**EXPLANATORY STATEMENT**

Issued by the authority of the Secretary of the Department of Social Services

***Social Security Act 1991***

***Social Security (Family Law Affected Income Streams) Amendment Principles 2025***

**Purpose**

The *Social Security (Family Law Affected Income Streams) Amendment Principles 2025* (the Amending Principles) amend the *Social Security (Family Law Affected Income Streams) Principles 2022* (the Principles) to substitute outdated references to the *Family Law (Superannuation) Regulations 2001* (the 2001 Regulations) with correct references to the *Family Law (Superannuation) Regulations 2025* (the 2025 Regulations).

**Background**

The 2001 Regulations were made to give effect to the distribution of superannuation interests pursuant to Parts VIIIB and VIIIC of the *Family Law Act 1975*. Specifically, the 2001 Regulations support the operation of Parts VIIIB and VIIIC by prescribing:

* the methods (actuarial formulas) and factors (tables of numbers based on different mortality rates, benefit entitlements, ages of retirement) for valuing superannuation interests;
* the way in which superannuation payment splits are to be put into effect; and
* the information that trustees must provide to parties to family law property proceedings, and to couples seeking to negotiate a superannuation agreement.

The 2001 Regulations are due to sunset on 1 April 2025 and the 2025 Regulations will commence from 1 April 2025. The 2025 Regulations remake the 2001 Regulations in a substantively similar form, but include minor and technical changes to modernise language and ensure the provisions continue to operate effectively.

Superannuation income streams affected by the operation of Part VIIIB and Part VIIIC of the *Family Law Act 1975* may be assessable under the social security means test prescribed in the *Social Security Act 1991* (the Act). Part 3.10 and Part 3.12 of the Act relevantly include provisions for the Secretary to work out the asset value or the annual rate of ordinary income that is taken to be received by a person from these income streams (family law affected income streams) when working out a person’s rate of social security payment. In doing so, the Secretary is required to comply with decision-making principles formulated under section 1099DD (when considering ordinary income) or subsection 1120A(5) (when considering asset value) of the Act.

The Principles ensure that family law affected income streams are assessed appropriately with other income and assets under the social security means test where a person owns and receives payments from a family law affected income stream, and is receiving or seeks to receive a social security payment that is subject to the means test. While the Principles are designed to support the operation of the social security means test, certain terms and phrases used in the Principles have been defined by reference to the 2001 Regulations.

The Amending Principles update certain definitions prescribed in section 4 of the Principles to ensure these definitions refer to the equivalent provision in the 2025 Regulations, and remain accurate when the 2025 Regulations commence. The Amending Principles are not intended to make any policy changes.

**Authority**

Section 1099DD and subsection 1120A(5) of the Act provide that the Secretary may, by legislative instrument, formulate principles (decision – making principles) to be complied with in making decisions relating to family law affected income streams under subsections 1099DB(1), 1099DC(1), 1099DCA(1), 1120A(2) and 1120A(3) of the Act.

The Secretary has delegated the power to make legislative instruments under section 1099DD and subsection 1120A(5) to particular Branch Managers in the Department of Social Services.

Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make any instrument of a legislative or administrative character, the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to amend or vary such instrument.

The Amending Principles are a legislative instrument for the purposes of the *Legislation Act 2003* and are subject to disallowance.

**Commencement**

The Amending Principles commence on 1 April 2025.

**Consultation**

The Department of Social Services consulted with Services Australia and the Attorney-General’s Department on the intention to make the Amending Principles. These agencies did not raise any concerns.

The Department did not consult with social security recipients on the intention to make the Amending Principles due to the minor technical nature of the amendments.

**Impact Analysis**

An Impact Analysis is not required, as the Amending Principles are not regulatory in nature, will not impact business activity and will have no, or minimal, compliance costs or competition impact (OIA25-09287).

## Explanation of the provisions

Details of the *Social Security (Family Law Affected Income Streams) Amendment Principles 2025*

**Section 1 – Name**

This section states how the instrument is to be cited, that is, as the *Social Security (Family Law Affected Income Streams) Amendment Principles 2025* (the Amending Principles)**.**

**Section 2 – Commencement**

This section sets out a table providing for the commencement of the Amending Principles, that is,on 1 April 2025.

