

## EXPLANATORY STATEMENT

### Veterans' Entitlements (Income Exempt Lump Sums) Determination 2025

#### EMPOWERING PROVISION

The Repatriation Commission makes this instrument under paragraph 5H(12)(c) of the *Veterans' Entitlement Act (1986)* (the **Act**).

#### PURPOSE

This instrument is an overarching legislative instrument that has been re-made in place of a number of individual instruments. Had the instruments not been re-made, they would have been automatically repealed due to sunset provisions.

The main purpose of this instrument is to save the legislative instruments in question from sunset and thereby preserve entitlements of the men and women who have served in Australia's Defence Force. The Department has comprehensively assessed if the exempt lump sums in this instrument are "fit-for-purpose" and have determined that they are.

The instruments which make up this instrument are known as "exempt lump sum instruments". An amount determined in these instruments to be an exempt lump sum is not assessed as income for means-tested pensions such as a service pension, income support supplement and veteran payment.

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.

This instrument, therefore, exempts the specified payments from the means test and ensures they are not treated as income.

This instrument revokes the below instruments and remakes them as a new overarching instrument ahead of their sunset dates. **Attachment B** briefly outlines the substance of each instrument that is being repealed and replaced by this instrument.

- Veterans' Entitlements (Income Exempt Lump Sum – Japanese internment Compensation) Determination 2015.
- Veterans' Entitlements (Income Exempt Lump Sum – North Korean internment Compensation) Determination 2015.
- Veterans' Entitlements (Income Exempt Lump Sum - Government of South Australia Energy Concession Bonus) Determination 2015.
- Veterans' Entitlements (Income Exempt Lump Sum – Miscellaneous) Determination 2015. – which consists of:
  - Holocaust survivors
  - Annuity contracts
  - Home equity
  - Creutzfeldt-Jakob Disease (CJD)—patients
  - Children of CJD patients

- Accommodation or bond charges
- Crisis payment
- Medical payment
- Veterans' Entitlements (Income Exempt Lump Sum — F-111 Deseal/Reseal Lump Sum Payment) Determination 2015.
- Veterans' Entitlements (Income Exempt Lump Sum – Assistance to Purchase Motorcycle) Determination 2015.
- Schedule 10 to the Veterans' Affairs (Legislative Instrument Re-making Exercise) Instrument 2014- Veterans' Entitlements Income (Exempt Lump Sum—income received after end of market-linked income stream term) Determination
- Veterans' Entitlements (Income Exempt Lump Sum – Queensland Stolen Wages Reparation Payment Scheme) Determination 2016
- Veterans' Entitlements Income (Exempt Lump Sum – Superannuation Co-contribution Amounts) Determination 2016
- Veterans' Entitlements (Exempt Lump Sum – Life Insurance Payouts) Determination 2016
- Veterans' Entitlements (Income Exempt Lump Sum – South Australian Stolen Generations Reparations Scheme) Determination 2016
- Schedule 9 to the Veterans' Affairs (Legislative Instrument Re-making Exercise) Instrument 2014 (the 2014 Instrument) - Veterans' Entitlements Income (Exempt Lump Sum - Compensation) Determination

## OVERVIEW

The lump sums detailed in this instrument are not assessed as income for means-tested pensions such as a service pension, income support supplement and veteran payment.

Existing instruments under subsection 5H(12)(c) of the Act that are not sunseting until after 2026 will be reviewed closer to their sunseting date and, if necessary, added to Schedule 1 of this instrument.

In addition, since October 2018 equivalent exempt lump sum instruments under the *Social Security Act 1991* (SSA) equally apply in the context of the VEA payments (subsection 5H(12A)).

## EXPLANATION OF PROVISIONS

**Section 1** provides that the name of the instrument is the Veterans' Entitlements (Income Exempt Lump Sums) Determination 2025.

