

EXPLANATORY STATEMENT

Social Security Act 1991

Social Security Legislation Amendment (Measures No. 1) Determination 2020

Purpose

The *Social Security Legislation Amendment (Measures No. 1) Determination 2020* (the Determination) will:

- amend the *Social Security (Asset test Exempt Income Stream (Market-linked) – Payment Factors) Principles 2017* (Payment Factors Principles) made under subsection 9BA(5) of the *Social Security Act 1991* (the Act), and
- repeal the *Social Security (Retention of exemption for asset-test exempt income streams) (DEEWR) Principles 2011 (No. 1)* (DEEWR Principles) made under subparagraphs 1118(1A)(a)(iii) and 1118(1A)(b)(ii) of the Act.

Schedule 1

Subsection 9BA(5) of the Act allows the Secretary to determine, by legislative instrument, principles for working out the payment factor for an income stream for a financial year to maintain a grandfathered asset test exemption. The payment factors are designed to ensure that people draw down an increasing proportion of the income stream each year so that the income stream is exhausted at the end of its fixed term. This is consistent with other types of superannuation products, where the minimum drawdown amount increases over time.

Subsection 9BA(5) of the Act states the general rule for the total amount payable under the income stream in each financial year and provides the formula for working out the amount. The subsection also specifies that the annual payments from the income stream must be between a minimum 90 per cent and a maximum 110 per cent of the amount worked out under the formula.

Schedule 1 provides that for the financial years commencing on 1 July 2019 and 1 July 2020, the payment factor for working out the minimum amount payable in that financial year for an income stream under subsection 9BA(5) of the Act is to be double the relevant payment factor specified in the table at section 4 of the Payment Factors Principles. The payment factors for working out the maximum amount payable in that financial year for an income stream under subsection 9BA(5) of the Act remain unchanged.

Doubling the payment factor to be applied to working out the minimum drawdown amount, effectively halves the minimum drawdown required from an income stream in order to maintain grandfathered status for the relevant financial years, and takes into account the economic impact of the Coronavirus known as COVID-19. The effect is to halve the minimum drawdown to 45 percent of the amount that would otherwise have been calculated under the formula if new subsection 4(1A) of the Payment Factor Principles had not been inserted. Doubling the payment factor also

ensures consistency with the amendments made to Schedule 6 of the *Superannuation Industry (Supervision) Regulations 1994* (SIS Regulations) via the *Coronavirus Economic Response Package Omnibus Act 2020* (Coronavirus Omnibus Act).

These changes provide choice to superannuants, but do not require superannuants to reduce the amount that they draw down from these income streams.

Schedule 2

Schedule 2 repeals the entirety of the DEEWR Principles as these are no longer necessary.

Subsection 33(3) of the *Acts Interpretation Act 1901* provides where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power is construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Background

Payment Factors Principles

A market-linked income stream that meets the requirements of section 9BA of the Act is an “asset-test exempt income stream” for the purposes of the social security law.

To meet the definition of an “asset-test exempt income stream” in section 9BA of the Act, an income stream must pay an amount of income each year that is within a range of the amount worked out by the formula in subsection 9BA(5), and have commenced between 20 September 2004 and 19 September 2007 (both dates inclusive).

New market-linked income streams commenced on or after 20 September 2007 are not asset-test exempt income stream for the purposes of social security law. These provisions are designed to maintain the grandfathering of existing asset-test exempt income streams.

Subsection 9BA(5) of the Act states the general rule for the total amount payable under the income stream in each financial year and provides the formula for working out the amount. The subsection also specifies that the payments made under the income stream must be between a minimum 90 per cent and a maximum 110 per cent of the amount worked out under the formula using these payment factors.

The payment factors in the table in the Payment Factors Principles are the same as those in Schedule 6 of the SIS Regulations, and are used as the denominator in the same formula at subsection 9BA(5) of the Act and at clause 1 of Schedule 6 of the SIS Regulations.