**Section 3 – Authority**

This section provides that the Amending Principles are made under section 1099DD and subsection 1120A(5) of the *Social Security Act 1991***.**

**Section 4 – Schedules**

This section provides that each instrument that is specified in a Schedule to the Amending Principles is amended as set out in the applicable items in that Schedule, and any other item in a Schedule to the Amending Principles has effect according to its terms.

Schedule 1 amends the *Social Security (Family Law Affected Income Streams) Principles 2022* (the Principles) (see below).

**Schedule 1 – Amendments**

**Item 1 – Section 4**

Item 1 amends the definition of *allocated pension* in section 4 of the Principles, to refer the reader to the definition of *allocated pension* in section 4 of the *Family Law (Superannuation) Regulations 2025* (2025 Regulations).

**Item 2 – Section 4**

Item 2 amends the definition of *base amount allocated to the non-member spouse* in section 4 of the Principles, to refer the reader to the definition of that phrase in section 72 of the 2025 Regulations.

**Item 3 – Section 4**

Item 3 amends the definition of *market linked pension* in section 4 of the Principles, to refer the reader to the definition of *market linked pension* in section 4 of the 2025 Regulations.

**Statement of Compatibility with Human Rights**

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

***Social Security Act 1991***

***Social Security (Family Law Affected Income Streams) Amendment Principles 2025***

The *Social Security (Family Law Affected Income Streams) Amendment Principles 2025* (the Amending Principles) are 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**

The Amending Principles amend the *Social Security (Family Law Affected Income Streams) Principles 2022* (the Principles) to update references to definitions in the *Family Law (Superannuation) Regulations 2001* (2001 Regulations) when those regulations sunset and are replaced by the new *Family Law (Superannuation) Regulations 2025* (2025 Regulations).

Part 3.10 and Part 3.12 of the *Social Security Act 1991* (the Act) prescribe a legislative regime to facilitate means-testing a prospective or current social security recipient by reference to their income and assets. These frameworks include provisions for the Secretary to work out the asset value or the annual rate of ordinary income that is taken to be received by a person from a family law affected income stream. In doing so, the Secretary is required to comply with decision-making principles formulated under section 1099DD (when considering ordinary income) or subsection 1120A(5) (when considering asset value) of the Act.

The Principles are made under section 1099DD and subsection 1120A(5) of the Act to ensure that family law affected income streams are assessed appropriately with other income and assets under the social security means test where a person owns and receives payments from a family law affected income stream, and is receiving or seeks to receive a social security payment that is subject to the means test.

**Human rights implications**

The Amending Principles engage the right to social security under Article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the right to an adequate standard of living in Article 11 of the ICESCR.

The right to social security in Article 9 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.

Article 11 of the ICESCR recognises the right of everyone to an adequate standard of living including adequate food, water and housing, and to the continuous improvement of living conditions.

Article 4 of the ICESCR provides that countries may limit these rights in a way determined by law only in so far as this may be compatible with the nature of the rights contained within the ICESCR and solely for the purpose of promoting general welfare in a democratic society. Such a limitation must be proportionate to the objective to be achieved.

The Amending Principles are compatible with Australia’s obligations in relation to the right to social security and the right to an adequate standard of living. The Amending Principles make minor technical amendments to the Principles, which improve the operation of the social security system and do not unreasonably restrict a person’s eligibility to receive a social security payment or reduce the benefits to which a person may be entitled.

The Principles support fair and equitable means test outcomes for family law affected income stream products by providing consistent decision-making principles to be taken into account in considering the ordinary income and asset value of these products. By ensuring family law affected income stream products are fairly assessed under the social security means test, the social security system appropriately recognises individuals’ capacity for self-support when determining their rate of income support and remains sustainable for future generations.

**Conclusion**

The Amending Principles are compatible with human rights as they promote and support the right to social security and the right to an adequate standard of living. To the extent these rights are engaged or limited, the impact is for a legitimate objective and is reasonable, necessary and proportionate.

**Gillian Beer, Branch Manager, Payment Structures and Seniors Branch
Delegate of the Secretary of the Department of Social Services**