EXPLANATORY NOTE

Asset-test Exempt Income Stream (Lifetime Income Stream Guidelines) Amendment Determination 1999 (No.5)

Summary

This determination is made under subsection 5JA(6) of the Veterans' Entitlements Act 1986 (the Veterans' Entitlements Act), which was inserted by Schedule 3, Part 2 to the Social Security and Veterans' Affairs (Budget and Other Measures) Act 1998.

The purpose of this determination is to amend the guidelines (the Asset-test Exempt Income Stream (Lifetime Income Stream Guidelines) Determination 1998 (No.10) made by the Repatriation Commission on 18 September 1998) for the exercise of the Commission's discretion, under subsection 5JA(5) of the Veterans' Entitlements Act, to determine that an income stream that does not meet the requirements of subsection 5JA(2) is an asset-test exempt income stream for the purposes of the Veterans' Entitlements Act.

The 1998 Guidelines provided that an asset-test exempt lifetime income stream provided from a private sector defined benefit fund would only apply until 19 September 1999. This exclusion has been removed from this determination.

Background

Section 5JA of the Veterans' Entitlements Act specifies the characteristics that a lifetime income stream must have to be exempt from the assets test. These characteristics are designed to ensure a steady drawdown of capital and income over a long period, with no access to the capital. Subsection 5JA(1) of the Veterans' Entitlements Act specifies that lifetime income streams are asset-test exempt if they arise under a contract or governing rules that meet the requirements of subsection 5JA(2), and the Repatriation Commission has not made a determination under subsection 5JA(4) in relation to the income stream (which would remove the asset-test exempt status).

Subsection 5JA(5) of the Veterans' Entitlements Act states that the Repatriation Commission may decide that an income stream that does not meet all the specified characteristics in subsection 5JA(2), may nevertheless be treated as an asset-test exempt income stream. In order to make such a decision, the Repatriation Commission must take into account guidelines, which are a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901.
These guidelines will be used to provide a limited exemption to public and private sector defined benefit superannuation pensions because they only deviate slightly from required characteristics for asset-test exemption and they generally satisfy the Government's retirement income aims. In addition, changes to the public and private sector schemes from which these income streams arise may require legislative amendment or changes to trust deeds that may not be achieved quickly or easily. In general, the income streams targeted by these guidelines are a model for retirement income streams in terms of a regular and dependable income stream in retirement, with no access to the underlying capital.

**Explanation of the provisions**

Section 1 of the determination states the name of the determination and section 2 states that the determination commences once it is made.

Section 3 specifies that Schedule 1 amends the 1998 Guidelines.

**Schedule I-Amendments**

Schedule 1[1] amends section 1.3 of the 1998 Guidelines of the definition of lifetime income stream so that they are made at least annually in relation to a person.

Schedule 1[2] amends section 1.3 of the 1998 Guidelines of the definition of private sector superannuation scheme by substituting a new definition, private sector fund, which has the same meaning as in subsection 10(1) of the Superannuation Industry (Supervision) Act 1993.


**Part 2-Guidelines**

*Lifetime income stream under a public sector fund or superannuation scheme*

Section 2.1(1) of the determination specifies that the Commission must have regard to section 2.1 in making a determination under subsection 5JA(5) of the Veterans'Entitlements Act for exempting from the assets tests a lifetime income stream that is paid from a public sector fund or a public sector superannuation scheme where the income stream does not fully meet the requirements of subsection 5JA(2) of the Veterans' Entitlements Act.
Section 2.1 (2) specifies that the income stream must be a lifetime income stream that must be a defined benefit income stream, that the amount of payments must be determined by the governing rules of the fund or scheme and that the income stream is a defined benefit superannuation pension (paragraph (a)) or that the income stream is a superannuation pension under an exempt public sector superannuation scheme within the meaning of section 10 of the Superannuation Industry (Supervision) Act 1993 being a scheme to which subregulation 1.04(4A) of the Superannuation Industry (Supervision) Regulations 1994 applies.

Section 2.1(3) specifies that the fund or scheme must have been established before 20 September 1998. Paragraph (a) provides that for an income stream commencing before 20 September 1998 the value of the incoming stream is disregarded in calculating the value of the person's assets because of the application of section 52 of the Veterans' Entitlements Act as in force immediately before 20 September 1998 (the previous section 52). Paragraph (b) provides that for an income stream commencing on or after 20 September 1998, that is a defined benefit superannuation pension existing before 20 September 1998, the value of the income stream would have been disregarded in calculating the value of the person's assets because of the application of the previous section 52 if the commencement day of the income stream was before 20 September 1998 and defined benefit superannuation pension payments were made before that date.

**Lifetime income stream under a private sector fund**

Section 2.2(1) of the determination specifies that the Commission must have regard to section 2.2 in making a determination under subsection 5JA(5) of the Veterans' Entitlements Act for exempting from the assets tests a lifetime income stream that is paid from a private sector fund where the income stream does not fully meet the requirements of subsection 5JA(2) of the Veterans' Entitlements Act.

Section 2.2(2) specifies that the income stream must be a lifetime income stream that is a defined benefit income stream, that the amount of payments must be determined by the governing rules of the fund and that the income stream is a defined benefit superannuation pension.

Section 2.2(3) specifies that the fund must have been established before 20 September 1998. Paragraph (a) provides that for an income stream commencing before 20 September 1998 the value of the incoming stream is disregarded in calculating the value of the person's assets because of the application of section 52 of the Veterans' Entitlements Act as in force immediately before 20 September 1998 (the previous section 52). Paragraph (b) provides
that for an income stream commencing on or after 20 September 1998, that is a defined benefit superannuation pension existing before 20 September 1998, the value of the income stream would have been disregarded in calculating the value of the person's assets because of the application of the previous section 52 if the commencement day of the income stream was before 20 September 1998 and defined benefit superannuation pension payments were made before that date.

Section 2.2(4) provides that the fund must have a direct connection with the previous employment of the person receiving the income stream, or in the case of a reversionary beneficiary, the person who would have received the income stream if that person had not died.

Section 2.2(5) provides that a fund has a direct connection with a person's previous employment if the income stream from the fund became payable to, or in respect of the person because of that employment.