



Family and Community Services and Veterans' Affairs Legislation Amendment (Income Streams) Act 2004

No. 116, 2004

**An Act to amend the law relating to social security
and veterans' entitlements, and for related
purposes**

Note: An electronic version of this Act is available in SCALEplus
(<http://scaleplus.law.gov.au/html/comact/browse/TOCN.htm>)

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**An Act to amend the law relating to social security
and veterans' entitlements, and for related
purposes**

[Assented to 13 July 2004]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Family and Community Services and
Veterans' Affairs Legislation Amendment (Income Streams) Act
2004*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	13 July 2004
2. Schedules 1 and 2	20 September 2004.	20 September 2004

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendment of the Social Security Act 1991

1 Subsection 9(1) (definition of *asset-test exempt income stream*)

Omit “and 9B”, substitute “, 9B and 9BA”.

2 Paragraphs 9A(2)(d) and (e)

Repeal the paragraphs, substitute:

- (d) if the income stream is purchased by or for the primary beneficiary—that the first payment under the income stream relates to the period commencing on the day of that purchase; and
- (e) if the income stream is not purchased, but acquired, by or for the primary beneficiary—that the first payment under the income stream relates to the period commencing on the day of that acquisition; and

3 Subparagraph 9A(2)(h)(ii)

Omit “10 years after the commencement day of”, substitute “the life expectancy period for”.

4 Subparagraph 9A(2)(h)(iii)

Omit “arising under a contract, or governing rules, that meet the requirements of this subsection or subsection 9B(2)”, substitute “that is an asset-test exempt income stream”.

5 Subparagraph 9A(2)(h)(iv)

Omit “that the person is liable to pay in his or her capacity as purchaser of”, substitute “relating to”.

6 Paragraph 9A(3)(a)

Omit “10 years after the commencement day of”, substitute “the life expectancy period for”.

7 Paragraph 9A(3)(a)

Omit “the period of 10 years”, substitute “that period”.

8 Subparagraph 9A(3)(b)(i)

Omit “10 years after the commencement day of”, substitute “the life expectancy period for”.

9 Subparagraph 9A(3)(b)(iii)

Omit “the period of 10 years”, substitute “that period”.

10 Subparagraph 9A(3)(c)(i)

Omit “10 years after the commencement day of”, substitute “the life expectancy period for”.

11 Subsection 9A(5)

After “guidelines”, insert “(if any)”.

12 Subsection 9A(7)

Insert:

life expectancy period, for an income stream, means the period:

- (a) starting on the income stream’s commencement day; and
- (b) equal to the shorter of:
 - (i) the primary beneficiary’s life expectancy on the commencement day; and
 - (ii) 20 years.

13 Subsection 9B(1)

Repeal the subsection, substitute:

- (1) An income stream provided to a person is also an asset-test exempt income stream for the purposes of this Act if either subsection (1A) or (1B) applies.

Note: The heading to section 9B is altered by omitting “or 15 year minimum term”.

14 Before paragraph 9B(1A)(a)

Insert:

- (aa) the person to whom the income stream is being provided is:
-

- (i) the primary beneficiary; or
- (ii) the primary beneficiary's reversionary partner (if any) on the day of the primary beneficiary's death; and

15 Paragraph 9B(2)(a)

Repeal the paragraph, substitute:

- (a) the income stream's term, which must comply with subsection (2B) or (2C); and
- (aa) that payments under the income stream are to be made at least annually during the income stream's term; and

16 Paragraphs 9B(2)(d) and (e)

Repeal the paragraphs, substitute:

- (d) if the income stream is purchased by or for the primary beneficiary—that the first payment under the income stream relates to the period commencing on the day of that purchase; and
- (e) if the income stream is not purchased, but acquired, by or for the primary beneficiary—that the first payment under the income stream relates to the period commencing on the day of that acquisition; and

17 Subparagraphs 9B(2)(h)(ii), (iii) and (iv)

Repeal the subparagraphs, substitute:

- (ii) if the payment resulting from the commutation is transferred directly to the purchase of another income stream that is an asset-test exempt income stream; or
- (iii) if the primary beneficiary's reversionary partner (if any) on the day of the primary beneficiary's death survives the primary beneficiary—on or after the partner's death; or
- (iiia) if subparagraph (iii) does not apply—on or after the primary beneficiary's death; or
- (iv) to the extent necessary to cover any superannuation contributions surcharge relating to the income stream; or