**Section 2** provides that the instrument commences on the day after the day it is registered.

**Section 3** sets out the authority for the Repatriation Commission making the instrument, namely paragraph 5H(12)(c) of the Act.

**Section 4** gives effect to Schedule 1 which outlines specified lump sums which are exempted from means testing when considering pensions such as a service pension, income support supplement, and veteran payment.

**Section 5** repeals the previous instruments outlined in Schedule 2.

## **CONSULTATION**

The Department did not consult directly with individuals likely to be affected by the remake of these instruments. This was not considered necessary given the remake is administrative in nature to prevent the instrument from arbitrarily sunseting. These determinations relate to means test assessment for pensions and confirm the lump sum payments which should be excluded from the income test for income support payments.

The policy objective of the instrument is to retain the exclusion of these lump sum payments from the income test for income support payments, ensuring that veterans and their dependents retain their current level of entitlements.

## **HUMAN RIGHTS IMPLICATIONS**

This instrument is compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full statement of compatibility is set out in **Attachment A**.

### **Approved by:**

Luke Brown  
First Assistant Secretary, Policy Division  
A delegate of the Repatriation Commission  
Rule-maker

## **Attachment A**

### **Statement of Compatibility with Human Rights**

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

#### **Veterans' Entitlements (Income Exempt Lump Sums) Determination 2025**

This disallowable legislative instrument 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*.

#### **Overview of the Disallowable Legislative Instruments**

The Veterans' Entitlements (Income Exempt Lump Sums) Determination 2025 (the **Instrument**) repeals a number of exempt lump sum instruments and Schedules 9 and 10 to the Veterans' Affairs (Legislative Instrument Re-making Exercise) Instrument 2014. It also remakes them as one consolidated instrument ahead of their sunseting dates.

Paragraph 5H(12)(c) of the *Veterans' Entitlements Act 1986* authorises the Repatriation Commission to determine an amount or one of a class of amounts to be exempted from any means testing when considering income and assets for service pension, income support supplement and veteran payment.

The lump sums that are included as exempt are generally payments made as compensation or to alleviate hardship and it would be unfair to indirectly reduce them by reducing the amount of income support payment a person receives.

The Instrument exempts the specified lump sums from the means test and ensures that they are not treated as income.

#### **Human rights implications**

The Instrument engages and promotes 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 Instrument is compatible with human rights as it ensures a person's current resources are appropriately assessed for the purposes of ascertaining the person's assessable income for means testing purposes under Part IIIB of the Act.

#### **Conclusion**

This Instrument is compatible with human rights as it engages and promotes the right to social security by ensuring that rules designed assess pension under the Act are applied flexibly and fairly.

