

EXPLANATORY STATEMENT

Veterans' Entitlements (Exempt Lump Sum – Defence Reparation Payment) Determination 2018 (Instrument 2018 No. R35)

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 Defence Reparation Scheme will not be regarded as income under the income test provisions of the VEA.

Under the Defence Reparation Scheme, the Australian Defence Force will be empowered to make one-off reparation payments to individuals who have suffered the most serious forms of abuse or sexual assault while serving in the Australian Defence Force where the abuse or assault occurred on or before 30 June 2014

The payments will be made by the Australian Defence Force, on behalf of the Australian Government, on recommendation by the Defence Force Ombudsman in acknowledgement that the abuse suffered by the complainant was wrong, that it could have a lasting and serious impact and that, in the past Defence was not positioned to appropriately to respond to abuse in many cases.

This determination provides that a defence reparation 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 defence reparation 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, representatives of the Commonwealth Department of Defence and the Commonwealth Ombudsman (Defence Force Ombudsman). Consultation also took place with the Department of Social Services. That Department will make a similar “exempt lump sum” instrument under equivalent provisions of the *Social Security Act 1991* (paragraph 8(11)(d)).

The nature of consultation was by way meetings, email correspondence and telephone calls.

The determination is beneficial in nature as it exempts payments made under the Defence Reparation 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

The determination will be taken to have commenced on 1 February 2018 and will operate retrospectively from that date.

The retrospective commencement is designed to align with the commencement of defence reparation payments under the Defence Reparation Scheme and is intended to ensure that any defence reparation payments made to clients of the Department of Veterans’ Affairs between the date of commencement of the scheme and the date this instrument is made are captured and will be treated as exempt income under the VEA.

The retrospective operation of 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 defence 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 defence reparation payment is not exempted, a person in receipt of a defence reparation 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 a defence reparation payment is not treated as income for the purposes of the means test for establishing payability for certain pensions. Defence reparation payments (while not compensation) are made to individuals by the Australian Defence Force on advice from the Defence Force Ombudsman in acknowledgment that the most serious forms of abuse and or sexual assault within Defence are wrong and should not have occurred.

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 – *Veterans’ Entitlements (Exempt Lump Sum – Defence Reparation Payment) Determination 2018*.

Section 2

This is the commencement provision. It provides that the determination commenced on 1 February 2018.

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 “*defence reparation payment*” and the “*Defence Reparation Scheme*”.

A defence reparation payment is defined to mean a payment made to a person under the *Defence Reparation Scheme*.

The *Defence Reparation Scheme* is defined to mean the scheme administered by the Defence Force Ombudsman that come into effect on 16 December 2017 for the purpose of making reparation payments to members or former members of the Defence Force who suffered the most serious forms of abuse or sexual assault where the abuse or assault occurred on or before 30 June 2014.

Section 5

This is the operative provision of the determination. It provides that if a person or the person’s partner receives a defence reparation 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.