

EXPLANATORY STATEMENT

Veterans' Entitlements Income (Exempt Lump Sum - Thalidomide Class Action Payment) Determination 2014

Summary

Paragraph 5H(12)(c) of the *Veterans Entitlements Act 1986* (the Act) allows the Repatriation Commission to determine that an amount or class of amounts received by a person is an exempt lump sum for the purposes of the Act. The effect of this Determination is that a Thalidomide Class Action Payment, a one-off lump sum payment made pursuant to the settlement of a class action by persons in Australia and New Zealand who suffered thalidomide-caused injuries that was approved by the Victorian Supreme Court on 7 February 2014, is an exempt lump sum under paragraph 5H(12)(c) of the Act.

Background

Under veterans' entitlement law, an income test is used to determine the rate at which an income support payment of service pension or income support supplement is payable to a person. An income amount earned, derived or received for a person's own use or benefit is generally assessable as income. However, some amounts that would otherwise be income are specifically exempted.

Paragraph 5H(12)(c) of the Act allows the Repatriation Commission to determine that an amount, or class of amounts, is an "exempt lump sum" for the purposes of the Act. An exempt lump sum is excluded from the definition of "ordinary income" under subsection 5H(1) of the Act, meaning the lump sum amount is not to be taken into account under the veterans' entitlements income test. The exemption of the Thalidomide Class Action Payment from the assessment of a person's income will beneficially impact that person's eligibility for a veterans' entitlements income support or if they are eligible, the rate of the payment they are entitled to receive.

The initial exemption of the Thalidomide Class Action Payment 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 asset produced from the lump sum is exempt from the veterans' entitlements assets test. This is consistent with the treatment of other lump sum payments exempted under paragraph 5H(12)(c) of the Act.

Class Action by Thalidomide Survivors

A class action was brought against the distributor of the drug thalidomide by persons in Australia and New Zealand who suffered thalidomide-caused injuries (thalidomide survivors). On 7 February 2014, settlement of the class action was approved by the Victorian Supreme Court. As a result of the settlement of the class action, each of the thalidomide survivors will be paid

directly a one-off lump amount to provide for their future care. The amount of each payment varies based on the severity of injury suffered. There is potential for the compensation payments resulting from the settlement of the class action to reduce or cancel income support entitlements of thalidomide survivors unless exempted under the Act. This Determination is consistent with previous determinations made under paragraph 5H(12)(c) of the Act for lump sum payments that are compensatory in nature.

Effect of determination

This Determination is a legislative instrument.

Explanation of Provisions

Part 1 of the Determination states the name of the Determination, the commencing date, the defined terms, and the authorising provision within the *Veterans' Entitlements Act 1986*.

Part 2 states that for the purpose of paragraph 5H(12)(c) of the Act a Thalidomide Class Action Payment is an exempt lump sum.

Consultation

Consultation was not necessary as the Determination is only relevant to the administration of the Act. A similar Determination has been prepared by the Department of Social Services in respect of income support payments under the *Social Security Act 1991*. No other Government department or authority, business or community group is impacted in regard to social security payments.

Regulatory Impact Analysis

The Determination does not require a Regulatory Impact Statement. The Determination is not regulatory in nature, will not impact on business activity and will have no, or minimal, compliance costs or competition impact.

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 Sum) (Thalidomide Class Action Payment) Determination 2014

The effect of the Determination is that a person who receives a Thalidomide Class Action Payment (Thalidomide Payment) will not have that Thalidomide Payment assessed as income under the veterans' entitlements law.

Human rights implications

The Determination engages the right to social security under Article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). 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.

The changes made by the Determination will operate beneficially as a Thalidomide Payment will not be taken into account when assessing a person's eligibility or rate of income support payments under the veterans' entitlements income test. If the Thalidomide Payment is not exempted, a person in receipt of the Thalidomide Payment may not be eligible for an income support payment or, if they are eligible, their rate of payment might be reduced.

The exemption of the Thalidomide Payment 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 asset produced from the lump sum is exempt from the social security assets test. This is consistent with the treatment of other lump sum payments exempted under paragraph 5H(12)(c) of the Act.

The exemption provided by the Determination will ensure that receipt of a Thalidomide Payment will not be taken into account when assessing a person's eligibility or rate of income support payment under the veterans' entitlements income test and is therefore consistent with the promotion of the right to social security.

Conclusion

This Determination supports a person's human right to social security.

Mark Harrigan, Senior Executive Band 1, Rehabilitation and Entitlements Branch, as a delegate of the Repatriation Commission.
