

EXPLANATORY STATEMENT

Veterans' Entitlements Income (Exempt Lump Sum – Superannuation Co-contribution Amounts) Determination 2016

EMPOWERING PROVISION

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

PURPOSE

The attached instrument (2015 No.R69) revokes and remakes Instrument no R7/2006 dated 8 February 2006 for the purposes of the sunset exercise. On 1 April 2016 the instrument will “sunset” (expire) unless re-made.

Subsection 26(1B) of the Legislative Instruments Act 2003 provides that the requirement for an explanatory statement to explain the purpose and operation of an instrument may be met by an explanation that the instrument replaces a specified earlier legislative instrument or a specified provision of an earlier legislative instrument and is the same in substance as the specified instrument or provision.

The Department of Veterans' Affairs (DVA) has reviewed the instrument and found that it is still required. Accordingly, the instrument has been re-made and aside from updating and streamlining is the same in substance as the instrument it replaces.

The attached instrument is known as an “exempt lump sum instrument”. An amount determined in this instrument to be an exempt lump sum means it is not assessed as income for means-tested pensions.

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.

The *Superannuation (Government Co-contribution for Low Income Earners) Act 2003* provides for the payment of a Government superannuation co-contribution to qualifying low-income earners who made eligible personal superannuation contributions from 1 July 2003. To qualify a person must have an annual income below the higher co-contribution income threshold, be making eligible personal superannuation contributions and have employer-supported superannuation.

The attached instrument provides for the exemption of superannuation co-contribution amounts from the income assessment of the person's or the person's partner's service pension or income support supplement and therefore, exempt the payments from the means test and ensure that the amount is not treated as income.

CONSULTATION

There has been no consultation because the instrument is being re-made in essentially the same form and benefits are not being affected. Consultation was considered unnecessary.

RETROSPECTIVITY

None.

DOCUMENTS INCORPORATED-BY-REFERENCE

No.

REGULATORY BURDEN

This instrument does not impose a regulatory impact on business, community organisations or individuals, and, as such, has nil or minor regulatory impact

HUMAN RIGHTS STATEMENT

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

The attached legislative instrument does engage an applicable right or freedom. It relates to 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 engaged and promoted by the attached instrument in that the instrument re-makes an instrument that ensure the superannuation co-contribution amounts are not treated as income for the purposes of the means-test for certain pensions, thereby maintaining the level of pension a person receives.

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 the 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.

However, under subsection 5H(12)(c) of the VEA, payments such as superannuation co-contribution amounts can be exempted from the means-test. This provision has been utilised in the attached instrument to exempt the relevant amount from the means test.

Conclusion

The attached legislative instrument is considered to be compatible with the human right to social security because it ensures certain pensions are maintained at their existing levels and are not unfairly reduced by the payment of the superannuation co-contribution amounts.

Mark Harrigan
Assistant Secretary, as delegate of The Repatriation Commission

Rule-Maker