



Social Security (Retention of exemption for asset-test exempt income streams) (FaHCSIA) Principles 2011¹

Social Security Act 1991

I, FINN PRATT, Secretary of the Department of Families, Housing, Community Services and Indigenous Affairs, make these Principles under subparagraphs (a) (iii) and (b) (ii) of the definition of *partially asset-test exempt income stream* in subsection 1118 (1A) of the *Social Security Act 1991*.

Dated 17 October 2011

FINN PRATT

Secretary

Department of Families, Housing, Community Services and Indigenous Affairs

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Part 1 Preliminary**1.1 Name of Principles**

These Principles are the *Social Security (Retention of exemption for asset-test exempt income streams) (FaHCSIA) Principles 2011*.

1.2 Commencement

These Principles commence on the day after they are registered.

1.3 Revocation

The *Social Security (Retention of Exemption for Asset-test Exempt Income Streams) (FaCSIA) Principles 2007* are revoked.

1.4 Definitions

In these Principles:

2005 Principles means the *Social Security (Partially Asset-test Exempt Income Stream — Exemption) (FaHCSIA) Principles 2005*.

2007 Principles means the *Social Security (Retention of Exemption for Asset-test Exempt Income Streams) (FaCSIA) Principles 2007*.

Act means the *Social Security Act 1991*.

benefit fund has the meaning given by subsection 16B (1) of the *Life Insurance Act 1995*.

defined benefit pension has the meaning given by regulation 9.04E of the *Superannuation Industry (Supervision) Regulations 1994*.

hardship amount has the meaning given by subsection 9A (7) of the Act.

immediate annuity means an annuity that is presently payable.

life company has the meaning given in the Dictionary to the *Life Insurance Act 1995*.

regulated superannuation fund has the meaning given by subsection 10 (1) of the *Superannuation Industry (Supervision) Act 1993*.

self managed superannuation fund has the meaning given by section 17A of the *Superannuation Industry (Supervision) Act 1993*.

statutory fund has the meaning given by section 29 of the *Life Insurance Act 1995*.

successor fund has the meaning given by subregulation 1.03 (1) of the *Superannuation Industry (Supervision) Regulations 1994*.

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third party has the meaning given by section 90AB of the *Family Law Act 1975*.

Note Several other words and expressions used in these Principles have the meaning given in Part 1.2 of Chapter 1 of the Act, for example:

- asset-test exempt income stream (subsection 9 (1) and sections 9A, 9B and 9BA)
- family law affected income stream (subsection 9 (1) and section 9C)
- income stream (subsection 9 (1))
- original family law affected income stream (subsection 9 (1) and section 9C).

1.5 Purpose

These Principles specify:

- (a) under Part 2 — the criteria that exclude an income stream from the class of partially asset-test exempt income streams established by paragraph (a) of the definition of *partially asset-test exempt income stream* set out in subsection 1118 (1A) of the Act; and
- (b) under Part 3 — the criteria to be satisfied by an income stream covered by paragraph (b) of that definition.

Note Section 1118 of the Act provides for certain assets to be disregarded in calculating the value of a person's assets for the purposes of the assets test. Paragraph 1118 (1) (d) of the Act provides that the value of an asset-test exempt income stream, other than a partially asset-test exempt income stream, is to be disregarded for the purposes of that calculation. Paragraph 1118 (1) (da) of the Act provides that only half of the value of a partially asset-test exempt income stream is to be disregarded for the purposes of the assets test.

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Part 2 Asset-test exempt income streams

2.1 Principles

For subparagraph (a) (iii) of the definition of *partially asset-test exempt income stream* in subsection 1118 (1A) of the Act, the Principles are the Principles set out in this Part.

Note For the definition of *asset-test exempt income stream*, see subsection 9 (1) of the Act.

2.2 Asset-test exempt income stream resulting from original asset-test exempt income stream purchased before 20 September 2004

- (1) These Principles cover an asset-test exempt income stream if:
 - (a) the income stream (the *present income stream*) is covered by section 9A or 9B of the Act; and
 - (b) it is purchased by the primary beneficiary on or after 20 September 2004 from funds arising from the commutation of another asset-test exempt income stream (the *original income stream*); and
 - (c) the original income stream was purchased before 20 September 2004; and
 - (d) the original income stream is a kind of income stream to which one of the following subsections applies.
- (2) This subsection applies to an original income stream if:
 - (a) it is covered by subsection 9A (1) or (1A) or section 9B of the Act; and
 - (b) it was purchased by the primary beneficiary for the benefit of the primary beneficiary and a reversionary beneficiary; and
 - (c) payments made under the income stream are calculated on the basis of the life expectancy of the reversionary beneficiary; and
 - (d) the reversionary beneficiary predeceases the primary beneficiary.
- (3) This subsection applies to an original income stream if:
 - (a) it is covered by subsection 9A (1) or (1A) or section 9B of the Act; and
 - (b) it is not an income stream to which section 2.4 or 2.5 of these Principles applies; and
 - (c) it is purchased by the primary beneficiary for the benefit of the primary beneficiary and a reversionary beneficiary who, at the time of the purchase, are members of a couple together; and

