EXPLANATORY STATEMENT


Summary

The Veterans’ Entitlements (Actuarial Certificate – Lifetime Income Stream Guidelines) Determination 2009 (the Determination) is made under subsection 5JA(1B) of the Veterans' Entitlements Act 1986 (the Act).

The purpose of the Determination is to set out guidelines for the Repatriation Commission (Commission) when determining whether an actuarial certificate is in force for the purposes of paragraph 5JA(1)(b) of the Act.

Background

Subsection 5JA(1) sets out criteria for establishing that an income stream is an asset-test exempt income stream. Asset test exempt income streams are not taken into account for pension means-testing purposes allowing the pensioner to potentially receive a higher rate of pension than if the income stream was asset tested.

One criterion is that for a provider of an income stream in a class of provider which is specified by the Commission, the Commission must be satisfied there is in force a current actuarial certificate. The actuarial certificate must state that in the actuary’s opinion there is a high probability that the provider of the income stream will be able to pay the income stream as required under the income stream’s contract or governing rules.

Where the Commission has specified a class of provider and is not satisfied that an actuarial certificate is in force in the required terms and in relation to the income stream provided by a provider in that class then, subject to the Act (particularly subsection 5JA(1C), the income stream is not an asset-test exempt income stream. Subsection 5JA(1C) provides for a period of grace where an actuarial certificate ceases to be in force and 26 weeks later has not been renewed. During this period the asset-test exempt status of the relevant income stream is preserved.

The attached instrument:

- specifies a class of provider of an income stream (for an income stream provided by a provider in that class a current actuarial certificate in the required terms must be in force); and
- sets out guidelines for the Commission when determining whether, for an income stream provided by a specified provider, a current actuarial certificate in the required terms is in force.

The required terms of a current actuarial certificate are that, in the actuary’s opinion, there is a high probability that the provider of the income stream will be able to pay the income stream as required under the income stream’s contract or governing rules.
Explanation of the provisions


Section 1.2 provides that the Determination commences on the day after it is registered on the Federal Register of Legislative Instruments.

Section 1.3 contains definitions relevant to the Determination.

Section 1.4 describes the purpose of the Determination, namely to:

- specify a class of provider of an income stream for the purposes of paragraph 5JA(1)(b) of the Act so that in relation to an income stream provided by a provider in that class there must be a current actuarial certificate in the required terms in force.

- set out the guidelines for the exercise of the Commission’s discretion, under paragraph 5JA(1)(b) of the Act, to determine that a current actuarial certificate is in force in relation to an income stream and what constitutes a high probability or positive opinion that the provider of the income stream will be able to pay the income stream as required under the contract or governing rules in order for that income stream to be an asset-test exempt income stream.

Part 2 Guidelines

Asset-test exempt lifetime income stream – self managed superannuation fund

Section 2.1 (1) specifies a class of provider of an income stream. The class is a “self managed superannuation fund” (SMSF). A member or trustee of the SMSF must provide an actuarial certificate to the Commission.

Section 2.1 (2) requires an actuarial certificate to be prepared in relation to the SMSF in accordance with the Institute of Actuaries of Australia Guidance Note 465 and to specify whether there is a high degree of probability, at the valuation date, of the SMSF meeting the income stream payments specified under the SMSF’s trust deed or governing rules.

Section 2.1(3) requires an actuarial certificate that relates to a SMSF with less than 5 members to specify an “in force period” of 12 months or less from the date of certification. Any longer period is deemed to end 12 months from the date of certification.

Section 2.1(4) confirms that where an actuarial certificate for a SMSF specifies an in force period of 12 months or less, from the date of certification, the certificate will be considered to be in force during the period so specified.
Section 2.1(5) provides that where an actuarial certificate in relation to a “less than 5 member SMSF” expires after the relevant period then the certificate ceases to be in force from the first day after the expiry date. However the SMSF retains its asset-test exempt status for a further 26 weeks under subsection 5JA(1C) of the Act. This gives time for a new certificate to be prepared.

Section 2.1(6) makes it clear that if an actuarial certificate for a “less than 5 member SMSF” does not specify an in force period then the certificate will not be considered to be in force.

