

EXPLANATORY STATEMENT

Social Security (Waiver of Debts – Self Managed Superannuation Funds and Small APRA Funds) (FaHCSIA) Specification 2011

Summary

The *Social Security (Waiver of Debts – Self Managed Superannuation Funds and Small APRA Funds) (FaHCSIA) Specification 2011* (the Specification) is made under subsection 1237AB(1) of the *Social Security Act 1991* (the Act).

The purpose of the Specification is to specify a class of debts that may be waived.

Background

Subsection 1237AB(1) of the Act provides that the Secretary may decide to waive the Commonwealth's right to recover debts arising under the Act that are included as a class of debts specified by the Minister by legislative instrument.

Income streams sourced from a self managed superannuation fund or a small APRA (Australian Prudential Regulation Authority) fund:

- before 20 September 2004 (or that were commuted and rolled over on or after 20 September 2004 from those income streams and retained their 100 percent exemption); or
- between 20 September 2004 and 19 September 2007 (or that were commuted and rolled over on or after 20 September 2007 from those income streams and retained their 50 percent asset-test exemption); and

which comply with the requirements of section 9A or 9B of the Act, are 100 per cent or 50 per cent asset-test exempt. If these income streams are commuted, the asset-test exemption may be retained provided the new income stream complies with the requirements of the *Social Security (Guidelines for Determining whether Income Stream is Asset-test Exempt) (FaCSIA) Determination 2007 (No. 1)* or the *Social Security (Retention of Exemption for Asset-test Exempt Income Streams) (FaCSIA) Principles 2007* (in force from time to time). These requirements include commuting the income stream and purchasing a similar income stream product from a retail provider. This option is available at any time to the owner of the income stream under this instrument.

These income streams are required, among other things, to meet a 'high probability' actuarial test that the provider of the income stream will be able to pay the income stream as required, so as to comply with the requirements of section 9A or 9B of the Act. However, some self managed superannuation

funds or small APRA funds may no longer be able to meet this requirement due to changes in the value of assets backing their income stream.

Where an income stream does not meet the high probability test, it may be restructured by purchasing a retail asset-test exempt product (which will comply with the requirements of the social security law). In these circumstances, the income stream will continue to be assessed as asset-test exempt.

Alternatively, the income stream may be restructured into a market-linked income stream either from a retail provider or within the self managed superannuation fund. However, this new income stream will no longer meet the requirements of section 9A or 9B of the Act. The new market-linked income stream will also not meet the requirements of section 9BA as the income stream's commencement day would not meet the requirements of subparagraph 9BA(1)(a)(i) of the Act. Accordingly, the market-linked income stream will be 100 percent asset tested.

Under the social security law, a consequence of restructuring an income stream which was sourced from a self managed superannuation fund or small APRA fund to a market-linked income stream, will mean that the difference between the amount that has been paid by way of income support where the income stream was asset-test exempt and the amount that would have been payable had the income stream been asset-tested, is a debt due to the Commonwealth under section 1223A of the Act.

This instrument will allow for this class of debts to be waived. This will enable the Secretary to waive the Commonwealth's right to recover debts arising under the Act, incurred by persons whose income streams, sourced from a self managed superannuation fund or a small APRA fund before 20 September 2004 (or were commuted and rolled over on or after 20 September 2004 from those income streams and retained their 100 percent exemption) and which complied with the requirements of sections 9A and 9B of the Act are commuted to a market-linked income stream. This waiver applies irrespective of whether the asset-test exempt income stream does or does not meet the high probability test. In other words, this waiver is available at any time, provided the income stream is commuted to a 100 percent asset tested market-linked income stream.

Explanation of the provisions

Section 1 states the name of the Specification is the *Social Security (Waiver of Debts – Self Managed Superannuation Funds and Small APRA Funds) (FaHCSIA) Specification 2011*.

Section 2 provides that the Specification commences on the day after the end of the period for disallowing it, in accordance with section 42 of the *Legislative Instruments Act 2003*. Subsection 1237AB(3) of the Act provides that an instrument made under subsection 1237AB(1) is of no effect until the time

allowed for its disallowance has passed. This Specification will commence on the day after the end of the disallowance period.

Section 3 contains definitions relevant to the Specification.

Section 4 specifies the class of debt that may be waived. A debt is in a specified class if a person owes a debt to the Commonwealth under section 1223A of the Act which did not arise because the person knowingly made a false or misleading statement, or knowingly provided false information to the Commonwealth (paragraphs 4(a) and (b)).

The specified class of debts must also meet the requirements of subparagraphs 4(c)(i)(A) and (B). That is, immediately before the commencement of this Specification, the income stream that is relevant for the purposes of section 1223A:

- was an asset-test exempt income stream that met the requirements of either section 9A or 9B of the Act; or
- an asset-tested income stream (long term) that was previously an asset-test exempt income stream but due to changes in the value of the assets backing the income stream, failed to meet the high probability actuarial test. As these income streams are no longer able to meet the requirements of either paragraph 9A(1)(b) or 9B(1A)(b) of the Act, they are unable to retain their asset-test exemption. In these circumstances, these income streams would be assessed as asset-tested income streams and this change of status would normally trigger the operation of section 1223A of the Act.

A debt is in a specified class if the income stream, that meets the requirements of subparagraphs 4(c)(i)(A) and (B) of this Specification, was also sourced from a self managed superannuation fund or a small APRA fund (subparagraphs 4(c)(ii)(A) and (B)).

However, section 1223A of the Act does not apply if the income stream is commuted and rolled over into an asset tested market-linked income stream on or after the commencement of this Specification (paragraph 4(d)).

Consultation

Public consultation has not been undertaken as this instrument is of a purely beneficial character. Consultation was also undertaken with Centrelink, the Department of Veterans' Affairs and the Department of Education, Employment and Workplace Relations in the making of this Specification, to ensure a co-ordinated approach by all Departments. A similar instrument has also been made by the Minister for Tertiary Education, Skills, Jobs and Workplace Relations to allow the waiver of debts for which the Minister has responsibility.

Regulatory Impact Statement

A Regulatory Impact Statement and a Business Costs Calculator are not required as the waiver of the Commonwealth's right to recover social security debts will have no regulatory or competition impacts, and will not impose compliance costs on business.