The amendments to the Payment Factors Principles are being made to ensure consistency with the amendments to the SIS Regulations and the *Retirement Savings Accounts Regulations 1997* made by Schedule 10 to the Coronavirus

Omnibus Act. These amendments reduced the minimum payment amounts that apply to account-based annuities and pensions, allocated annuities and pensions, and market linked annuities and pensions for the 2019-20 and 2020-21 financial years by half. These measures were part of the Government's commitment to provide financial assistance to those who are financially affected by the Coronavirus health crisis.

Asset test rules for certain asset-test exempt income streams

Under subsection 1118(1A) of the Act, asset-test exempt income streams that meet the definitions provided under subsections 9A(1) or (1A), 9B(1) or 9BA(1) the Act that commenced between 20 September 2004 and 19 September 2007 (both dates inclusive) are partially asset-test exempt income stream for the purposes of the social security law. As such, only half of the value of any partially asset-test exempt income stream is assessed under the social security assets test.

Commencement

The Determination commences on the day after this instrument is registered on the Federal Register of Legislation. The retrospective application of the Determination means the amended payment factors will apply from the financial year beginning 1 July 2019, however the amendment is beneficial.

Consultation

The department has consulted with the Treasury, and the Department of Veterans' Affairs. These stakeholders support the proposed changes introduced by the Determination.

Regulation Impact Statement (RIS)

The Determination does not require a Regulatory Impact Statement. The Determination is not regulatory in nature and will not impact on business activity and will have no, or minimal, compliance costs or competition impact. (OBPR reference ID: 26371).

Explanation of the provisions

Section 1

Section 1 provides how this Determination is to be cited, that is, as the *Social Security Legislation Amendment (Measures No. 1) Determination 2020*.

Section 2

Section 2 provides that this Determination commences on the day after the instrument is registered on the Federal Register of Legislation.

Section 3

Section 3 provides that this Determination is made under subsection 9BA(5) and subparagraphs 1118(1A)(a)(iii) and 1118(1A)(b)(ii) of the *Social Security Act 1991*.

Section 4

Section 4 provides that the instrument specified in Schedule 1 to the Determination is amended as set out in the applicable items of the Schedule.

Section 5

Section 5 provides that the instrument specified in Schedule 2 is repealed as set out in that Schedule.

Schedule 1 – Amendments to the Social Security (Asset test Exempt Income Stream (Market-linked) – Payment Factors) Principles 2017

Item 1

Item 1 repeals and substitutes subsection 4(1) of the Payment Factors Principles with new subsections 4(1) and (1A).

New subsection 4(1) provides that for the formula in subsection 9BA(5) of the Act, subject to new subsection 4(1A), '**PF**' means the payment factor specified in column 3 of the table in this section that corresponds with the remaining term of the income stream. The payment factor is applied on 1 July of each financial year, except in the first year of the income stream's term, where this is done on the day the income stream commences.

New subsection 4(1A) provides that if the financial year for which the total amount is being worked out is a financial year that commences on 1 July 2019 or 1 July 2020, the '**PF**', when applying the formula in subsection 9BA(5) of the Act to determine the minimum amount, that is 90 per cent, of the payments to be made under the income stream, is the number twice the payment factor specified in column 3 of the table in this section that corresponds with the remaining term of the income stream.

The '**PF**' used for working out the maximum amount, that is 110 per cent, of payments that may be made under an income stream during a financial year, as

worked out in accordance with the formula under subsection 9BA(5), remains unchanged.

Example:

Maya has a market-linked pension with 19 remaining terms. On 1 July 2020, its account balance was \$200,000. According to item 52 of the table in section 4, the payment factor of a market-linked pension with a remaining term of 19 years is 13.71.

To work out the minimum payment requirement of Maya's market-linked pension for the 2020-21 financial year for social security purposes, a payment factor of 27.42 (double 13.71) is applied to the formula at subsection 9BA(5) of the Act. This means the minimum amount Maya needs to drawdown from her market-linked pension in the 2020-21 financial year is 90% of \$200,000 ÷ 27.42, which is \$6,564.55.

