

EXPLANATORY STATEMENT

Veterans' Entitlements (Income Exempt Lump Sum – Assistance to Purchase Motorcycle) Determination 2015.

Veterans' Entitlements (Income Exempt Lump Sum — F-111 Deseal/Reseal Lump Sum Payment) Determination 2015.

Veterans' Entitlements (Income Exempt Lump Sum - Government of South Australia Energy Concession Bonus) Determination 2015.

Veterans' Entitlements (Income Exempt Lump Sum – Japanese internment Compensation) Determination 2015.

Veterans' Entitlements (Income Exempt Lump Sum – Miscellaneous) Determination 2015.

Veterans' Entitlements (Income Exempt Lump Sum – North Korean internment Compensation) Determination 2015.

EMPOWERING PROVISION

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

PURPOSE

The attached instruments are legislative instruments that have been re-made. Had the instruments not been re-made, they would have been automatically repealed on 1 October 2015.

Subsection 26(1B) of the *Legislative Instruments Act 2003* provides that the requirement for an explanatory statement to explain the purpose and operation of an instrument may be met by an explanation that the instrument replaces a specified earlier legislative instrument or a specified provision of an earlier legislative instrument and is the same in substance as the specified instrument or provision.

Also, subsection 26(1D) of the *Legislative Instruments Act 2003* provides that a single explanatory statement may relate to one or more legislative instruments – which is the case here.

The Department of Veterans' Affairs (DVA) has reviewed the instruments and found that they are still required. Accordingly, the instruments have been re-made and aside from updating and streamlining are the same in substance as the instruments they replace.

The attached instruments are known as “exempt lump sum instruments”. An amount determined in these instruments to be an exempt lump sum means it is not assessed as income for means-tested pensions.

Exempt lump sums tend to be payments made as compensation or to alleviate hardship and it would be unfair to indirectly reduce them by reducing the amount of pension a person receives.

The attached instruments, therefore, exempt the payments from the means test and ensure that they are not treated as income.

Further Explanation

Part A explains the *Veterans' Entitlements (Income Exempt Lump Sum – Assistance to Purchase Motorcycle) Determination 2015*.

Part B explains the *Veterans' Entitlements (Income Exempt Lump Sum — F-111 Deseal/Reseal Lump Sum Payment) Determination 2015*.

Part C explains the *Veterans' Entitlements (Income Exempt Lump Sum - Government of South Australia Energy Concession Bonus) Determination 2015*.

Part D explains the *Veterans' Entitlements (Income Exempt Lump Sum – Japanese internment Compensation) Determination 2015*.

Part E explains the *Veterans' Entitlements (Income Exempt Lump Sum – Miscellaneous) Determination 2015*.

Part F explains the *Veterans' Entitlements (Income Exempt Lump Sum – North Korean internment Compensation) Determination 2015*.

CONSULTATION

There has been no consultation because the instruments are being re-made in essentially the same form and benefits are not being affected. Consultation was considered unnecessary.

RETROSPECTIVITY

None.

DOCUMENTS INCORPORATED-BY-REFERENCE

No.

HUMAN RIGHTS STATEMENT

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

The attached legislative instruments do engage an applicable right or freedom. They relate to the Right to Social Security contained in article 9 of the International Covenant on Economic Social and Cultural Rights

The Right to Social Security is engaged and promoted by the attached instrument in that the instrument re-makes a number of instruments that ensure payments, some of which are intended to alleviate hardship, are not treated as income for the purposes of the means-test for certain pensions, thereby maintaining the level of pension a person receives.

Under the VEA certain pensions are subject to a means-test which assesses the income and assets of the pensioner to determine the level of pension the person is entitled to. Where a pensioner receives one of the exempt lump sums in question (e.g. hardship-type payment), prima facie the payment is ordinary income and would be assessed in the means test for the pension which could result in a reduced pension.

However, under subsection 5H(12)(c) of the VEA, payments such as a hardship-type payments can be exempted from the means-test. This provision has been utilised in the attached instruments to exempt the relevant payments from the means test.

CONSULTATION

The attached legislative instruments are considered to be compatible with the human right to social security because they ensure certain pensions are maintained at their existing levels and are not unfairly reduced by certain payments that are compensatory in nature or intended to alleviate hardship.

Rule-Maker
The Repatriation Commission

Part A

Veterans' Entitlements (Income Exempt Lump Sum – Assistance to Purchase Motorcycle) Determination 2015

- a payment to reimburse a disabled veteran for the amount of *GST* paid for the purchase of a motorcycle or motorcycle-part.

Part B

Veterans' Entitlements (Income Exempt Lump Sum — F-111 Deseal/Reseal Lump Sum Payment) Determination 2015

- a one-off payment paid by DVA to participants in the F-111 Deseal/Reseal maintenance program.

Part C

Veterans' Entitlements (Income Exempt Lump Sum - Government of South Australia Energy Concession Bonus) Determination 2015

- an annual concession payment from the State Government of South Australia to assist eligible people with their energy bills.

Part D

Veterans' Entitlements (Income Exempt Lump Sum – Japanese internment Compensation) Determination 2015

- a compensation payment received by a person under the *Compensation (Japanese Internment) Act 2001* or the *Veterans' Entitlements (Compensation – Japanese Internment) Regulations 2001*.

Part E

Veterans' Entitlements (Income Exempt Lump Sum – Miscellaneous) Determination 2015

- a one-off payment made on or after 11 February 2000 to needy *Holocaust survivors* from a Humanitarian Fund established by Swiss banks, and administered by the World Jewish Restitution Organisation through the Executive Council of Australian Jewry.
- an amount paid, in certain circumstances, by a life insurance business or a superannuation fund to a person as the minimum amount payable consistent with the need to convert the person's existing annuity contract or contracts to an asset test exempt product or products.
- an amount in excess of \$40,000 that is paid to or on behalf of the person under a Home Equity Conversion Agreement.

- an ex gratia payment to a person (patient), or a child of that person, for psychiatric illness due to being exposed to the risk of Creutzfeldt-Jakob disease as a result of the patient receiving treatment under the Australian Human Pituitary Hormone Program during the period 1967 to 1985.
- a refund of accommodation bond/accommodation charge received by a person who is or was an aged care resident.
- a one-off crisis payment granted under the *Veterans' Entitlements (Special Assistance) Regulations 1999*.
- a payment (other than a periodical payment or a payment representing an accumulation of instalments) made for or in respect of expenses incurred by a person for hospital, medical, dental or similar treatment.

Part F

Veterans' Entitlements (Income Exempt Lump Sum – North Korean internment Compensation) Determination 2015

- a compensation payment made under Part 2 (Compensation payments for North Korean internment) of the *Veterans' Entitlements (Clarke Review) Act 2004*.