18 Paragraph 9B(2)(i)

Repeal the paragraph, substitute:

- (i) that the income stream cannot be transferred except on death;
and

19 After subsection 9B(2A)

Insert:

Term of the income stream

- (2B) An income stream's *term* complies with this subsection if it is a period of whole years that:
 - (a) starts on the income stream's commencement day; and
 - (b) is at least as long as the primary beneficiary's life expectancy (rounded up, if not consisting of a whole number of years, to the next whole number) on the commencement day; and
 - (c) is at most as long as what would be the primary beneficiary's life expectancy (rounded up, if not consisting of a whole number of years, to the next whole number) on the commencement day if the primary beneficiary were 5 years younger.
- (2C) An income stream's *term* complies with this subsection if it is a period of whole years that:
 - (a) starts on the income stream's commencement day; and
 - (b) is at least as long as the greater of the life expectancies (rounded up, if not consisting of a whole number of years, to the next whole number), on the commencement day, of:
 - (i) the primary beneficiary; and
 - (ii) the primary beneficiary's reversionary partner on that day; and
 - (c) is at most as long as the greater of what would be the life expectancies (rounded up, if not consisting of a whole number of years, to the next whole number), on the commencement day, of:
 - (i) the primary beneficiary, if the primary beneficiary were 5 years younger; and
 - (ii) the primary beneficiary's reversionary partner on that day, if the partner were 5 years younger.

20 Subsection 9B(4)

After "guidelines", insert "(if any)".

21 Subsection 9B(6)

Insert:

reversionary partner, in relation to the primary beneficiary of an income stream and a particular day, means another person who, on that day:

- (a) is a member of a couple with the primary beneficiary; and
- (b) is the person to whom the income stream will revert on the primary beneficiary's death.

22 Application—amendments of sections 9A and 9B of the Social Security Act 1991

The amendments of sections 9A and 9B of the *Social Security Act 1991* made by this Schedule apply to income streams purchased, or acquired, by or for the primary beneficiary on or after 20 September 2004.

23 Transitional—current asset-test exempt income streams can be commuted to purchase market linked income streams

- (1) This item applies to an income stream (the *first income stream*) if:
 - (a) the first income stream is an asset-test exempt income stream immediately before the commencement of this item; and
 - (b) the first income stream's contract, or governing rules, are later changed to allow for commutation if the payment resulting from the commutation is transferred directly to the purchase of an income stream covered by subsection 9BA(1) of the *Social Security Act 1991*.
- (2) Neither of the following result in the first income stream ceasing to be an asset-test exempt income stream:
 - (a) the change to the contract, or the governing rules, described in paragraph (1)(b) of this item;
 - (b) a commutation of the first income stream in accordance with that change.

24 After section 9B

Insert:

9BA Meaning of *asset-test exempt income stream*—market-linked income streams

General requirements

- (1) An income stream provided to a person is also an asset-test exempt income stream for the purposes of this Act if:
- (a) all of the following criteria are satisfied:
 - (i) the income stream's commencement day happens on or after 20 September 2004;
 - (ii) the person to whom the income stream is being provided is the primary beneficiary or the primary beneficiary's reversionary partner (if any) on the day of the primary beneficiary's death;
 - (iii) the income stream is an income stream arising under a contract, or governing rules, that meets the requirements of subsection (2);
 - (iv) the Secretary has not made a determination under subsection (10) in respect of the income stream;
 - (v) the Secretary is satisfied that the requirements of subsection (2) have been given effect to from the day the income stream commenced to be paid; or
 - (b) the Secretary has made a determination under subsection (11) in respect of the income stream.