Luke Brown

First Assistant Secretary, Policy Division

A delegate of the Repatriation Commission

**Rule-Maker**

## **Attachment B**

<b>Item</b>	<b>Subject</b>	<b>Repealed Instrument</b>	<b>Brief description</b>
1	Japanese internment	Veterans' Entitlements (Income Exempt Lump Sum – Japanese internment Compensation) Determination 2015 F2015L00116	A compensation payment received by a person under the Compensation (Japanese Internment) Act 2001 or the Veterans' Entitlements (Compensation – Japanese Internment) Regulations 2001.
2	North Korean internment	Veterans' Entitlements (Income Exempt Lump Sum – North Korean internment Compensation) Determination 2015 F2015L00117	A compensation payment made Under Part 2 (Compensation payments for North Korean internment) of the Veterans' Entitlements (Clarke Review) Act 2004.
3	South Australia energy concession	Veterans' Entitlements (Income Exempt Lump Sum – Government of South Australia Energy Concession Bonus) Determination 2015 F2015L00120	An annual concession payment from the State Government of South Australia to assist eligible people with their energy bills.
4	Holocaust survivors	Veterans' Entitlements (Income Exempt Lump Sum – Miscellaneous) Determination 2015 F201500121	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.
5	Annuity contracts	Veterans' Entitlements (Income Exempt Lump Sum – Miscellaneous) Determination 2015 F201500121	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.
6	Home equity	Veterans' Entitlements (Income Exempt Lump Sum – Miscellaneous) Determination 2015 F201500121	An amount in excess of \$40,000 that is paid to or on behalf of the person under a Home Equity Conversion Agreement.
7	Creutzfeldt-Jakob Disease ( <b>CJD</b> )—patients	Veterans' Entitlements (Income Exempt Lump Sum – Miscellaneous) Determination 2015 F201500121	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.
8	CJD—children of patients	Veterans' Entitlements (Income Exempt Lump Sum – Miscellaneous) Determination 2015 F2015L000121	An ex gratia payment to a child of a person who died from CJD and suffered with a 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. Specific women have been named in this instrument and any children of these women are covered under paragraph (a).
9	Accommodation bond or charges	Veterans' Entitlements (Income Exempt Lump Sum – Miscellaneous) Determination 2015 F201500121	A refund of accommodation bond/accommodation charge received by a person who is or was an aged care resident.
10	Crisis payment	Veterans' Entitlements (Income Exempt Lump Sum – Miscellaneous) Determination 2015	A one-off crisis payment granted under the <i>Veterans' Entitlements (Special Assistance) Regulations 1999</i> .

		F201500121	
11	Medical payment	Veterans' Entitlements (Income Exempt Lump Sum – Miscellaneous) Determination 2015 F201500121	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.
12	F111 Deseal/Reseal	Veterans' Entitlements (Income Exempt Lump Sum – F-111 Deseal/Reseal Lump Sum Payment) Determination 2015 F2015L00125	A one-off payment paid by DVA to participants in the F-111 Deseal/Reseal maintenance program.
13	Motorcycle purchase	Veterans' Entitlement (Income Exempt Lump Sum – Assistance to Purchase Motorcycle) Determination 2015 F2015L00127	A payment to reimburse a disabled veteran for the amount of GST paid for the purchase of a motorcycle or motorcycle-part.
14	Income received after end of market-linked income stream term	Veterans' Affairs (Legislative Instrument Re-Making Exercise) Instrument 2014. F2015L00068	This is where a market-linked income stream has a residual balance which is to be paid to a beneficiary after the end of the income stream's term and the beneficiary receives a service pension or income support supplement under the Veterans' Entitlements Act 1986, then the amount paid is an exempt lump sum.
15	Stolen wages	Veterans' Entitlements (Income Exempt Lump Sum – Queensland Stolen Wages Reparation Payment Scheme) Determination 2016 F2016L00039	Ex gratia payment made to Aboriginal and Torres Strait Islander people who had their wages controlled by the Queensland Government.
16	Superannuation co-contribution	Veterans' Entitlements Income (Exempt Lump	If individuals or their partner have an annual income below a certain

		Sum – Superannuation Co-contribution Amounts) Determination 2016 F2016L00139	threshold and they make superannuation payment contributions there is a co-contribution payment that is payable to them.
17	Life insurance payout	Veterans' Entitlements (Exempt Lump Sum – Life Insurance payouts) Determination 2016 F2016L00329	Payment made under an insurance policy after a person or their partner dies or has a terminal illness.
18	Stolen generations	Veterans' Entitlements (Income Exempt Lump sum – South Australian Stolen Generations Reparations Scheme) Determination 2016 F2016L01206	One off payments made to Aboriginal people or their partner by the South Australian Government who were victims of the stolen generation.
19	Compensation for detriment	Veterans' Affairs (Legislative Instrument Re-Making Exercise) Instrument 2014. F2015L00068	A compensation payment under the Commonwealth's Defective Administration or Act-of-Grace Schemes for financial loss caused by the Department of Veterans' Affairs, the Repatriation Commission, Military Rehabilitation and Compensation Commission or the Department of Human Services.