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- (d) the primary beneficiary and reversionary beneficiary are no longer members of a couple together.

Example

On 1 March 2002, J purchased an income stream (the **original income stream**) covered by subsection 9A (1) of the Act for the benefit of J, the primary beneficiary, and H, the reversionary beneficiary. At the time of the purchase, J and H were members of a couple together. On 1 December 2005, J and H ceased to be members of a couple together. On 15 December 2005, J commutes the original income stream and purchases another income stream (the **new income stream**) covered by subsection 9A (1) of the Act. The new income stream is covered by these Principles and retains the 100% exemption from the social security assets test.

- (4) This subsection applies to an original income stream if:
- (a) it is a defined benefit pension covered by section 9A or 9B of the Act that is provided by a regulated superannuation fund; and
 - (b) it is an income stream in relation to which the Secretary is not satisfied as required by paragraph 9A (1) (b) or 9B (1A) (b) of the Act, as applicable.

Example

On 1 March 2002, P purchased a 100% asset-test exempt income stream (the **original income stream**) that is a defined benefit pension covered by section 9A of the Act that is provided by a regulated superannuation fund. Paragraph 9A (1) (b) of the Act applies to the original income stream. On 1 September 2005, the Secretary is not satisfied that the requirements of paragraph 9A (1) (b) of the Act are met in relation to the original income stream. On 15 September 2005, P commutes the original income stream to purchase another income stream (the **new income stream**) that is covered by section 9A of the Act. The new income stream is covered by these Principles and retains the 100% exemption from the social security assets test.

Note Paragraphs 9A (1) (b) and 9B (1A) (b) of the Act require the Secretary to be satisfied, in relation to an income stream, that there is in force a current actuarial certificate stating that in the actuary's opinion there is a high probability that the provider of the income stream will be able to pay the income stream as required under the income stream's contract or governing rules.

- (5) This subsection applies to an original income stream if:
- (a) it is an immediate annuity under a statutory fund established by a life company, or under a benefit fund; and
 - (b) it:
 - (i) is an income stream in relation to which the Secretary is not satisfied as required by paragraph 9A (1) (b) or 9B (1A) (b) of the Act, as applicable; or
 - (ii) fails to satisfy relevant standards published by the Australian Prudential Regulation Authority about minimum surrender values and paid up values.

Note Paragraphs 9A (1) (b) and 9B (1A) (b) of the Act require the Secretary to be satisfied, in relation to an income stream, that there is in force a current actuarial certificate stating that in the actuary's opinion there is a high probability that the provider of the income stream will be able to pay the income stream as required under the income stream's contract or governing rules.

Section 2.3**2.3 Asset-test exempt income stream resulting from transfer to successor fund**

These Principles cover an asset-test exempt income stream if:

- (a) it is covered by section 9A or 9B of the Act; and
- (b) it results from the transfer, on or after 20 September 2004, of another income stream (the *original income stream*) to a successor fund; and
- (c) the original income stream was covered by section 9A or 9B of the Act; and
- (d) the original income stream was provided by a regulated superannuation fund; and
- (e) the original income stream:
 - (i) was purchased before 20 September 2004; or
 - (ii) was covered by the 2005 Principles during the period starting on 20 September 2004 and ending at the end of 19 September 2007; or
 - (iii) until the commencement of these Principles, was covered by the 2007 Principles; or
 - (iv) was covered by these Principles.

2.4 Asset-test exempt income stream resulting from payment split

These Principles cover an asset-test exempt income stream if:

- (a) it is covered by section 9A or 9B of the Act; and
- (b) it is purchased or acquired by the primary beneficiary or the primary beneficiary's partner or former partner on or after 20 September 2004; and
- (c) it results from another asset-test exempt income stream (the *original income stream*) being commuted to give effect to an entitlement of the partner or former partner of the primary beneficiary in respect of the original income stream under a payment split under Part VIII B of the *Family Law Act 1975*; and
- (d) the original income stream was covered by section 9A or 9B of the Act; and
- (e) the original income stream:
 - (i) was purchased before 20 September 2004; or
 - (ii) was covered by the 2005 Principles during the period starting on 20 September 2004 and ending at the end of 19 September 2007; or
 - (iii) until the commencement of these Principles, was covered by the 2007 Principles; or
 - (iv) was covered by these Principles.

