

## EXPLANATORY STATEMENT

### **Veterans' Entitlements (Exempt Lump Sum - Compensation Payments by the Commonwealth on Behalf of the ADF for Historical Child Sexual Abuse Claims) Determination 2019**

(Instrument 2019 No. R45)

#### **EMPOWERING PROVISION**

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

#### **PURPOSE**

The purpose of the determination is to ensure that compensation payable by the Commonwealth as a result of a court ruling, settlement or similar scenario, in relation to historical child sexual abuse committed against a person whilst they were a member of the Australian Defence Force (ADF), will not be regarded as income under the income test provisions of the VEA.

The determination will align the treatment of such payments with that of monetary payments made under the National Redress Scheme for Institutional Child Sexual Abuse ("National Redress Scheme") which commenced from 1 July 2018.

The National Redress Scheme was created in response to recommendations by the Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission). The Royal Commission listened to thousands of people about the abuse they experienced as children in orphanages, Children's Homes, schools, churches and other religious organisations, sports clubs, hospitals, foster care and other institutions including the ADF.

The National Redress Scheme provides access to counselling and psychological services, a direct personal response from the responsible institution, and a redress payment of up to \$150,000. The payment is not subject to income tax and was exempted from income tests for the purposes of the VEA by the *Veterans' Entitlements (Exempt Lump Sum – Redress Payment) Determination 2018* (Instrument 2018 No. R83) [F2018L01141].

However, access to the National Redress Scheme will not be provided where a person has already received a court-ordered payment from or on behalf of the institution. Such payments are now more likely to be received as some of the other recommendations of the Royal Commission resulted in various State and Territory governments amending their civil liability and limitations legislation to enable claims for damages to be more easily made.

This determination provides that an amount paid to a person or person's partner on the basis of such a claim where the abuse was suffered while the person was a child, and was a member of the Australian Defence Force (ADF) is an exempt lump sum for the purposes 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 rate of income support under the VEA.

The determination will ensure that if a person or the person's partner receives an amount of compensation on the basis that the payment concerns historical child sexual abuse committed against the person while they were a member of the ADF and the person is eligible for, or in receipt of, an income support supplement, a service pension or a veteran payment, then the amount of compensation received by the person or the person's partner is an exempt lump sum.

## **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.

This determination was made in consultation with policy representatives of the Department of Veterans' Affairs (DVA). The nature of consultation was by way of email correspondence.

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

## **RETROSPECTIVITY**

The determination will be taken to have commenced on 1 July 2018 in line with the commencement of the National Redress Scheme and will operate from that date.

The retrospective commencement is designed to support clients and is intended to ensure that compensation already paid by the Commonwealth on behalf of the ADF to a person or their partner, will be treated as exempt income under the VEA.

The retrospective operation of the instrument will not infringe section 12 of the *Legislation Act 2003* because the retrospective operation would not disadvantage any person or impose a liability on a person other than the Commonwealth.

## **DOCUMENTS INCORPORATED BY REFERENCE**

No.

## **REGULATORY IMPACT**

None. Office of Best Practice Regulation (OBPR) reference is OBPR ID 25701.

## **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 VEA, income support payments are subject to a means test which assesses the income and assets of the pensioner to determine the level of payment the person is entitled to. Where an income support recipient receives a lump sum, the whole or part of the payment is

generally treated as income and would be assessed under the means test for the payment which could result in the payment being reduced.

The determination will operate beneficially as a compensation payment will not be taken into account when assessing a person's rate of payment under the VEA income test. If the compensation payment is not exempted, a person in receipt of that compensation may not be eligible for an income support 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 instrument in that it ensures compensation is not treated as income for the purposes of the means test for establishing whether certain pensions and other payments are payable.

The attached instrument is compatible with human rights because it supports a person's right to social security.

Edel Kairouz

Assistant Secretary, as delegate of the Repatriation Commission

Rule-Maker

#### **FURTHER EXPLANATION OF PROVISIONS**

See: [Attachment A](#)

## **FURTHER EXPLANATION OF PROVISIONS**

### **Section 1**

This determination sets out the name of the instrument – *Veterans’ Entitlements (Exempt Lump Sum – Compensation Payments by the Commonwealth on Behalf of the ADF for Historical Child Sexual Abuse Claims) Determination 2019*.

### **Section 2**

This is the commencement provision. It provides that the determination commenced on 1 July 2018.

### **Section 3**

This section sets out the primary legislation that authorises the making of the determination, namely paragraph 5H(12)(c) of the *Veterans’ Entitlements Act 1986* (VEA).

### **Section 4**

This section defines terms used in section 5 of the determination.

*A compensation payment on behalf of the ADF* is defined as a payment of compensation made by the Commonwealth on behalf of the ADF as the consequence of a claim for compensation for historical child sexual abuse as a member of the ADF.

The other terms that are defined - *income support supplement*, *service pension* and *veteran payment* all refer to their VEA meanings.

### **Section 5**

This is the operative provision of the determination. It provides that if a person or the person’s partner receives a *compensation payment on behalf of the ADF* and the person is eligible for, or in receipt of, a service pension, income support supplement or veteran payment, then the amount of the *compensation payment in behalf of the ADF* 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.