

EXPLANATORY STATEMENT

Veterans' Entitlements (Exempt Lump Sum – Life Insurance Payouts) Determination 2016 (Instrument 2016 No. R15)

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 by insurance companies to Department of Veterans' Affairs (DVA) clients in receipt of service pension or income support supplement on death or terminal illness will not be regarded as income under the income test provisions of the VEA.

This determination provides that a payment made pursuant to a policy of insurance upon the death or terminal illness of another person (life insurance payout) is an exempt lump sum for the purposes of the definition of "ordinary income" in paragraph 5H(1) 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 payment under the veterans' entitlements income test.

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

The initial exemption of these payments 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 financial assets produced from the lump sum are exempt from the relevant income deeming provisions of the VEA.

CONSULTATION

Yes. The Department of Social Services (DSS) has been consulted. The policy implemented by the attached instrument is in line with the long-standing DSS beneficial policy position (reflected in its Guide to Social Security Law) whereby death benefits or insurance policy payments upon terminal illness are treated as exempt income for the purpose of determining pensions administered by that Department.

Consultation with DSS was by way of email correspondence and discussions.

RETROSPECTIVITY

Yes. The instrument is stated to commence on 1 July 2015. Its retrospective commencement is designed to ensure that insurance payouts of the kind covered by this instrument and paid between 1 July 2015 and the date of making of this instrument are treated as exempt income under the VEA.

This determination is beneficial in its impact as it exempts lump sum payments made by insurance companies on death or terminal illness from the income test provisions of the VEA.

While retrospective in nature, the instrument will not infringe relevant provisions of the *Legislation Act 2003* because the retrospective operation of this instrument 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 determination engages the Right to Social Security contained in article 9 of the International Covenant on Economic Social and Cultural Rights.

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 an 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.

The determination will operate beneficially as exempted insurance payouts will not be taken into account when assessing a person's eligibility or rate of pension under the VEA income test. If the insurance payout is not exempted, a person in receipt of the payout 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 determination in that the determination ensures that insurance payments, intended to compensate on death or terminal illness, are not treated as income for the purposes of the means-test for certain pensions.

Conclusion

The attached instrument is compatible with human rights, most relevantly, the 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 sets out the name of the instrument.

Section 2 is the commencement provision. It provides that the determination is taken to have commenced on 1 July 2015.

Section 3 defines “income support supplement”, “life insurance payout”, and “service pension” for the purposes of section 4 of the determination.

Section 4 is the operative provision of the determination. It provides that if a person or a person’s partner receives a *life insurance payout* and the person is eligible for, or in receipt of a *service pension* or *income support supplement*, then the amount of the *life insurance payout* 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.