Requirements of contract/governing rules for provision of income stream

- (2) A contract, or the governing rules, for the provision of an income stream to a person meets the requirements of this subsection if the contract or governing rules specify:
- (a) the income stream's term, which must comply with subsection (3) or (4); and
 - (b) obligations for the making of payments under the income stream that satisfy the requirements of subsections (5) to (9); and
 - (c) if the income stream is purchased by or for the primary beneficiary—that the first payment under the income stream relates to the period commencing on the day of that purchase; and

- (d) if the income stream is not purchased, but acquired, by or for the primary beneficiary—that the first payment under the income stream relates to the period commencing on the day of that acquisition; and
- (e) that the income stream has no residual capital value; and
- (f) that the income stream cannot be commuted except:
 - (i) if the income stream is a non-commutation funded income stream and the commutation is made within 6 months after the commencement day of the income stream; or
 - (ii) if the payment resulting from the commutation is transferred directly to the purchase of another income stream that is an asset-test exempt income stream; or
 - (iii) if the primary beneficiary's reversionary partner (if any) on the day of the primary beneficiary's death survives the primary beneficiary—on or after the partner's death; or
 - (iv) if subparagraph (iii) does not apply—on or after the primary beneficiary's death; or
 - (v) to the extent necessary to cover any superannuation contributions surcharge relating to the income stream; or
 - (vi) to the extent necessary to give effect to an entitlement of the person's spouse or former spouse under a payment split under Part VIIIB of the *Family Law Act 1975*; or
 - (vii) to the extent necessary to pay a hardship amount; and
- (g) that the income stream cannot be transferred except on death; and
- (h) that neither the capital value of the income stream, nor the income from it, can be used as security for a borrowing; and
- (i) that, if the income stream reverts, it must not have a reversionary component greater than the account balance immediately before the reversion; and
- (j) that, if the income stream is commuted, the commuted amount must not be greater than the account balance immediately before the commutation.

Term of the income stream

- (3) An income stream's *term* complies with this subsection if it is a period of whole years that:
- (a) starts on the income stream's commencement day; and
 - (b) is at least as long as the primary beneficiary's life expectancy (rounded up, if not consisting of a whole number of years, to the next whole number) on the commencement day; and
 - (c) is at most as long as what would be the primary beneficiary's life expectancy (rounded up, if not consisting of a whole number of years, to the next whole number) on the commencement day if the primary beneficiary were 5 years younger.
- (4) An income stream's *term* complies with this subsection if it is a period of whole years that:
- (a) starts on the income stream's commencement day; and
 - (b) is at least as long as the greater of the life expectancies (rounded up, if not consisting of a whole number of years, to the next whole number), on the commencement day, of:
 - (i) the primary beneficiary; and
 - (ii) the primary beneficiary's reversionary partner on that day; and
 - (c) is at most as long as the greater of what would be the life expectancies (rounded up, if not consisting of a whole number of years, to the next whole number), on the commencement day, of:
 - (i) the primary beneficiary, if the primary beneficiary were 5 years younger; and
 - (ii) the primary beneficiary's reversionary partner on that day, if the partner were 5 years younger.

Total amount payable in each financial year—general rule

- (5) For each financial year wholly or partly within the income stream's term, the total amount of the payments to be made under the income stream must equal the amount worked out under the formula:

Account balance
PF

where:

account balance means:

- (a) if the financial year includes the income stream's commencement day—the opening account balance for the income stream; or
- (b) otherwise—the account balance for the income stream at the start of the financial year.

PF means the payment factor for the income stream for the financial year, worked out under principles determined in writing by the Secretary.

Other rules about payments under the income stream

- (6) If the income stream's commencement day is not a 1 July, the total amount worked out under subsection (5) for the financial year starting on the preceding 1 July must be reduced on a pro-rata basis by reference to the number of days in the financial year that are on and after the commencement day.
- (7) If:
 - (a) the income stream's commencement day happens in June; and
 - (b) no payment is made under the income stream for the financial year in which the commencement day happens;subsections (5) and (6) do not apply to the income stream for that financial year.
- (8) If the amount (the **test amount**) of a payment to be made under the income stream on a day in a financial year:
 - (a) is worked out by reference to the total amount worked out under subsection (5) (and subsection (6), if applicable) for the financial year; and
 - (b) exceeds the income stream's account balance on that day;then:
 - (c) the account balance (if any) must be paid instead of the test amount; and

(d) that total amount described in paragraph (a) must be reduced by the amount of the excess.

- (9) If the income stream has a positive account balance at the end of its term, a payment equal to that account balance must be made within 28 days after the end of the term.

Determination that income stream not asset-test exempt

- (10) The Secretary may determine that an income stream that meets the requirements of subsection (2) is not an asset-test exempt income stream if the Secretary is satisfied that:
- (a) the primary beneficiary has commuted an asset-test exempt income stream on at least 3 occasions since the person first received a social security payment; and
 - (b) on at least 3 of those occasions, the commutation happened within 6 months after the commencement day of the income stream concerned.