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Example

On 1 March 2002, P, who was partnered to J at that date, purchased an income stream (the **original income stream**) covered by section 9A of the Act. On 1 February 2012, P and J separate. P's original income stream is commuted to give effect to an entitlement of J in respect of the original income stream under a payment split under Part VIII B of the *Family Law Act 1975*. On 15 February 2012, J uses the entitlement resulting from the payment split to purchase an income stream (the **new income stream**) covered by section 9A of the Act. The new income stream is covered by these Principles and retains the 100% exemption from the social security assets test.

2.5 Asset-test exempt income stream resulting from Family Court order or injunction

These Principles cover an asset-test exempt income stream if:

- (a) it is covered by section 9A or 9B of the Act; and
- (b) it is purchased or acquired by the primary beneficiary or the primary beneficiary's partner or former partner on or after 20 September 2004; and
- (c) it results from another asset-test exempt income stream (the **original income stream**) being commuted to give effect to:
 - (i) an order made under section 79, 90SM, 90SS or 114 of the *Family Law Act 1975*; or
 - (ii) an injunction granted under section 90SS or 114 of that Act that is binding on a third party under Part VIII A A of that Act; or
 - (iii) any other order or injunction under the *Family Law Act 1975* that relates specifically to the original income stream; and
- (d) the original income stream was covered by section 9A or 9B of the Act; and
- (e) the original income stream:
 - (i) was purchased before 20 September 2004; or
 - (ii) was covered by the 2005 Principles during the period starting on 20 September 2004 and ending at the end of 19 September 2007; or
 - (iii) until the commencement of these Principles, was covered by the 2007 Principles; or
 - (iv) was covered by these Principles.

Example

On 1 March 2002, J purchased an income stream (the **original income stream**) covered by subsection 9A (1) of the Act for the benefit of J, the primary beneficiary, and H, the reversionary beneficiary. As it was purchased before 20 September 2004, the income stream has a 100% exemption from the social security assets test. At the time of the purchase, J and H are partnered. On 1 February 2012, J and H separate. On 15 February 2012, J commutes the original income stream in response to a Family Court order and purchases another income stream (the **new income stream**) covered by subsection 9A (1) of the Act. The new income stream is covered by these Principles and retains the 100% exemption from the social security assets test.

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2.6 Asset-test exempt income stream resulting from payment of superannuation contributions surcharge debt

These Principles cover an asset-test exempt income stream if:

- (a) it is covered by section 9A or 9B of the Act; and
- (b) it is purchased by the primary beneficiary on or after 20 September 2004; and
- (c) it results from another asset-test exempt income stream (the *original income stream*) being commuted to pay a superannuation contributions surcharge debt; and
- (d) the original income stream was covered by section 9A or 9B of the Act; and
- (e) the original income stream:
 - (i) was purchased before 20 September 2004; or
 - (ii) was covered by the 2005 Principles during the period starting on 20 September 2004 and ending at the end of 19 September 2007; or
 - (iii) until the commencement of these Principles, was covered by the 2007 Principles; or
 - (iv) was covered by these Principles.

2.6A Asset-test exempt income stream resulting from payment of excess contributions tax

These Principles cover an asset-test exempt income stream if:

- (a) it is covered by section 9A or 9B of the Act; and
- (b) it is purchased by the primary beneficiary on or after 20 September 2004; and
- (c) it results from another asset-test exempt income stream (the *original income stream*) being commuted to pay an amount to give effect to a release authority, given in relation to the primary beneficiary, under:
 - (i) section 292-415 of the *Income Tax Assessment Act 1997*; or
 - (ii) section 292-80C of the *Income Tax (Transitional Provisions) Act 1997*; and
- (d) the original income stream was covered by section 9A or 9B of the Act; and
- (e) the original income stream:
 - (i) was purchased before 20 September 2004; or
 - (ii) was covered by the 2005 Principles during the period starting on 20 September 2004 and ending at the end of 19 September 2007; or
 - (iii) until the commencement of these Principles, was covered by the 2007 Principles; or

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- (iv) was covered by these Principles.

