

EXPLANATORY STATEMENT

Veterans' Entitlements (Exempt Lump Sum – Tasmanian Special Energy Bonus Scheme) Determination 2017 (Instrument 2017 No. R54)

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 Tasmanian Government's Special Energy Bonus Scheme will not be regarded as income under the income test provisions of the VEA.

Under the Tasmanian Special Energy Bonus Scheme, the Tasmanian Government is providing a one-off special energy bonus payment (special energy bonus payment) in the sum of \$125 per household to eligible Pensioner Concession Card holders and Commonwealth Seniors Health Card holders.

The special energy bonus payment is being made under the State Government's Tasmanians First energy policy to assist pensioners and Commonwealth Seniors Health Card holders with their electricity bills. The payments are to be made during the 2017-18 financial year with the first payments to commence from early December 2017.

This determination provides that a special energy bonus payment is an exempt lump sum for the purposes of paragraph 5H(12)(c) 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 income support payment under the veterans' entitlements income test.

The attached determination will ensure that if a person or the person's partner receives a special energy bonus payment and the person is eligible for, or in receipt of a service pension or income support supplement, then the amount of the payment received by the person is an exempt lump sum.

CONSULTATION

Section 17 of the *Legislation Act 2003* requires a rule-maker to be satisfied, before making a legislative instrument that any consultation the rule-maker considered appropriate and reasonably practicable, has been undertaken.

This determination was made in consultation with, and following advice from, the Commonwealth Department of Social Services (DSS). DSS will make an equivalent instrument under paragraph 8(11)(d) of the *Social Security Act 1991*.

The Department has been briefed by DSS with relevant background material from the Tasmanian Department of Treasury and Finance who administers the Tasmanian Special Energy Bonus Scheme, and who initiated the request for relevant income exemptions for this special energy bonus payment.

The nature of consultation with DSS was by way of email correspondence and telephone calls.

The determination is beneficial in nature as it exempts the relevant payment made under the Tasmanian Special Energy Bonus Scheme from the income test under the VEA. As a result, public consultation was considered unnecessary.

Accordingly, it is considered the requirements of section 17 of the *Legislation Act 2003* have been met.

RETROSPECTIVITY

None, if the determination is made on or before 1 December 2017.

If made after that date, the determination will be taken to have commenced on 1 December 2017 and will operate retrospectively from that date.

The commencement date coincides with the commencement of the special energy bonus payment by the Tasmanian Government under the Scheme and is intended to ensure that, if the determination is made after 1 December 2017, any payments to DVA clients under the Scheme from the commencement date are captured by this determination and will be treated as exempt income under the VEA.

If the determination operates retrospectively, the instrument will not infringe section 12 of the *Legislation Act 2003* because the retrospective operation 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 instrument 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 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.

Under the *Veterans' Entitlements Act 1986* (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 a lump sum, the payment is generally treated as 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 special energy bonus payment will not be taken into account when assessing a person's eligibility or rate of pension under the VEA income test. If the special energy bonus payment is not exempted, a person in receipt of the special energy bonus payment may not be eligible for a payment under the VEA or, if they are eligible, their rate of payment might be reduced.

The right to social security is promoted by the attached instrument in that it ensures that special energy bonus payment is not treated as income for the purposes of the means test for establishing payability for certain pensions. The payment is being made under the Government's Tasmanians First energy policy and is aimed at reducing the impact of increasing cost of living expenses.

Conclusion

The attached instrument is compatible with human rights, because it supports a person's 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 PROVISIONS

Section 1

This determination sets out the name of the instrument – the *Veterans' Entitlements (Exempt Lump Sum – Tasmanian Special Energy Bonus Scheme) Determination 2017*.

Section 2

This is the commencement provision. It provides that the determination commences or is taken to have commenced on 1 December 2017.

Section 3

This section sets out the primary legislation that authorises the making of the determination, namely paragraph 5H(12)(c) of the VEA.

Section 4

This section defines terms used in section 5 of the determination including the terms “special energy bonus payment” and the “Tasmanian Special Energy Bonus Scheme”.

A *special energy bonus payment* is defined to mean a payment made by Aurora Energy Pty Ltd under the *Tasmanian Special Energy Bonus Scheme*.

The *Tasmanian Special Energy Bonus Scheme* is defined to mean the scheme operated by the Tasmanian Government to provide a one-off special energy bonus payment to eligible Pensioner Concession Card holders and eligible Commonwealth Seniors Health Card holders to reduce the impact of cost of living pressures.

Section 5

This is the operative provision of the determination. It provides that if a person or the person's partner receives a special energy bonus payment and the person is eligible for, or in receipt of a service pension or income support supplement, then the amount of the 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.