Determination that income stream is asset-test exempt

- (11) The Secretary may determine, in writing, that an income stream that does not meet the requirements of subsection (2) is an asset-test exempt income stream for the purposes of this Act. In making the determination, the Secretary must have regard to the guidelines (if any) determined under subsection (12).

Guidelines to be complied with in making determination

- (12) The Secretary may determine, in writing, guidelines to be complied with when making a determination under subsection (11). The determination is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Miscellaneous

- (13) A determination for the purposes of the definition of **PF** in subsection (5) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (14) In this section:

hardship amount has the same meaning as in section 9A.

non-commutation funded income stream means an income stream that has not been purchased by transferring directly to the purchase of the income stream a payment resulting from the commutation of another asset-test exempt income stream.

reversionary partner, in relation to the primary beneficiary of an income stream and a particular day, means another person who, on that day:

- (a) is a member of a couple with the primary beneficiary; and
- (b) is the person to whom the income stream will revert on the primary beneficiary's death.

25 Transitional—early use of new Life Tables

- (1) This item applies to an income stream with a commencement day happening:
 - (a) after the first day (the ***new publication day***) during 2004 or 2005 on which the Australian Government Actuary (the ***AGA***) publishes Australian Life Tables (the ***new Life Tables***) that differ from the AGA's most recent publication of Australian Life Tables before 2004; and
 - (b) during the period starting on 20 September 2004, and ending on:
 - (i) if the new publication day happens during 2004—31 December 2004; or
 - (ii) if the new publication day happens during 2005—31 December 2005.
- (2) For the purposes of determining whether the income stream is an asset-test exempt income stream, the life expectancy on the income stream's commencement day of:
 - (a) the primary beneficiary of the income stream; or
 - (b) the primary beneficiary's reversionary partner (if any) on that day;can be ascertained by reference to:
 - (c) the Life Tables prescribed for the purposes of the definition of ***life expectation factor*** in subsection 27H(4) of the *Income Tax Assessment Act 1936* most recently published before 2004; or
 - (d) the new Life Tables.

- (3) When working out the income stream's *relevant number* for the purposes of the *Social Security Act 1991*, a person's life expectancy must be ascertained by reference to the same Life Tables as those chosen under subitem (2) of this item in relation to the income stream and the person.

26 Section 1098 (note)

Omit "and 9B", substitute ", 9B and 9BA".

27 At the end of paragraph 1118(1)(d)

Add ", other than a partially asset-test exempt income stream".

28 After paragraph 1118(1)(d)

Insert:

- (da) half of the value of any partially asset-test exempt income stream of the person;

29 Subsection 1118(1A)

Insert:

partially asset-test exempt income stream means an asset-test exempt income stream that:

- (a) is:
- (i) an income stream covered by subsection 9A(1) or (1A), or 9B(1), that is not a defined benefit income stream; or
 - (ii) an income stream covered by subsection 9BA(1); and
- (b) has a commencement day happening on or after 20 September 2004; and
- (c) is not covered by principles (if any) determined in writing by the Secretary.

30 At the end of section 1118

Add:

- (5) A determination under paragraph (c) of the definition of *partially asset-test exempt income stream* in subsection (1A) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

31 After section 1120A

Insert:

1120B Value of partially asset-test exempt income streams

- (1) This section applies to income streams covered by paragraph 1118(1)(da).
- (2) The value of such an income stream is, for the purposes of paragraph 1118(1)(da), worked out as follows:
 - (a) if the income stream is a family law affected income stream—under section 1120A;
 - (b) otherwise—under section 1119;as if the income stream were an asset-tested income stream to which that section applied.

32 Subsection 1223A(5)

Omit “or 9B(4)”, substitute “, 9B(4) or 9BA(11)”.

Note: The heading to section 1223A is altered by omitting “**or 9B(2)**” and substituting “, **9B(2) or 9BA(2)**”.

Schedule 2—Amendment of the Veterans' Entitlements Act 1986

1 Subsection 5J(1) (definition of *asset-test exempt income stream*)

Omit “and 5JB”, substitute “, 5JB and 5JBA”.

