

EXPLANATORY STATEMENT

Veterans' Entitlements (Income Exempt Lump Sum – South Australian Stolen Generations Reparations Scheme) Determination 2016 (Instrument 2016 No. R44)

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 South Australian Government's Stolen Generations Reparations Scheme will not be regarded as income under the income test provisions of the VEA.

This determination provides that a payment made by the South Australian Government under the South Australian Stolen Generations Reparations Scheme 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.

Under the South Australian Stolen Generations Reparations Scheme, the government of South Australia is providing one-off ex gratia lump sum payments to Aboriginal persons who were removed from their parents or family as children before 31 December 1975 without a court order and whose usual place of residence when removed was South Australia or who were removed by South Australian authorities.

The scheme was announced by the South Australian Minister for Aboriginal Affairs and Reconciliation in November 2015 and payments (of up to \$50,000) to eligible members of the "Stolen Generations" will be made following commencement of the scheme on 31 March 2016.

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

This determination was made in consultation with, and following advice from, the Commonwealth Department of Social Services (DSS). That Department has made a similar instrument – *Social Security Exempt Lump Sum (South Australian Stolen*

Generations Reparations Scheme) Determination 2016 – under section 8(11)(d) of the *Social Security Act 1991* to ensure that reparation payments received by DSS clients are exempt from the income test under Social Security Law.

The Department of Veterans' Affairs (DVA) was briefed by DSS with relevant background material from the Department of State Development in South Australian which initiated the request for relevant income exemptions.

Consultation was by way of email and other correspondence.

This determination will be beneficial to persons affected as it exempts payments made under the South Australian Stolen Generations Reparation Scheme from the veterans' entitlements income test. In these circumstances, public consultation was considered unnecessary.

RETROSPECTIVITY

Yes. The instrument will operate retrospectively to 31 March 2016.

This is designed to co-incide with the commencement of reparation payments by the South Australian government under the scheme and is intended to ensure that any payments to DVA clients under the scheme and prior to registration of this instrument are captured by this determination.

This instrument is beneficial in terms of its impact on DVA clients and, as such, will not infringe subsection 12(2) of the *Legislation Act 2003* (a legislative instrument is of no effect if it takes effect before registration and disadvantages a person or imposes liabilities 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.

The Right to Social Security is promoted by the attached determination in that the determination ensures that the reparation payment, which is intended to compensate, is not treated as income for the purposes of the means-test for certain pensions.

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 client receives a reparation payment in question, prima facie the payment would be considered to be “ordinary income” and would be included in the means-test which could result in a reduced pension for that client.

The determination will operate beneficially as the 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 reparation payment is not exempted, a person in receipt of the reparation payment may not be eligible for a payment under the VEA or, if they are eligible, their rate of payment might be reduced.

Conclusion

The determination ensures that certain pensions under the VEA are not unfairly reduced due to receipt of a reparation payment. In so doing it is compatible with human rights, relevantly, the Right to Social Security.

Luke Brown
Acting Assistant Secretary, as delegate of the Repatriation Commission

Rule-Maker

FURTHER EXPLANATION OF PROVISIONS

See: [Attachment A](#)

FURTHER EXPLANATION OF THE DETERMINATION

Section 1 recites the name of the determination.

Section 2 is the commencement provision. It states that the determination is to taken to have commenced on 31 March 2016.

Section 3 defines terms that are used in section 4 of the determination, most significantly, “reparation payment” and “South Australian Stolen Generations Reparations Scheme”.

The latter term is defined to mean a scheme operated by the South Australian Government to provide one-off *ex gratia* lump sum payments to Aboriginal persons who were removed from their parents or family as children before 31 December 1975 without a court order and whose usual place of residence when removed was South Australia or who were removed by South Australian authorities.

A “reparation payment” is a payment made by the South Australian government in accordance with that scheme.

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