

EXPLANATORY STATEMENT

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

PURPOSE

This Determination revokes and remakes the *Asset-test Exempt Income Stream (Lifetime Income Stream Guidelines) Determination 1998* (the 1998 Determination).

The 1998 Determination is being revoked and remade now to coincide with the remaking of a similar determination made by the Repatriation Commission under subsection 5JA(6) of the *Veterans' Entitlements Act 1986* (the VEA).

This VEA determination is the *Asset-test Exempt Income Stream (Lifetime Income Stream Guidelines) Determination 2015*. The Repatriation Commission has remade its determination under subsection 5JA(6) of the VEA as its 1998 determination had a sunset date of 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.

This Determination is made under subsection 9A(6) of the *Social Security Act 1991* (the Act) and relates to identifying income streams that are exempt from the assets test under the Act.

The Determination sets out the guidelines for the exercise of the Secretary's discretion, under subsection 9A(5) of the Act, to determine that a defined benefit income stream that does not meet the requirements of subsection 9A(2) of the Act, is an asset-test exempt income stream.

The 1998 Determination has been re-made and aside from updating and streamlining, the Determination is the same in substance as the 1998 Determination it replaces.

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 subsection 9(1F) of the Act. Previously, the instrument defined a 'defined benefit income stream' by using several definitions referencing the *Superannuation Industry (Supervision) Regulations 1994*. The Act has since been amended to include a new definition of a 'defined benefit income stream' in subsection 9(1F) and the Determination adopts that definition.

CONSULTATION

There has been consultation with the Department of Veterans' Affairs (DVA) about this Determination and the *Asset-test Exempt Income Stream (Lifetime Income Stream Guidelines) Determination 2015* which is the equivalent Repatriation Commission determination.

DVA was consulted to ensure a consistent approach to the instruments and their remaking. The nature of the consultation with DVA was communication by telephone and electronic mail.

No policy changes have been made and the asset-test exemption in this Determination is the same as the exemption in the 1998 Determination. Consequently, there has been no public consultation.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

The *Asset-test Exempt Income Stream (Lifetime Income Stream Guidelines) (Social Security) Determination 2015* engages the Right to Social Security contained in article 9 of the International Covenant on Economic Social and Cultural Rights.

The Determination engages and promotes the Right to Social Security by enabling certain income streams to be exempt from the pension means-test under the *Social Security Act 1991*.

The Determination is therefore compatible with human rights.

Finn Pratt AO PSM
Secretary
Department of Social Services