2 Paragraphs 5JA(2)(d) and (e)

Repeal the paragraphs, substitute:

- (d) if the income stream is purchased by or for the primary beneficiary—that the first payment under the income stream relates to the period commencing on the day of that purchase; and
- (e) if the income stream is not purchased, but acquired, by or for the primary beneficiary—that the first payment under the income stream relates to the period commencing on the day of that acquisition; and

3 Subparagraph 5JA(2)(h)(ii)

Omit “10 years after the commencement day of”, substitute “the life expectancy period for”.

4 Subparagraph 5JA(2)(h)(iii)

Omit “arising under a contract, or governing rules, that meet the requirements of this subsection or subsection 5JB(2)”, substitute “that is an asset-test exempt income stream”.

5 Subparagraph 5JA(2)(h)(iv)

Omit “that the person is liable to pay in his or her capacity as purchaser of”, substitute “relating to”.

6 Paragraph 5JA(2)(h) (after note 1)

Insert:

Note 1A: For *life expectancy period*, see subsection (7).

Note 1B: For *asset-test exempt income stream*, see section 5J.

7 Paragraph 5JA(3)(a)

Omit "10 years after the commencement day of", substitute "the life expectancy period for".

8 Paragraph 5JA(3)(a)

Omit "the period of 10 years", substitute "that period".

9 Subparagraph 5JA(3)(b)(i)

Omit "10 years after the commencement day of", substitute "the life expectancy period for".

10 Subparagraph 5JA(3)(b)(iii)

Omit "the period of 10 years", substitute "that period".

11 Subparagraph 5JA(3)(c)(i)

Omit "10 years after the commencement day of", substitute "the life expectancy period for".

12 Subsection 5JA(5)

After "guidelines", insert "(if any)".

13 Subsection 5JA(7)

Insert:

life expectancy period, for an income stream, means the period:

- (a) starting on the income stream's commencement day; and
- (b) equal to the shorter of:
 - (i) the primary beneficiary's life expectancy on the commencement day; and
 - (ii) 20 years.

14 Subsection 5JB(1)

Repeal the subsection (including the notes), substitute:

- (1) An income stream provided to a person is also an *asset-test exempt income stream* for the purposes of this Act if either subsection (1A) or (1B) applies.

Note: The heading to section 5JB is altered by omitting "or 15 year minimum term".

15 Before paragraph 5JB(1A)(a)

Insert:

- (aa) the person to whom the income stream is being provided is:
 - (i) the primary beneficiary; or
 - (ii) the primary beneficiary's reversionary partner (if any) on the day of the primary beneficiary's death; and

Note: For *reversionary partner*, see subsection (7).

16 Paragraph 5JB(2)(a)

Repeal the paragraph, substitute:

- (a) the income stream's term, which must comply with subsection (2B) or (2C); and
- (aa) that payments under the income stream are to be made at least annually during the income stream's term; and

17 Paragraphs 5JB(2)(d) and (e)

Repeal the paragraphs, substitute:

- (d) if the income stream is purchased by or for the primary beneficiary—that the first payment under the income stream relates to the period commencing on the day of that purchase; and
- (e) if the income stream is not purchased, but acquired, by or for the primary beneficiary—that the first payment under the income stream relates to the period commencing on the day of that acquisition; and

18 Subparagraphs 5JB(2)(h)(ii), (iii) and (iv)

Repeal the subparagraphs, substitute:

- (ii) if the payment resulting from the commutation is transferred directly to the purchase of another income stream that is an asset-test exempt income stream; or
- (iii) if the primary beneficiary's reversionary partner (if any) on the day of the primary beneficiary's death survives the primary beneficiary—on or after the partner's death; or
- (iv) if subparagraph (iii) does not apply—on or after the primary beneficiary's death; or

(ivaa) to the extent necessary to cover any superannuation contributions surcharge relating to the income stream;
or

19 Paragraph 5JB(2)(h) (after note 1)

Insert:

Note 1A: For *asset-test exempt income stream*, see section 5J.

20 Subparagraph 5JB(2)(h)(v)

Repeal the subparagraph.