2.7 Asset-test exempt income stream resulting from payment of hardship amount

These Principles cover an asset-test exempt income stream if:

- (a) it is covered by section 9A or 9B of the Act; and
- (b) it is purchased by the primary beneficiary on or after 20 September 2004; and
- (c) it results from another asset-test exempt income stream (the *original income stream*) being commuted to pay a hardship amount; and
- (d) the original income stream was covered by section 9A or 9B of the Act; and
- (e) the original income stream:
 - (i) was purchased before 20 September 2004; or
 - (ii) was covered by the 2005 Principles during the period starting on 20 September 2004 and ending at the end of 19 September 2007; or
 - (iii) until the commencement of these Principles, was covered by the 2007 Principles; or
 - (iv) was covered by these Principles.

Example

On 1 March 2002, J purchased an income stream (the *original income stream*) covered by subsection 9A (1) of the Act for the benefit of J, the primary beneficiary, and H, the reversionary beneficiary. As it was purchased before 20 September 2004, the income stream has a 100% exemption from the social security assets test. On 3 March 2012, J commutes part of the new income stream to pay a hardship amount, and J purchases another income stream (the *further income stream*) from the remaining capital backing the new income stream. The further income stream is covered by these Principles and retains the 100% exemption from the social security assets test.

2.8 Commutation of asset-test exempt income stream resulting from closure of a self managed superannuation fund

These Principles cover an asset-test exempt income stream if:

- (a) it is covered by section 9A or 9B of the Act; and
- (b) it is purchased by the primary beneficiary; and
- (c) it is not sourced from a self managed superannuation fund; and
- (d) it results from another asset-test exempt income stream (the *original income stream*) being commuted as a result of the closure of a self managed superannuation fund because:
 - (i) a member of the fund supporting the original income stream has died; or

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- (ii) the administrative responsibilities of the fund supporting the original income stream have become too onerous due to the age or incapacity of a trustee; and
- (e) the original income stream was:
 - (i) covered by section 9A or 9B of the Act; and
 - (ii) sourced from a self managed superannuation fund; and
- (f) the original income stream:
 - (i) was covered by the 2005 Principles during the period starting on 20 September 2004 and ending at the end of 19 September 2007; or
 - (ii) until the commencement of these Principles, was covered by the 2007 Principles; or
 - (iii) was covered by these Principles.

Example

F and W are trustees of their self managed superannuation fund. They both have lifetime asset-test exempt income streams that were purchased on 1 July 2003 when F was 65 and W was 64. F dies on 26 January 2012. W subsequently decides that she does not have the expertise or inclination to continue as a fund trustee. W commutes her asset-test exempt income stream and uses the proceeds to purchase from a retail income stream provider, an income stream that meets the provisions of section 9A of the Act. The new income stream is covered by these Principles and retains the 100% exemption from the social security assets test.

2.9 Asset-test exempt income stream resulting from commutation or rollover because of regulation 6.21 of *Superannuation Industry (Supervision) Regulations 1994*

These Principles cover an asset-test exempt income stream if:

- (a) it is covered by section 9A or 9B of the Act; and
- (b) it is purchased by the primary beneficiary on or after 1 July 2007; and
- (c) it results from another asset-test exempt income stream (the ***original income stream***) being commuted or rolled over to comply with subregulation 6.21 (2A) of the *Superannuation Industry (Supervision) Regulations 1994*; and
- (d) the original income stream was covered by section 9A or 9B of the Act; and
- (e) the original income stream:
 - (i) was purchased before 20 September 2004; or
 - (ii) was covered by the 2005 Principles during the period starting on 20 September 2004 and ending at the end of 19 September 2007; or
 - (iii) until the commencement of these Principles, was covered by the 2007 Principles; or
 - (iv) was covered by these Principles.

Section 2.10**2.10 Asset-test exempt income stream that is family law affected income stream**

