

# EXPLANATORY STATEMENT

*Asset-test Exempt Income Stream (Lifetime Income Stream Guidelines) Determination 2015*

*Veterans' Entitlements (Asset-test Exempt Income Stream (Market-linked) – Payment Factors) Principles 2005*

*Veterans' Entitlements (Means Test Treatment of Private Trusts – Excluded Trusts) Declaration 2015*

*Motor Vehicle Compensation Scheme*

## PURPOSE

The attached instruments are legislative instruments that have been re-made. Had the instruments not been re-made, they would have been automatically repealed on 1 October 2015.

Subsection 26(1B) of the *Legislative Instruments Act 2003* provides that the requirement for an explanatory statement to explain the purpose and operation of an instrument may be met by an explanation that the instrument replaces a specified earlier legislative instrument or a specified provision of an earlier legislative instrument and is the same in substance as the specified instrument or provision.

Also, subsection 26(1D) of the *Legislative Instruments Act 2003* provides that a single explanatory statement may relate to one or more legislative instruments – which is the case here.

The Department of Veterans' Affairs (DVA) has reviewed the instruments and found that they are still required. Accordingly, the instruments have been re-made and aside from updating and streamlining, are the same in substance as the instruments they replace.

The first two instruments relate to identifying income streams that are exempt from the assets test under the *Veterans' Entitlements Act 1986* (VEA).

The third instrument specifies classes of trusts that are excluded trusts for means testing under the VEA.

The fourth instrument outlines the Motor Vehicle Compensation Scheme which sets out the circumstances under which assistance can be provided in relation to a motor vehicle under the *Military Rehabilitation and Compensation Act 2004* (MRCA).

## Further Explanation

**Part A** explains the *Asset-test Exempt Income Stream (Lifetime Income Stream Guidelines) Determination 2015* made under subsection 5JA(6) of the VEA.

**Part B** explains the *Veterans' Entitlements (Asset-test Exempt Income Stream (Market-linked) – Payment Factors) Principles 2005* made under subsection 5JBA(5A) of the VEA.

**Part C** explains the *Veterans' Entitlements (Means Test Treatment of Private Trusts – Excluded Trusts) Declaration 2015* made under 52ZZB(4) of the VEA.

**Part D** explains the *Motor Vehicle Compensation Scheme* made under subsection 212(1) of the MRCA.

## **CONSULTATION**

There has been consultation with the Department of Social Services (DSS) in respect of the *Asset-test Exempt Income Stream (Lifetime Income Stream Guidelines) Determination 2015* as DSS administers a similar instrument. The instrument has been amended to remove unnecessary repetition and to include a more accurate definition of a 'defined benefit income stream'. DSS was consulted to obtain agreement to the redrafting of the instrument. The nature of the consultation with DSS was communication by telephone and electronic mail. No policy changes have been made to the instrument and the asset-test exemption the Guidelines provide for is the same as the exemption in the current instrument. Consequently, there has been no public consultation.

There has been no consultation for the other instruments because they are being re-made in the same form, accordingly consultation was considered unnecessary.

## **RETROSPECTIVITY**

None.

## **DOCUMENTS INCORPORATED-BY-REFERENCE**

No.

## **HUMAN RIGHTS STATEMENT**

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

Three of the attached legislative instruments engage an applicable right or freedom.

The *Asset-test Exempt Income Stream (Lifetime Income Stream Guidelines) Determination 2015* and the *Veterans' Entitlements (Means Test Treatment of Private Trusts – Excluded Trusts) Declaration 2015* relate to the Right to Social Security contained in article 9 of the International Covenant on Economic Social and Cultural Rights. These instruments engage and promote the Right to Social Security by:

- enabling certain income streams to be exempt from the pension means-test under the VEA; and
- preventing the income and assets of certain private trusts from being attributed to an individual pensioner for means testing under the VEA.

The *Motor Vehicle Compensation Scheme* relates to the rights of people with a disability contained in the Convention on the Rights of Persons with Disabilities. The Convention recognises the barriers that people with a disability may face. The *Motor Vehicle Compensation Scheme* is compatible with the Convention because it provides

financial assistance to enable people with a disability to access transport. This assists in removing barriers people with a disability may face in participating in daily activities.

The remaining instrument, the *Veterans' Entitlements (Asset-test Exempt Income Stream (Market-linked) – Payment Factors) Principles 2005*, is human-rights neutral.

#### Rule-Makers

The Repatriation Commission

The Military Rehabilitation and Compensation Commission

## PART A

***Asset-test Exempt Income Stream (Lifetime Income Stream Guidelines) Determination 2015***

This instrument sets out the guidelines for the exercise of the Repatriation Commission's discretion, under subsection 5JA(5) of the VEA, to determine that a defined benefit income stream that does not meet the requirements of subsection 5JA(2) of the VEA, is an asset-test exempt income stream.

Changes have been made to this instrument to simplify and streamline the guidelines but there has been no change to the operation of the instrument. In particular, Part 2 of the instrument has been simplified by combining certain criteria instead of referring to them singularly. Also, the definition of a 'defined benefit income stream' has been amended to refer to the current definition in section 5J(1E) of the VEA. Previously, the instrument defined a 'defined benefit income stream' by using several definitions referencing the *Superannuation Industry (Supervision) Regulations 1994*. The VEA has since been amended to include a more accurate definition of a 'defined benefit income stream' found under 5J(1E) and the Instrument adopts that definition.

## PART B

***Veterans' Entitlements (Asset-test Exempt Income Stream (Market-linked) – Payment Factors) Principles 2005***

This instrument specifies the payment factor (PF), which is the denominator used in the formula in subsection 5JBA(5) of the VEA. A market-linked income stream that meets the requirements of section 5JBA of the VEA will be classified as an asset-test exempt income stream.

To meet the definition of an asset-test exempt income stream in section 5JBA, an income stream must pay an amount of income in each year that is equal to the amount worked out by the formula in subsection 5JBA(5), using the PF in this instrument.

## PART C

***Veterans' Entitlements (Means Test Treatment of Private Trusts – Excluded Trusts) Declaration 2015***

This instrument specifies classes of trusts that are excluded trusts under the VEA. The effect of a trust being an excluded trust is that the assets and income of such a trust will not be attributed to an individual pensioner for means-testing purposes under the VEA.

## PART D

***Motor Vehicle Compensation Scheme***

- This instrument enables the Military Rehabilitation and Compensation Commission, in the circumstances identified in the instrument, to provide compensation to an eligible person of the following kind:
  - (a) modifying a motor vehicle for a person; or
  - (b) maintaining or repairing modifications to a motor vehicle; or

- (c) subsidising the purchase of a motor vehicle for a person; or
- (d) other kinds of compensation relating to motor vehicles specified in the instrument.