21 Paragraph 5JB(2)(i)

Repeal the paragraph, substitute:

- (i) that the income stream cannot be transferred except on death;
and

22 After subsection 5JB(2A)

Insert:

Term of the income stream

- (2B) An income stream's *term* complies with this subsection if it is a period of whole years that:
 - (a) starts on the income stream's commencement day; and
 - (b) is at least as long as the primary beneficiary's life expectancy (rounded up, if not consisting of a whole number of years, to the next whole number) on the commencement day; and
 - (c) is at most as long as what would be the primary beneficiary's life expectancy (rounded up, if not consisting of a whole number of years, to the next whole number) on the commencement day if the primary beneficiary were 5 years younger.
 - (2C) An income stream's *term* complies with this subsection if it is a period of whole years that:
 - (a) starts on the income stream's commencement day; and
 - (b) is at least as long as the greater of the life expectancies (rounded up, if not consisting of a whole number of years, to the next whole number), on the commencement day, of:
 - (i) the primary beneficiary; and
-

- (ii) the primary beneficiary's reversionary partner on that day; and
- (c) is at most as long as the greater of what would be the life expectancies (rounded up, if not consisting of a whole number of years, to the next whole number), on the commencement day, of:
 - (i) the primary beneficiary, if the primary beneficiary were 5 years younger; and
 - (ii) the primary beneficiary's reversionary partner on that day, if the partner were 5 years younger.

23 Subsection 5JB(4)

After "guidelines", insert "(if any)".

24 Subsection 5JB(6)

Repeal the subsection (not including the heading).

25 Subsection 5JB(7)

Insert:

reversionary partner, in relation to the primary beneficiary of an income stream and a particular day, means another person who, on that day:

- (a) is a member of a couple with the primary beneficiary; and

Note: For *member of a couple*, see section 5E.

- (b) is the person to whom the income stream will revert on the primary beneficiary's death.

26 Application—amendments of sections 5JA and 5JB of the Veterans' Entitlements Act 1986

The amendments of sections 5JA and 5JB of the *Veterans' Entitlements Act 1986* made by this Schedule apply to income streams purchased, or acquired, by or for the primary beneficiary on or after 20 September 2004.

27 Transitional—current asset-test exempt income streams can be commuted to purchase market linked income streams

- (1) This item applies to an income stream (the *first income stream*) if:
- (a) the first income stream is an asset-test exempt income stream immediately before the commencement of this item; and
 - (b) the first income stream's contract, or governing rules, are later changed to allow for commutation if the payment resulting from the commutation is transferred directly to the purchase of an income stream covered by subsection 5JBA(1) of the *Veterans' Entitlements Act 1986*.
- (2) Neither of the following result in the first income stream ceasing to be an asset-test exempt income stream:
- (a) the change to the contract, or the governing rules, described in paragraph (1)(b) of this item;
 - (b) a commutation of the first income stream in accordance with that change.

28 After section 5JB

Insert:

5JBA Meaning of *asset-test exempt income stream*—market-linked income streams

General requirements

- (1) An income stream provided to a person is also an *asset-test exempt income stream* for the purposes of this Act if:
- (a) all of the following criteria are satisfied:
 - (i) the income stream's commencement day happens on or after 20 September 2004;
 - (ii) the person to whom the income stream is being provided is the primary beneficiary or the primary beneficiary's reversionary partner (if any) on the day of the primary beneficiary's death;
 - (iii) the income stream is an income stream arising under a contract, or governing rules, that meets the requirements of subsection (2);

- (iv) the Commission has not made a determination under subsection (10) in respect of the income stream;
- (v) the Commission is satisfied that the requirements of subsection (2) have been given effect to from the day the income stream commenced to be paid; or

Note: For *reversionary partner*, see subsection (14).

- (b) the Commission has made a determination under subsection (11) in respect of the income stream.

Requirements of contract/governing rules for provision of income stream

- (2) A contract, or the governing rules, for the provision of an income stream to a person meets the requirements of this subsection if the contract or governing rules specify:
 - (a) the income stream's term, which must comply with subsection (3) or (4); and
 - (b) obligations for the making of payments under the income stream that satisfy the requirements of subsections (5) to (9); and
 - (c) if the income stream is purchased by or for the primary beneficiary—that the first payment under the income stream relates to the period commencing on the day of that purchase; and
 - (d) if the income stream is not purchased, but acquired, by or for the primary beneficiary—that the first payment under the income stream relates to the period commencing on the day of that acquisition; and
 - (e) that the income stream has no residual capital value; and
 - (f) that the income stream cannot be commuted except:
 - (i) if the income stream is a non-commutation funded income stream and the commutation is made within 6 months after the commencement day of the income stream; or
 - (ii) if the payment resulting from the commutation is transferred directly to the purchase of another income stream that is an asset-test exempt income stream; or
 - (iii) if the primary beneficiary's reversionary partner (if any) on the day of the primary beneficiary's death survives

