

EXPLANATORY STATEMENT

Veterans' Entitlements (Income Exempt Lump Sum – Queensland Stolen Wages Reparation Payment Scheme) Determination 2016

EMPOWERING PROVISION

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

PURPOSE

The purpose of the determination is to ensure that payments made under the Queensland Government's new Stolen Wages Reparation Payment Scheme will not be regarded as income under the income test provisions of the VEA.

This determination provides that a payment made by the Queensland Government under the Stolen Wages Reparation Payment Scheme is an exempt lump sum for the purposes of the definition of "ordinary income" in paragraph 5H(1) of the VEA.

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". An exempt lump sum is excluded from the definition of "ordinary income" under subsection 5H(1) of the VEA, meaning the lump sum amount is not to be taken into account in determining the amount of VEA payment under the veterans' entitlements income test.

Under the Queensland Stolen Wages Reparation Payment Scheme, the Queensland Government is providing ex gratia lump sum payments to Aboriginal and Torres Strait Islander people whose wages and savings were controlled by the Queensland Government under a legislative regime known as the "Protection Acts".

Since 1999, the Queensland Government has undertaken a number of compensation and reparation processes for Aboriginal and Torres Strait Island peoples who suffered direct disadvantage as a result of these historical "stolen wages" policies.

A previous determination made in 2003 (*the Veterans' Entitlements Income Exempt Lump Sum Determination No.2 of 2003*) excluded payments made under the Queensland Government Indigenous Wages and Savings Reparations Process from the income test in respect of persons whose wages and savings were controlled in the period 1897 to 1965. In 2006, *the Veterans' Entitlements Income (Exempt Lump Sum – Queensland Indigenous Reparation Payment) Determination* extended the earlier exemption to people whose wages and savings were controlled up to 1986. This new determination exempts from the income test payments received under the Queensland Government's latest Queensland Stolen Wages Reparation Payment Scheme.

The initial exemption of these payments 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 financial assets produced from the lump sum are exempt from the relevant income deeming provisions of the VEA.

CONSULTATION

This determination was made in consultation with, and following advice from, the Commonwealth Department of Social Services which has made a virtually identical instrument for its relevant clients under section 8(11)(d) of the *Social Security Act 1991* – the *Social Security (Income Exempt Lump Sum – Queensland Stolen Wages Reparation Payment Scheme) Determination 2015*.

This Department has been briefed by the Department of Social Services with relevant background material from the Queensland Department of Aboriginal and Torres Strait Islander Partnerships who initiated the request for relevant income exemptions for these reparation payments.

Consultation was by way of email correspondence.

This determination will be beneficial to persons affected as it exempts payments made under the Queensland Stolen Wages Reparation Payment Scheme from the veterans' entitlements income test. In these circumstances, and given the limited timeframe in which to implement the instrument, public consultation was seen as unnecessary.

RETROSPECTIVITY

Yes. The instrument is stated to commence on 1 December 2015. Its commencement is backdated to co-incide with the commencement of reparation payments by the Queensland Government under the Scheme and is intended to ensure that any early payments to DVA clients under the Scheme are captured by this determination.

While retrospective in nature, the instrument will not infringe subsection 12(2) of the *Legislative Instruments Act 2003* (a legislative instrument is of no effect if it takes effect before registration and disadvantages a person or imposes liabilities on a person other than the Commonwealth) because the retrospective operation of this instrument would not disadvantage any person or impose a liability on a person other than the Commonwealth.

DOCUMENTS INCORPORATED-BY-REFERENCE

No.

REGULATORY IMPACT

None.

HUMAN RIGHTS STATEMENT

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

The attached determination engages 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 promoted by the attached determination in that the determination ensures that the reparation payment, which is intended to compensate, is not treated as income for the purposes of the means-test for certain pensions.

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 an exempt lump sum in question, 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.

The determination will operate beneficially as the reparation payment will not be taken into account when assessing a person's eligibility or rate of pension under the VEA income test. If the reparation payment is not exempted, a person in receipt of the reparation payment may not be eligible for a payment under the VEA or, if they are eligible, their rate of payment might be reduced.

Conclusion

The determination ensures that certain pensions under the VEA are not unfairly reduced by these reparation payments. In so doing it is compatible with human rights, most relevantly, the Right to Social Security.

Mark Harrigan
Assistant Secretary, as delegate of The Repatriation Commission

Rule-Maker

FURTHER EXPLANATION OF PROVISIONS

See: [Attachment A](#)

FURTHER EXPLANATION OF THE DETERMINATION

Section 1.1 recites the name of the determination.

Section 1.2 is the commencement provision. It states that the determination is to commence on 1 December 2015.

Section 1.3 defines “income support supplement”, “Queensland Stolen Wages Reparation Payment Scheme”, “reparation payment”, and “service pension”. These terms are used in section 2.1 of the determination.

Section 2.1 is the operative provision of the determination. It provides that if a person or a person’s partner receives a *reparation payment* and the person is eligible for, or in receipt of a *service pension* or *income support supplement*, then the amount of the *reparation payment* received by the person or the person’s partner is an exempt lump sum.

The provision is made under paragraph 5H(12)(c) of the VEA for the purposes of the definition of “ordinary income” in subsection 5H(1) of the VEA.