- (1) These Principles cover an asset-test exempt income stream that is a family law affected income stream that does not meet the requirements of subsection 9A (2) or 9B (2) of the Act if:
- (a) either:
 - (i) the income stream meets all the requirements of paragraphs 9A (2) (a) to (l) or 9B (2) (a) to (l) of the Act other than those that are not met because of the operation of an order under Part VIII A A, or a payment split under Part VIII B, of the *Family Law Act 1975* relating to the income stream; or
 - (ii) as a result of the operation of 1 or more orders under Part VIII A A, or 1 or more payment splits under Part VIII B, of the *Family Law Act 1975*, the income stream is derived from an income stream that was an asset-test exempt income stream to which subsection 9A (1A) or 9B (1B) of the Act applied at the time of the order or payment split, or of the last of them; and
 - (b) the income stream is derived from an original family law affected income stream:
 - (i) as a result of the operation of 1 or more orders under Part VIII A A, or 1 or more payment splits under Part VIII B, of the *Family Law Act 1975*; and
 - (ii) the income stream was purchased on or after 20 September 2004; and
 - (c) the original family law affected income stream from which the income stream is derived as a result of the operation of 1 or more orders under Part VIII A A, or 1 or more payment splits under Part VIII B, of the *Family Law Act 1975*, was purchased before 20 September 2004; and
 - (d) either:
 - (i) for an income stream that is an immediate annuity under a statutory fund established by a life company or under a benefit fund — the income stream satisfies standards published by the Australian Prudential Regulation Authority, about minimum surrender values and paid up values, that apply to the annuity; or
 - (ii) in any other case — the income stream meets the requirements of subsection (2); and
 - (e) any amount of the original family law affected income stream that is rolled over, transferred, commuted or paid as a lump sum is not more than the amount required to satisfy the non-member partner's entitlement under an order under Part VIII A A, or under a payment split under Part VIII B, of the *Family Law Act 1975* relating to the original family law affected income stream; and
 - (f) for an income stream to which subparagraph (a) (i) applies — the income stream has met all the requirements mentioned in that subparagraph from the day the income stream began being paid.

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- (2) An income stream meets the requirements of this subsection if:
- (a) the Secretary is satisfied that there is in force a current actuarial certificate that states that in the actuary's opinion there is a high probability that the provider of the income stream will be able to pay the income stream as required under the contract or governing rules under which the income stream is provided; or
 - (b) for a period beginning when an actuarial certificate mentioned in paragraph (a) ceases to be in force and ending not more than 26 weeks later, an actuarial certificate of that kind is not in force.

Part 3 Partially asset-test exempt income streams

3.1 Principles

For subparagraph (b) (ii) of the definition of *partially asset-test exempt income stream* in subsection 1118 (1A) of the Act, the Principles are the Principles set out in this Part.

Note For the definition of *asset-test exempt income stream*, see subsection 9 (1) of the Act.

3.2 Partially asset-test exempt income stream resulting from original partially asset-test exempt income stream purchased on or after 20 September 2004 but before 20 September 2007

- (1) These Principles cover a partially asset-test exempt income stream if:
 - (a) the income stream (the *present income stream*) is purchased by the primary beneficiary on or after 20 September 2007 from the commutation of another partially asset-test exempt income stream (the *original income stream*); and
 - (b) the original income stream was purchased on or after 20 September 2004 and before 20 September 2007; and
 - (c) the original income stream is a kind of income stream in relation to which one of the following subsections applies.
- (2) This subsection applies to an original income stream if:
 - (a) it was purchased by the primary beneficiary for the benefit of the primary beneficiary and a reversionary beneficiary; and
 - (b) payments made under the income stream are calculated on the basis of the life expectancy of the reversionary beneficiary; and
 - (c) the reversionary beneficiary predeceases the primary beneficiary.
- (3) This subsection applies to an original income stream if:
 - (a) it is not an income stream to which section 3.4 or 3.5 of these Principles applies; and
 - (b) it is purchased by the primary beneficiary for the benefit of the primary beneficiary and a reversionary beneficiary who, at the time of the purchase, are members of a couple together; and

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- (c) the primary beneficiary and reversionary beneficiary are no longer members of a couple together.

Example

On 1 March 2005, J purchased an income stream (the *original income stream*) covered by subsection 9A (1) of the Act for the benefit of J, the primary beneficiary, and H, the reversionary beneficiary. The income stream has a 50% exemption from the social security asset test. At the time of the purchase, J and H were members of a couple together. On 1 December 2008, J and H ceased to be members of a couple together. On 15 December 2008, J commutes the original income stream and purchases another income stream (the *new income stream*) covered by subsection 9A (1) of the Act. The new income stream is covered by these Principles and retains the 50% exemption from the social security assets test.

- (4) This subsection applies to an original income stream if:
- (a) it is a defined benefit pension covered by subsection 9A (1) or 9B (1A) of the Act that is provided by a regulated superannuation fund; and
 - (b) it is an income stream in relation to which the Secretary is not satisfied as required by paragraph 9A (1) (b) or 9B (1A) (b) of the Act, as applicable.