To work out the maximum payment limit of Maya's market-linked pension for the 2020-21 financial year for social security purposes, a payment factor of 13.71 is applied to the formula at subsection 9BA(5) of the Act. This means the maximum amount Maya may drawdown from her market-linked pension in the 2020-21 financial year is 110% of \$200,000 ÷ 13.71, which is \$16,046.68.

This means for the financial year 2020-21, Maya must drawdown from her market-linked pension a total amount between a minimum amount of \$6,564.55 and a maximum amount of \$16,046.68 for social security purposes.

Without this measure, the minimum payment requirement of Maya's market-linked pension in the 2020-21 financial year for social security purposes would be 90% of \$200,000 ÷ 13.71, which is \$13,129.10. The change effectively halves the minimum assessable income from a market-linked pension.

Schedule 2 – Repeal of the Social Security (Retention of exemption for asset-test exempt income streams) (DEEWR) Principles 2011 (No. 1)

Item 1

Item 1 repeals the entirety of the DEEWR Principles.

Andrew Whitecross, Delegate of the Secretary of the Department of Social Services

Statement of Compatibility with Human Rights

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

Social Security Legislation Amendment (Measures No.1) Determination 2020

The Determination is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the legislative instrument

Schedule 1 of the *Social Security Legislation Amendment (Measures No.1) Determination 2020* (Determination) will have the effect of halving the minimum drawdown amount from market-linked income streams that is assessable for social security purposes.

A market-linked income stream that meets the requirements of section 9BA of the *Social Security Act 1991* (Act) is an “asset-test exempt income stream” for the purposes of the social security law. To meet the definition of an “asset-test exempt income stream” under section 9BA of the Act, an income stream must pay an amount of income each year that is within a range of the amount worked out by the formula in subsection 9BA(5).

Subsection 9BA(5) of the Act states the general rule for the total amount payable under the income stream in each financial year and provides that the payments made under the income stream must be between a minimum 90 per cent and a maximum 110 per cent of the amount worked out under the subsection.

The payment factors in the table in the Payment Factors Principles are the same as those in Schedule 6 of the *Superannuation Industry (Supervision) Regulations 1994* (SIS Regulations), and are used as the denominator in the same formula at subsection 9BA(5) of the Act and at clause 1 of Schedule 6 of the SIS Regulations.

The amendments to the Payment Factors Principles are being made to ensure consistency with the amendments made by Schedule 10 to the *Coronavirus Economic Response Package Omnibus Act 2020* (Coronavirus Omnibus Act). Schedule 10 to the Coronavirus Omnibus Act introduced amendments to the SIS Regulations and the *Retirement Savings Accounts Regulations 1997*, reducing the minimum payment amounts that apply to account-based annuities and pensions, allocated annuities and pensions, and market linked annuities and pensions for the 2019-20 and 2020-21 financial years by half. These measures in the Coronavirus Omnibus Act were introduced as part of the Government’s commitment to provide financial assistance to those who are financially impacted by the Coronavirus health crisis.

Schedule 2 of the Determination repeals the *Social Security (Retention of exemption for asset-test exempt income streams) (DEEWR) Principles 2011* (No. 1).

Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power is construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

The *Social Security Legislation Amendment (2019 Measures No. 1) Determination 2019* made amendments to the *Social Security (Retention of exemption for asset-test exempt income streams) (DSS) Principles 2011* (DSS Principles). The DEEWR Principles are to be repealed as the name of the department responsible for the administration of section 1118 of the Act, being the Department of Social Services, has changed, and the DSS Principles have updated the circumstances which are specified to apply.

Human rights implications

This Determination engages the right to social security under 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.

The Determination has been created to ensure fair and equitable means test outcomes for recipients of income support who hold market-linked income streams. The changes assist pension and annuity account balance holders manage capital losses associated with the economic downturn that has resulted from the Coronavirus health crisis by giving retirees greater flexibility on the amount they draw down from their market-linked income streams.

Conclusion

The Determination is compatible with human rights because it does not raise any human rights issues.

Andrew Whitecross, Delegate of the Secretary of the Department of Social Services