- the primary beneficiary—on or after the partner's death;
or
- (iv) if subparagraph (iii) does not apply—on or after the primary beneficiary's death; or
- (v) to the extent necessary to cover any superannuation contributions surcharge relating to the income stream;
or
- (vi) to the extent necessary to give effect to an entitlement of the person's spouse or former spouse under a payment split under Part VIIIIB of the *Family Law Act 1975*; or
- (vii) to the extent necessary to pay a hardship amount; and

Note 1: For *non-commutation funded income stream*, see subsection (14).

Note 2: For *asset-test exempt income stream*, see section 5J.

Note 3: For *hardship amount*, see subsection (14).

- (g) that the income stream cannot be transferred except on death;
and
- (h) that neither the capital value of the income stream, nor the income from it, can be used as security for a borrowing; and
- (i) that, if the income stream reverts, it must not have a reversionary component greater than the account balance immediately before the reversion; and
- (j) that, if the income stream is commuted, the commuted amount must not be greater than the account balance immediately before the commutation.

Term of the income stream

- (3) An income stream's *term* complies with this subsection if it is a period of whole years that:
 - (a) starts on the income stream's commencement day; and
 - (b) is at least as long as the primary beneficiary's life expectancy (rounded up, if not consisting of a whole number of years, to the next whole number) on the commencement day; and
 - (c) is at most as long as what would be the primary beneficiary's life expectancy (rounded up, if not consisting of a whole number of years, to the next whole number) on the commencement day if the primary beneficiary were 5 years younger.

- (4) An income stream's *term* complies with this subsection if it is a period of whole years that:
- (a) starts on the income stream's commencement day; and
 - (b) is at least as long as the greater of the life expectancies (rounded up, if not consisting of a whole number of years, to the next whole number), on the commencement day, of:
 - (i) the primary beneficiary; and
 - (ii) the primary beneficiary's reversionary partner on that day; and
 - (c) is at most as long as the greater of what would be the life expectancies (rounded up, if not consisting of a whole number of years, to the next whole number), on the commencement day, of:
 - (i) the primary beneficiary, if the primary beneficiary were 5 years younger; and
 - (ii) the primary beneficiary's reversionary partner on that day, if the partner were 5 years younger.

Total amount payable in each financial year—general rule

- (5) For each financial year wholly or partly within the income stream's term, the total amount of the payments to be made under the income stream must equal the amount worked out under the formula:

$$\frac{\text{Account balance}}{\text{PF}}$$

where:

account balance means:

- (a) if the financial year includes the income stream's commencement day—the opening account balance for the income stream; or
- (b) otherwise—the account balance for the income stream at the start of the financial year.

PF means the payment factor for the income stream for the financial year, worked out under principles determined in writing by the Commission.

Other rules about payments under the income stream

- (6) If the income stream's commencement day is not a 1 July, the total amount worked out under subsection (5) for the financial year starting on the preceding 1 July must be reduced on a pro-rata basis by reference to the number of days in the financial year that are on and after the commencement day.
- (7) If:
 - (a) the income stream's commencement day happens in June; and
 - (b) no payment is made under the income stream for the financial year in which the commencement day happens; subsections (5) and (6) do not apply to the income stream for that financial year.
- (8) If the amount (the *test amount*) of a payment to be made under the income stream on a day in a financial year:
 - (a) is worked out by reference to the total amount worked out under subsection (5) (and subsection (6), if applicable) for the financial year; and
 - (b) exceeds the income stream's account balance on that day; then:
 - (c) the account balance (if any) must be paid instead of the test amount; and
 - (d) that total amount described in paragraph (a) must be reduced by the amount of the excess.
- (9) If the income stream has a positive account balance at the end of its term, a payment equal to that account balance must be made within 28 days after the end of the term.

Determination that income stream not asset-test exempt

- (10) The Commission may determine that an income stream that meets the requirements of subsection (2) is not an asset-test exempt income stream if the Commission is satisfied that:
 - (a) the primary beneficiary has commuted an asset-test exempt income stream on at least 3 occasions since the person first received a service pension, an income support supplement or a social security payment; and

- (b) on at least 3 of those occasions, the commutation happened within 6 months after the commencement day of the income stream concerned.