Example

On 1 March 2005, P purchased an income stream (the *original income stream*) that is a defined benefit pension covered by section 9A of the Act that is provided by a regulated superannuation fund. Paragraph 9A (1) (b) of the Act applies to the original income stream. The income stream has a 50% exemption from the social security assets test. On 1 September 2008, the Secretary of the then Department of Families, Community Services and Indigenous Affairs is not satisfied that the requirements of paragraph 9A (1) (b) of the Act are met in relation to the original income stream. On 15 September 2008, P commutes the original income stream to purchase another income stream (the *new income stream*) that is covered by section 9A of the Act. The new income stream is covered by these Principles and retains the 50% exemption from the social security assets test.

Note Paragraphs 9A (1) (b) and 9B (1A) (b) of the Act require the Secretary to be satisfied, in relation to an income stream, that there is in force a current actuarial certificate stating that in the actuary's opinion there is a high probability that the provider of the income stream will be able to pay the income stream as required under the income stream's contract or governing rules.

- (5) This subsection applies to an original income stream if:
- (a) the income stream is an immediate annuity under a statutory fund established by a life company, or under a benefit fund; and
 - (b) the income stream:
 - (i) is an income stream to which paragraph 9A (1) (b) or 9B (1A) (b) of the Act applies or would have applied if paragraph 9A (1) (aa) or subparagraph 9B (1) (a) (i) of the Act did not apply, and in relation to which the Secretary is not satisfied as required by that paragraph; or

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- (ii) fails to satisfy relevant standards published by the Australian Prudential Regulation Authority about minimum surrender values and paid up values.

Note Paragraphs 9A (1) (b) and 9B (1A) (b) of the Act require the Secretary to be satisfied, in relation to an income stream, that there is in force a current actuarial certificate stating that in the actuary's opinion there is a high probability that the provider of the income stream will be able to pay the income stream as required under the income stream's contract or governing rules.

3.3 Partially asset-test exempt income stream resulting from transfer to successor fund

These Principles cover a partially asset-test exempt income stream if:

- (a) it results from the transfer, on or after 20 September 2007, of another income stream (the *original income stream*) to a successor fund; and
- (b) at the time of transfer, the original income stream was:
 - (i) covered by section 9A, 9B or 9BA of the Act or would have been covered by those sections if paragraph 9A (1) (aa), subparagraph 9B (1) (a) (i) or subparagraph 9BA (1) (a) (i) of the Act did not apply; and
 - (ii) provided by a regulated superannuation fund; and
- (c) the original income stream:
 - (i) was purchased on or after 20 September 2004 and before 20 September 2007; or
 - (ii) until the commencement of these Principles, was covered by the 2007 Principles; or
 - (iii) was covered by these Principles.

3.4 Partially asset-test exempt income stream resulting from payment split

These Principles cover a partially asset-test exempt income stream if:

- (a) it is purchased or acquired by the primary beneficiary or the primary beneficiary's partner or former partner on or after 20 September 2007; and
- (b) it results from another partially asset-test exempt income stream (the *original income stream*) being commuted to give effect to an entitlement of the partner or former partner of the primary beneficiary in respect of the original income stream under a payment split under Part VIIIIB of the *Family Law Act 1975*; and
- (c) the original income stream was covered by section 9A, 9B or 9BA of the Act or would have been covered by those sections if paragraph 9A (1) (aa), subparagraph 9B (1) (a) (i) or subparagraph 9BA (1) (a) (i) of the Act did not apply; and

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- (d) the original income stream:
 - (i) was purchased on or after 20 September 2004 and before 20 September 2007; or
 - (ii) until the commencement of these Principles, was covered by the 2007 Principles; or
 - (iii) was covered by these Principles.

Example

On 1 March 2005, P, who was partnered to J at that date, purchased an income stream (the *original income stream*) covered by section 9A of the Act. The income stream has a 50% exemption from the social security assets test. On 1 February 2012, P and J separate. P's original income stream is commuted to give effect to an entitlement of J in respect of the original income stream under a payment split under Part VIII B of the *Family Law Act 1975*. On 15 February 2012, J uses the entitlement resulting from the payment split to purchase an income stream (the *new income stream*) covered by section 9A of the Act. The new income stream is covered by these Principles and retains the 50% exemption from the social security assets test.

