

EXPLANATORY STATEMENT

Veterans' Entitlements Income (Exempt Lump Sum – Defence Abuse Reparation Scheme) Determination

Instrument No. R41/2013

Paragraph 5H(12)(c) of the Veterans' Entitlements Act 1986

The Purpose and Operation of the Attached Instrument

Summary

A payment is deemed not to be ordinary income for means-testing under the *Veterans' Entitlements Act 1986* (VEA) once it is stated to be an exempt lump sum by a determination under paragraph 5H(12)(c) of the VEA. The amount specified in the Determination at Part 2 of the Schedule as an exempt lump sum is an exempt lump sum for the purposes of the definition of 'ordinary income' in subsection 5H(1) of the VEA.

The attached instrument provides for the exemption of these payments from the income assessment of the person's or the person's partner's service pension or income support supplement (collectively referred to as "income support payment").

Background

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 Defence Abuse 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.defenceabusetaaskforce.gov.au/What-does-the-taskforce-provide/Pages/Defence-Abuse-Reparation-Scheme.aspx>

A Defence Abuse Reparation Payment to a person under the Defence Abuse Reparation Scheme is made in acknowledgment by the Australian Government, the 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

Under the VEA, money 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 from the VEA income test. 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 for the purposes of the VEA. An exempt lump sum is excluded from the definition of "ordinary income" under sub section 5H(1) of the VEA. As a result, any such amount is not to be taken into account under the VEA income test.

This Determination is a legislative instrument. The Secretaries of the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA), the Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education (DIISRTE) and the Department of Education, Employment and Workplace Relations (DEEWR) will make similar determinations in relation to their respective portfolios responsibilities. This will ensure that a Defence Abuse Reparation Payment will be an exempt lump sum for the purposes of the *Social Security Act 1991*.

Consultation

The Department has worked closely with DEEWR to ensure that this instrument has the same effect as a similar instrument to be executed under the social security law. The Attorney-General's Department, FaHCSIA, and DIISRTE were also consulted regarding this exemption. The nature of the consultation was an exchange of e-mails. No issues arose in the course of the consultation.

This instrument is beneficial to clients because it exempts reparation payments under the Defence Abuse Reparation Scheme from the VEA income test. If the exemption is not agreed to, the income support payments of recipients of Defence Abuse Reparation Scheme payments may be reduced or cancelled, for a period of time, under the income test. This will result in recipients not receiving the full value of the determined reparation amount. For these reasons, public consultation was therefore regarded as unnecessary.

Regulatory Impact Analysis

The Determination is not regulatory in nature, will not impact on business activity, and will have no, or minimal, compliance costs or competition impact.

Overview of the Legislative Instrument

The Determination is a class determination under paragraph 5H(12)(c) of the *Veterans' Entitlements Act 1986* (the VEA) to ensure that one-off reparation payments to individuals made under the Defence Abuse Reparation Scheme will not be assessed as income for VEA income test purposes thereby ensuring that recipients retain the full value of the payments.

Statement of Compatibility with Human Rights

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

The Determination 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*.

Human rights implications

The Determination engages and promotes the following human right:

The right to social security under 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.

The reparation payment that is made an exempt lump sum by the attached legislative instrument is an amount paid by the Department of Defence to persons who may plausibly have suffered abuse whilst employed in Defence.

By making the reparation payment an exempt lump sum, thereby ensuring it is not assessed as income for VEA income test purposes, the attached legislative instrument enables recipients of the payment to retain the full financial value of the payment. In this regard, therefore, the legislative instrument enhances the reparation paid as redress for abuse in employment and would complement Australia's obligations under the International Covenant on Economic, Social and Cultural Rights. If the reparation payment is not exempted, a person receiving the payment may be found ineligible for income support payment or if they are eligible, their rate of payment may be reduced.

The exemption of the Defence Abuse Reparation Payment from the income test does not mean that any on-going 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 VEA assets test. This is consistent with the treatment of other lump sum payments exempted under paragraph 5H(12)(c) of the Act.

There are conditions on the reparation payment being deemed to be an exempt lump sum, namely that the recipient or the recipient's partner must be in receipt of a service pension or income support supplement. These conditions are not discretionary or intended to limit benefits and merely identify the income support payments that are subject to the VEA income test.

Conclusion

The legislative instrument in question is compatible with, and promotes, human rights because it ensures that the value of reparation paid by the Department of Defence for abuse in employment is not diminished in value by the application of the *Veterans' Entitlements Act 1986*.

The Repatriation Commission (by its delegate).