

EXPLANATORY STATEMENT

Veterans' Entitlements (Exempt Lump Sum – Payments under the Territories Stolen Generations Redress Scheme) Determination 2022

(Instrument 2022 No. R2)

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 Territories Stolen Generations Redress Scheme (the Scheme), will be treated as an exempt lump sum under the VEA.

The Australian Government announced funding of \$378.6 million over the 2021 to 2026 financial years for the Scheme. Relevantly, it will be for survivors of the Stolen Generations who were removed as children from their families whilst in the Northern Territory or the Australian Capital Territory (prior to their respective self-government) or the Jervis Bay Territory. The Scheme is intended to operate from 1 March 2022 to 30 June 2026, and will be open for applications between 1 March 2022 and 28 February 2026.

The Scheme will provide the following financial and wellbeing package to eligible participants:

- a. a one-off redress payment to recognise the harm caused by forced removal;
- b. a one-off healing assistance payment in recognition that the action required to facilitate healing will be specific to each individual (these two payments are referred to as the redress payment); and
- c. the opportunity, if they choose, to confidentially tell their story about the impact of their removal to a senior official within government and receive a face-to-face or written direct personal response acknowledging the trauma caused by removal.

Under the VEA, the income test is one of two tests used to determine a person's eligibility for and rate of income support supplement, service pension or veteran payment and, if they are eligible, the rate of an income support supplement, a service pension or a veteran payment is payable. Income received for a person's own use or benefit is generally assessable. However, some amounts that would otherwise be income are specifically exempted.

This determination provides that a redress payment paid to an eligible participant under the Scheme is an exempt lump sum for the purposes of subsection 5H(12) 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 as part of the person's 'ordinary income' in determining the rate of income support under the VEA.

The determination will ensure that if a person receives a payment under the Scheme and the person is eligible for, or in receipt of, and income support supplement, a service pension or a

veteran payment, then the amount of compensation received by the person 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 the National Indigenous Australians Agency and the Department of Social Services.

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

RETROSPECTIVITY

Not applicable.

DOCUMENTS INCORPORATED BY REFERENCE

No.

REGULATORY IMPACT

The Office of Best Practice Regulation (OBPR) has been consulted and a RIS is not required as it is unlikely to have more than a minor regulatory impact. The OBPR ID Number is 25857.

FURTHER EXPLANATION OF PROVISIONS

See: [Attachment A](#)

Statement of Compatibility with Human Rights

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

Veterans' Entitlements (Exempt Lump Sum – Payments under the Australian Government under the Territories Stolen Generations Redress Scheme) Determination 2022

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 it has the effect that a payment under the Territories Stolen Generations Redress Scheme will not be taken into account when assessing a person's rate of payment under the VEA income test. If a payment is not exempted, a person in receipt of that payment 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 payments under the Territories Stolen Generations Redress Scheme are 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.

Simon Hill

Assistant Secretary, Policy Development Branch, as delegate of the Repatriation Commission
Rule-Maker

FURTHER EXPLANATION OF PROVISIONS

Section 1

This determination sets out the name of the instrument – *Veterans’ Entitlements (Exempt Lump Sum – Payments under the Territories Stolen Generations Redress Scheme) Determination 2022*.

Section 2

This is the commencement provision. It provides that the determination commences either at the same time as Part 2 of Schedule 1 to the *Territories Stolen Generations Redress Scheme (Consequential Amendments) Act 2021* (the ***Consequential Act***), or the day after the instrument is registered, whichever occurs later. It also provides that if Part 2 of Schedule 1 to that Act does not commence, the instrument does not commence.

Part 2 of Schedule 1 to the *Consequential Act* amends the *Veterans’ Entitlements Act 1986* (VEA) to insert new paragraph (mc) into subsection 5H(8). The commencement provision in the determination ensures the determination will commence at the same time as that amendment to the VEA.

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.

Act is defined to mean the *Veterans’ Entitlements Act 1986*.

The term “payment under the Territories Stolen Generations Redress Scheme” is defined as a payment received by a person under the Territories Stolen Generations Redress Scheme. The definition of the Scheme adopts the same meaning as provided for under section 3 of the *Territories Stolen Generations Redress Scheme (Facilitation) Act 2021*.

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

Section 5

This is the operative provision of the determination. It provides that if a person receives a payment under the scheme known as the Territories Stolen Generations Redress Scheme and the person is eligible for, or in receipt of, a service pension, income support supplement or veteran payment, then that amount is an exempt lump sum.

The expression ‘the scheme known as the Territories Stolen Generation Redress Scheme’ mirrors the wording used to describe the scheme in new paragraph 5H(8)(mc) to be inserted into the VEA by the *Consequential Act*.

Section 5 has the effect that payments received under the Scheme will not be counted in determining a person’s ‘ordinary income’ for the purposes of subsection 5H(1) of the VEA.