3.5 Partially asset-test exempt income stream resulting from Family Court order or injunction

These Principles cover a partially asset-test exempt income stream if:

- (a) it is purchased or acquired by the primary beneficiary or the primary beneficiary's partner or former partner on or after 20 September 2007; and
- (b) it results from another partially asset-test exempt income stream (the *original income stream*) being commuted to give effect to:
 - (i) an order made under section 79, 90SM, 90SS or 114 of the *Family Law Act 1975*; or
 - (ii) an injunction granted under section 90SS or 114 of that Act, that is binding on a third party under Part VIII A A of that Act; or
 - (iii) any other order or injunction under the *Family Law Act 1975* that relates specifically to the original income stream; and
- (c) the original income stream was covered by section 9A, 9B or 9BA of the Act or would have been covered by those sections if paragraph 9A (1) (aa), subparagraph 9B (1) (a) (i) or subparagraph 9BA (1) (a) (i) of the Act did not apply; and
- (d) the original income stream:
 - (i) was purchased on or after 20 September 2004 and before 20 September 2007; or
 - (ii) until the commencement of these Principles, was covered by the 2007 Principles; or
 - (iii) was covered by these Principles.

Section 3.6A

3.6 Partially asset-test exempt income stream resulting from payment of superannuation contributions surcharge debt

These Principles cover a partially asset-test exempt income stream if:

- (a) it is purchased by the primary beneficiary on or after 20 September 2007; and
- (b) it results from another partially asset-test exempt income stream (the *original income stream*) being commuted to pay a superannuation contributions surcharge debt; and
- (c) the original income stream was covered by section 9A, 9B or 9BA of the Act or would have been covered by those sections if paragraph 9A (1) (aa), subparagraph 9B (1) (a) (i) or subparagraph 9BA (1) (a) (i) of the Act did not apply; and
- (d) the original income stream:
 - (i) was purchased on or after 20 September 2004 and before 20 September 2007; or
 - (ii) until the commencement of these Principles, was covered by the 2007 Principles; or
 - (iii) was covered by these Principles.

3.6A Partially asset-test exempt income stream resulting from payment of excess contributions tax

These Principles cover an income stream if:

- (a) it is purchased by the primary beneficiary on or after 20 September 2007; and
- (b) it results from a partially asset-test exempt income stream (the *original income stream*) being commuted to pay an amount to give effect to a release authority, given in relation to the primary beneficiary, under:
 - (i) section 292-415 of the *Income Tax Assessment Act 1997*; or
 - (ii) section 292-80C of the *Income Tax (Transitional Provisions) Act 1997*; and
- (c) the original income stream was covered by section 9A, 9B or 9BA of the Act or would have been covered by those sections if paragraph 9A (1) (aa), subparagraph 9B (1) (a) (i) or subparagraph 9BA (1) (a) (i) of the Act did not apply; and
- (d) the original income stream:
 - (i) was purchased on or after 20 September 2004 and before 20 September 2007; or
 - (ii) until the commencement of these Principles, was covered by the 2007 Principles; or
 - (iii) was covered by these Principles.

Section 3.7

3.7 Partially asset-test exempt income stream resulting from payment of hardship amount

These Principles cover a partially asset-test exempt income stream if:

- (a) it is purchased by the primary beneficiary on or after 20 September 2007; and
- (b) it results from another partially asset-test exempt income stream (the *original income stream*) being commuted to pay a hardship amount; and
- (c) the original income stream was covered by section 9A, 9B or 9BA of the Act or would have been covered by those sections if paragraph 9A (1) (aa), subparagraph 9B (1) (a) (i) or subparagraph 9BA (1) (a) (i) of the Act did not apply; and
- (d) the original income stream:
 - (i) was purchased on or after 20 September 2004 and before 20 September 2007; or
 - (ii) until the commencement of these Principles, was covered by the 2007 Principles; or
 - (iii) was covered by these Principles.

3.8 Partially asset-test exempt market-linked income stream resulting from commutation of another partially asset-test exempt market-linked income stream

These Principles cover an income stream if:

- (a) it is covered by section 9BA of the Act or would have been covered by that section if subparagraph 9BA (1) (a) (i) of the Act did not apply; and
- (b) it results from the commutation and rollover of all the assets supporting a partially asset-test exempt income stream (the *original income stream*); and
- (c) the original income stream was covered by section 9BA of the Act or would have been covered by that section if subparagraph 9BA (1) (a) (i) did not apply; and
- (d) the original income stream:
 - (i) was purchased on or after 20 September 2004 and before 20 September 2007; or
 - (ii) until the commencement of these Principles, was covered by the 2007 Principles; or
 - (iii) was covered by these Principles.

