a person who receives a payment under the Queensland Indigenous Wages and Savings Reparations Process, and who also receives a social security payment, will not have their social security payments reduced because of the Queensland payments that they have received, because these payments will not be regarded as income for the purposes of 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 applies from 7 March 2003. This ensures that the instrument applies from the same date that the previous instrument, the *Social Security Exempt Lump Sum Determination Number 2 of 2003*, commenced.

Section 3 contains interpretation provisions. In particular, the term “Queensland Government Indigenous Wages and Savings Reparations Process” is defined as a process by the Queensland Government to offer monetary compensation to certain Aboriginal and Torres Strait Islander (and any other) individuals whose wages and salaries were controlled under a Queensland Government regime known as the “Protection Acts” during the period 1897 to 1986.

The term “reparation payment” is defined in **section 3** as a payment made by the Queensland Government in respect of the Indigenous Wages and Savings Reparation Process.

Section 4 revokes the previous instrument, the *Social Security Exempt Lump Sum Determination Number 2 of 2003*, which was made on 7 March 2003. This current instrument is the same as the previous 2003 instrument, however, the current instrument extends to payments made in respect of a period up to 1986.

Part 2

Subsection 5(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 5(2) provides that if a person accepts a “reparation payment”, then that payment is an exempt lump sum. Such an amount will be regarded as an exempt lump sum from the date that the amount was received by the person. **Subsection 5(2)** is expressed to operate subject to **section 6**.

Section 6 specifies that it is appropriate to determine that an amount, or class of amounts, paid to a person under the “Queensland Government Indigenous Wages and Savings Reparations Process” (as defined in **section 3**), 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 payment is made to the person.

Consultation

This instrument was made at the request of the Queensland Department of Aboriginal and Torres Strait Islander Policy.

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 Queensland payments for all social security payments under the Act.

This instrument is beneficial to customers because it exempts certain Queensland 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 13 January 2005 in relation to social security payments within the Family and Community Services portfolio (the *Social Security Exempt Lump Sum Determination No. 2 of 2005*). That instrument applied from 7 March 2003, which is the date that the previous instrument, the *Social Security Exempt Lump Sum Determination Number 2 of 2003*, commenced. This current instrument will also apply from 7 March 2003 to ensure that these Queensland 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 payments from the income test from an earlier date (ie. 7 March 2003). This instrument is entirely beneficial and does not disadvantage social security recipients in any way.