

EXPLANATORY STATEMENT

Social Security (Exempt Lump Sum) (Defence Abuse Reparation Scheme) (FaHCSIA) Determination 2013

Summary

Paragraph 8(11)(d) of the *Social Security Act 1991* (the Act) allows the Secretary of the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) to determine that an amount or class of amounts received by a person is an exempt lump sum for the purposes of the Act. The effect of this Determination is that a Defence Abuse Reparation Payment made by the Department of Defence under the Defence Abuse Reparation Scheme (Reparation Payment) is an exempt lump sum under paragraph 8(11)(d).

Background

Under social security law, an income test is used to determine a person's eligibility for a social security payment and if they are eligible, the rate of a social security payment that is payable. An income amount 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.

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, meaning the lump sum amount is not to be taken into account under the social security income test. The exemption of the Reparation Payment from the assessment of a person's income will beneficially impact that person's eligibility for a social security payment or if they are eligible, the rate of the payment they are entitled to receive.

The initial exemption of the Reparation Payment from the income test does not mean that any ongoing income generated by the lump sum is exempt from the income test, nor does it mean that any asset produced from the lump sum is exempt from the social security assets test. This is consistent with the treatment of other lump sum payments exempted under paragraph 8(11)(d) of the Act.

The Defence Abuse Reparation Scheme

The purpose of the Defence Abuse Reparation Scheme is to establish a mechanism by which a monetary payment may be made by the Department of Defence to persons who may have, plausibly, suffered abuse whilst employed in Defence. The Reparation Payment will be a one-off payment not exceeding \$50,000 determined in accordance with the Defence Abuse Reparation Scheme Guidelines. The Defence Abuse Reparation Scheme

Guidelines are available on the internet at:
<http://www.defenceabusetaskforce.gov.au/What-does-the-taskforce-provide/Pages/Defence-Abuse-Reparation-Scheme.aspx>.

A Reparation Payment under the Defence Abuse Reparation Scheme is made to a person in acknowledgment by the Australian Government, Department of Defence and Australian Defence Force that abuse is wrong; that abuse can have a lasting and serious impact; and that mismanagement by Defence of verbal/written reports or complaints about abuse is unacceptable.

Effect of determination

This Determination is a legislative instrument. The Secretaries of the Department of Education, Employment and Workplace Relations and the Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education will make similar determinations in relation to their respective portfolio responsibilities.

The Secretary of the Department of Veterans' Affairs is also making a similar instrument in relation to the payments that the Minister for Veterans' Affairs has responsibility for under the Administrative Arrangements Order. This will ensure that a Reparation Payment will also be an exempt lump sum for the purposes of the *Veterans' Entitlement Act 1986*.

Explanation of Provisions

Section 1 of the Determination states the name of the Determination and how it is to be cited.

Section 2 states that the Determination commences on the day after it is registered on the Federal Register of Legislative Instruments.

Subsection 3(1) defines "Defence Abuse Reparation Payment" to mean a payment made to a person, or to an authorised representative on behalf of a person, by the Department of Defence under the Defence Abuse Reparation Scheme.

The words "or to an authorised representative on behalf of a person" in subsection 3(1) have been inserted to ensure that the Reparation Payment is an exempt lump sum for a person, even if it is paid to the person's authorised representative.

Section 4 states that for the purpose of paragraph 8(11)(d) of the Act a Defence Abuse Reparation Payment is an exempt lump sum.

Consultation

The Department of Veterans' Affairs, the Department of Education, Employment and Workplace Relations, the Department of Human Services, the Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education, and the Attorney-General's Department were consulted regarding this exemption.

Regulatory Impact Analysis

The Determination does not require a Regulatory Impact Statement. 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

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

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The Legislative Instrument 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 effect of the Determination is that a person who receives a Defence Abuse Reparation Payment (Reparation Payment) will not have that Reparation Payment assessed as income under the social security law.

Human rights implications

The Determination engages the right to social security under Article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). 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.

The changes made by the Determination will operate beneficially as a Reparation Payment will not be taken into account when assessing a person's eligibility or rate of social security entitlements under the social security income test. If the Reparation Payment is not exempted, a person in receipt of the Reparation Payment may not be eligible for a social security payment or if they are eligible, their rate of payment might be reduced.

The exemption of the Reparation Payment from the income test does not mean that any ongoing income generated by the lump sum is exempt from the income test, nor does it mean that any asset produced from the lump sum is exempt from the social security assets test. This is consistent with the treatment of other lump sum payments exempted under paragraph 8(11)(d) of the Act.

The exemption provided by the Determination will ensure that receipt of a Reparation Payment will not be taken into account when assessing a person's eligibility or rate of social security entitlements under the social security

income test and is therefore consistent with the promotion of the right to social security.

Conclusion

This Determination supports a person's human right to social security.

Paul McBride, Group Manager, Social Policy Group, as a delegate of the Secretary of the Department of Families, Housing, Community Services and Indigenous Affairs.