Section 3.10

3.9 Commutation of partially asset-test exempt income stream resulting from closure of a self managed superannuation fund

These Principles cover a partially asset-test exempt income stream if:

- (a) it is purchased by the primary beneficiary; and
- (b) it is not sourced from a self managed superannuation fund; and
- (c) it results from another partially asset-test exempt income stream (the *original income stream*) being commuted as a result of the closure of a self managed superannuation fund because:
 - (i) a member of the fund supporting the original income stream has died; or
 - (ii) the administrative responsibilities of the fund supporting the original income stream have become too onerous due to the age or incapacity of a trustee; and
- (d) the original income stream was:
 - (i) covered by section 9A, 9B, or 9BA of the Act or would have been covered by those sections if paragraph 9A (1) (aa), subparagraph 9B (1) (a) (i) or subparagraph 9BA (1) (a) (i) of the Act did not apply; and
 - (ii) sourced from a self managed superannuation fund; and
 - (iii) covered by the 2007 Principles or these Principles.

Example

G and A are trustees of their self managed superannuation fund. They both have market-linked asset-test exempt income streams that were purchased on 1 July 2005 when G was 65 and A was 64. G dies on 26 January 2015. A subsequently decides that she does not have the expertise or inclination to continue as a fund trustee. A commutes her market-linked asset-test exempt income stream and uses the proceeds to purchase from a retail income stream provider, an income stream that meets the provisions of section 9BA of the Act. The new income stream is covered by these Principles and retains the 50% exemption from the social security assets test.

3.10 Partially asset-test income stream resulting from commutation or rollover because of regulation 6.21 of *Superannuation Industry (Supervision) Regulations 1994*

These Principles cover a partially asset-test exempt income stream if:

- (a) it is purchased by the primary beneficiary on or after 1 July 2007; and
- (b) it results from another asset-test exempt income stream (the *original income stream*) being commuted or rolled over to comply with subregulation 6.21 (2A) of the *Superannuation Industry (Supervision) Regulations 1994*; and
- (c) the original income stream was covered by section 9A, 9B or 9BA of the Act or would have been covered by those sections if paragraph 9A (1) (aa), subparagraph 9B (1) (a) (i) or subparagraph 9BA (1) (a) (i) of the Act did not apply; and

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- (d) the original income stream:
 - (i) was purchased on or after 20 September 2004 and before 20 September 2007; or
 - (ii) until the commencement of these Principles, was covered by the 2007 Principles; or
 - (iii) was covered by these Principles.

3.11 Partially asset-test exempt income stream that is family law affected income stream

- (1) These Principles cover an income stream that is a family law affected income stream that does not meet the requirements of subsection 9A (2) or 9B (2) of the Act if:
 - (a) either:
 - (i) the income stream meets all the requirements of paragraphs 9A (2) (a) to (l) or 9B (2) (a) to (l) of the Act other than those that are not met because of the operation of an order under Part VIII A A, or a payment split under Part VIII B, of the *Family Law Act 1975* relating to the income stream; or
 - (ii) as a result of the operation of 1 or more orders under Part VIII A A, or 1 or more payment splits under Part VIII B, of the *Family Law Act 1975*, the income stream was derived from an income stream that was an asset-test exempt income stream to which subsection 9A (1A) or 9B (1B) of the Act applied at the time of the order or payment split, or of the last of them; and
 - (b) the original family law affected income stream from which the income stream is derived as a result of the operation of 1 or more orders under Part VIII A A, or 1 or more payment splits under Part VIII B, of the *Family Law Act 1975*, was purchased after 19 September 2004 and before 20 September 2007; and
 - (c) either:
 - (i) for an income stream that is an immediate annuity under a statutory fund established by a life company, or under a benefit fund — the income stream satisfies standards published by the Australian Prudential Regulation Authority, about minimum surrender values and paid up values, that apply to the annuity; or
 - (ii) in any other case — the income stream meets the requirements of subsection (2); and
 - (d) any amount of the original family law affected income stream that is rolled over, transferred, commuted or paid as a lump sum is not more than the amount required to satisfy the non-member partner's entitlement under an order under Part VIII A A, or under a payment split under Part VIII B, of the *Family Law Act 1975* relating to the original family law affected income stream; and

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- (e) for an income stream to which subparagraph (a) (i) applies — the income stream has met all the requirements mentioned in that subparagraph from the day the income stream began being paid.
- (2) An income stream meets the requirements of this subsection if:
- (a) there is in force a current actuarial certificate that states that in the actuary's opinion there is a high probability that the provider of the income stream will be able to pay the income stream as required under the contract or governing rules under which the income stream is provided; or
 - (b) for a period beginning when an actuarial certificate mentioned in paragraph (a) ceases to be in force and ending not more than 26 weeks later, an actuarial certificate of that kind is not in force.

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See <http://www.frli.gov.au>.