

EXPLANATORY STATEMENT

Veterans' Entitlements (Exempt Lump Sum – Compensation Payment for Australian Prisoners of War in Europe) Determination 2017 (Instrument 2017 No. R13)

EMPOWERING PROVISION

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

PURPOSE

The attached instrument (2017 No.R13) revokes and re-makes the *Veterans' Entitlements Income (Exempt Lump Sum – Ex Gratia Payment for Australian Prisoners of War in Europe) Determination* (Instrument No.R16/2007) (former instrument), for the purposes of the sunseting exercise.

On 1 October 2017 the former instrument will “sunset” (expire) unless re-made.

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 is the same in substance as the instrument it replaces.

The purpose of the instrument is to provide that a one-off compensation payment for Australian Prisoners of War in Europe (compensation payment) is an exempt lump sum for the purposes of paragraph 5H(12)(c) of the VEA.

Schedule 5 of the *Social Security and Veterans' Affairs Legislation Amendment (One-off Payments and Other 2007 Budget Measures) Act 2007* provides for a one-off compensation payment in the sum of \$25,000 to veterans and civilian prisoners of war interned by enemy forces in Europe during World War 2, or their surviving widows or widowers.

The instrument will ensure that eligible persons who have not yet claimed the compensation payment are still able to do so without the payment being treated as income for the purpose of calculating the person's income support payment. Although most of the World War II prisoners of war are now deceased, this is not necessarily the case for their partners who may not yet have claimed the compensation payment.

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 income support payment under the veterans' entitlements income test.

The attached instrument will ensure that if a person or the person's partner receives a compensation payment and the person is eligible for, or in receipt of a service pension or income support supplement, then the amount of the payment received by the person is an exempt lump sum for the purposes of the definition of 'ordinary income' in subsection 5H(1) VEA.

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.

The authority to revoke the earlier determination is found in subsection 33(3) of the *Acts Interpretation Act 1901* which provides that where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

CONSULTATION

Section 17 of the *Legislation Act 2003* requires a rule-maker to be satisfied, before making a legislative instrument, that any consultation the rule-maker considered appropriate and reasonably practicable, has been undertaken.

No external consultation was undertaken in this instance. This is because the instrument is being re-made in essentially the same terms as its sunseting predecessor and benefits are not being affected.

Moreover, the instrument is beneficial in nature in terms of its impact on clients as it exempts the relevant payments from the income test under the VEA.

Accordingly, it is considered the requirements of section 17 of the *Legislation Act 2003* have been met.

RETROSPECTIVITY

No.

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 instrument 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 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.

Under the *Veterans' Entitlements Act 1986* (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 a lump sum, the payment is generally treated as income and would be assessed in the means test for the pension which could result in a reduced pension.

The instrument will ensure that the one-off compensation payment for Australian Prisoners of War in Europe received by eligible DVA clients will not be treated as ordinary income when assessing the person's eligibility or rate of pension under the VEA income test.

The right to social security is promoted by the attached instrument in that it ensures that these payments, intended to compensate those eligible persons who suffered as a result of internment by enemy forces in Europe during World War 2, are not treated as income for the purposes of the means-test for certain pensions.

Conclusion

The attached instrument is compatible with human rights, because it supports a person's 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

This section sets out the name of the instrument – the *Veterans' Entitlements (Exempt Lump Sum – Compensation Payment for Australian Prisoners of War in Europe) Determination 2017*.

Section 2

This is the commencement provision. It provides that the instrument commences on the day after registration.

Section 3

This section sets out the primary legislation that authorises the making of the instrument, namely paragraph 5H(12)(c) of the VEA.

Section 4

This section revokes the former instrument. The subject matter of the revoked instrument has been incorporated into the attached instrument.

Section 5

This section defines terms used in section 6 of the instrument including the term “*compensation payment for Australian Prisoners of War in Europe*”.

Section 6

This is the operative provision of the instrument. It provides that if a person or the person's partner receives a *compensation payment for Australian Prisoners of War in Europe* and the person is eligible for, or in receipt of a *service pension* or *income support supplement*, then the amount of the 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.