Determination that income stream is asset-test exempt

- (11) The Commission may determine, in writing, that an income stream that does not meet the requirements of subsection (2) is an asset-test exempt income stream for the purposes of this Act. In making the determination, the Commission must have regard to the guidelines (if any) determined under subsection (12).

Guidelines to be complied with in making determination

- (12) The Commission may determine, in writing, guidelines to be complied with when making a determination under subsection (11). The determination is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Miscellaneous

- (13) A determination for the purposes of the definition of **PF** in subsection (5) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (14) In this section:

hardship amount has the same meaning as in section 5JA (see subsection 5JA(7)).

non-commutation funded income stream means an income stream that has not been purchased by transferring directly to the purchase of the income stream a payment resulting from the commutation of another asset-test exempt income stream.

reversionary partner, in relation to the primary beneficiary of an income stream and a particular day, means another person who, on that day:

- (a) is a member of a couple with the primary beneficiary; and

Note: For **member of a couple**, see section 5E.

- (b) is the person to whom the income stream will revert on the primary beneficiary's death.

29 Transitional—early use of new Life Tables

- (1) This item applies to an income stream with a commencement day happening:
- (a) after the first day (the *new publication day*) during 2004 or 2005 on which the Australian Government Actuary (the *AGA*) publishes Australian Life Tables (the *new Life Tables*) that differ from the *AGA*'s most recent publication of Australian Life Tables before 2004; and
 - (b) during the period starting on 20 September 2004, and ending on:
 - (i) if the new publication day happens during 2004—31 December 2004; or
 - (ii) if the new publication day happens during 2005—31 December 2005.
- (2) For the purposes of determining whether the income stream is an asset-test exempt income stream, the life expectancy on the income stream's commencement day of:
- (a) the primary beneficiary of the income stream; or
 - (b) the primary beneficiary's reversionary partner (if any) on that day;
- can be ascertained by reference to:
- (c) the Life Tables prescribed for the purposes of the definition of *life expectation factor* in subsection 27H(4) of the *Income Tax Assessment Act 1936* most recently published before 2004; or
 - (d) the new Life Tables.
- (3) When working out the income stream's *relevant number* for the purposes of the *Veterans' Entitlements Act 1986*, a person's life expectancy must be ascertained by reference to the same Life Tables as those chosen under subitem (2) of this item in relation to the income stream and the person.

30 Section 46T (note)

Omit "and 5JB", substitute ", 5JB and 5JBA".

31 At the end of paragraph 52(1)(d)

Add ", other than a partially asset-test exempt income stream".

32 After paragraph 52(1)(d)

Insert:

(daa) half of the value of any partially asset-test exempt income stream of the person;

Note: For *partially asset-test exempt income stream*, see subsection (1AA).

33 After subsection 52(1)

Insert:

(1AA) For the purposes of paragraphs (1)(d) and (daa):

partially asset-test exempt income stream means an asset-test exempt income stream that:

(a) is:

(i) an income stream covered by subsection 5JA(1) or (1A), or 5JB(1), that is not a defined benefit income stream; or

(ii) an income stream covered by subsection 5JBA(1); and

Note: For *defined benefit income stream*, see section 5J.

(b) has a commencement day happening on or after 20 September 2004; and

Note: For *commencement day*, see section 5J.

(c) is not covered by principles (if any) determined in writing by the Commission.

(1AB) A determination under paragraph (c) of the definition of *partially asset-test exempt income stream* in subsection (1AA) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

34 After section 52BA

Insert:

52BB Value of partially asset-test exempt income streams

(1) This section applies to income streams covered by paragraph 52(1)(daa).

- (2) The value of such an income stream is, for the purposes of paragraph 52(1)(daa), worked out as follows:
- (a) if the income stream is a family law affected income stream—under section 52BA;
 - (b) otherwise—under section 52A;
- as if the income stream were an asset-tested income stream to which that section applied.

35 Subsection 52ZMA(11)

Omit “or 5JB(4)”, substitute “, 5JB(4) or 5JBA(11)”.

Note: The heading to section 52ZMA is altered by omitting “or **5JB(2)**” and substituting “, **5JB(2) or 5JBA(2)**”.

*[Minister's second reading speech made in—
House of Representatives on 26 May 2004
Senate on 15 June 2004]*