Section 2.1(7) exempts a provider of an income stream derived from a “annuity backed SMSF” from the requirement to provide an actuary certificate in respect of the SMSF. The annuity must be backed by the statutory fund of a life insurance company or the benefit fund of a friendly society.

Section 2.1(8) makes it clear that a “annuity backed SMSF” meets the requirements of paragraph 5JA(1)(b) of the Act even though the provider of the income stream from the SMSF was not required to provide an actuarial certificate in respect of the SMSF.

Asset-test exempt lifetime income stream – small APRA fund

Section 2.2(1) specifies a class of provider of an income stream. The class is a “small APRA fund”. A member or trustee of the small APRA fund must provide an actuarial certificate to the Commission. Generally speaking, a small APRA fund is a fund with fewer than 5 members which is unable to comply with the definition of a SMSF. Generally speaking a SMSF is one where:

- there are fewer than 5 members;
- all members are trustees, or directors of the trustee company;
- there are no trustees or directors who are not members;
- there are no members who are employees of other members (unless they are relatives); and
- No trustee of the fund receives any remuneration for his or her services as a trustee.

Section 2.2(2) requires an actuarial certificate to be prepared in relation to a small APRA fund in accordance with the Institute of Actuaries of Australia Guidance Note 465 and to specify whether there is a high degree of probability, at the valuation date, of the small APRA fund meeting the income stream payments under the small APRA fund’s trust deed or governing rules.

Section 2.2(3) requires an actuarial certificate that relates to a small APRA fund with less than 5 members to specify an “in force period” of 12 months or less from the date of certification. Any longer period is deemed to end 12 months from the date of certification.

Section 2.2(4) confirms that where an actuarial certificate for a small APRA fund specifies an in force period of 12 months or less, from the date of certification, the certificate will be considered to be in force during the period so specified.
Section 2.2(5) provides that where an actuarial certificate in relation to a “less than 5 member small APRA fund” expires after the relevant period then the certificate ceases to be in force from the first day after the expiry date. However the small APRA fund retains its asset-test exempt status for a further 26 weeks under subsection 5JA(1C) of the Act. This gives time for a new certificate to be prepared.

Section 2.2(6) makes it clear that if an actuarial certificate for a “less than 5 member small APRA fund” does not specify an in force period then the certificate will not be considered to be in force.

Section 2.2(7) exempts a provider of an income stream derived from a “annuity backed small APRA fund” from the requirement to provide an actuary certificate in respect of the small APRA fund. The annuity must be backed by the statutory fund of a life insurance company or the benefit fund of a friendly society.

Section 2.2(8) makes it clear that a “annuity backed small APRA fund” meets the requirements of paragraph 5JA(1)(b) of the Act even though the provider of the income stream from the small APRA fund was not required to provide an actuarial certificate in respect of the small APRA fund.

Application of paragraph 5JA(1)(b) of the Veterans’ Entitlements Act 1986 following certification of a high degree of probability

Section 2.3 provides that if the actuarial certificate provided to the Commission by the person or the trustee of the SMSF under subsection 2.1(1) or by the person or the trustee of the small APRA fund under subsection 2.2(1) does certify that there is a high degree of probability that the SMSF or small APRA fund, as the case may be, will be able to pay the income stream as required under the SMSF’s or small APRA fund’s governing rules then paragraph 5JA(1)(b) of the Act is satisfied.

Application of paragraph 5JA(1)(b) of the Veterans’ Entitlements Act 1986 following non-certification of a high degree of probability

Section 2.4(1) makes it clear that if the actuarial certificate provided to the Commission by the person or the trustee of the SMSF under subsection 2.1(1) or by the person or the trustee of the small APRA fund under subsection 2.2(1) does not certify that there is a high degree of probability that the SMSF or small APRA fund, as the case may be, will be able to pay the income stream as required under the SMSF’s or small APRA fund’s governing rules then paragraph 5JA(1)(b) of the Act is considered to be not satisfied and the income stream is to be determined to be an asset tested income stream (long term).

Section 2.4(2) makes it clear that if an actuarial certificate is not provided to the Commission by the person or the trustee of the SMSF under subsection 2.1(1) or by the person or the trustee of the small APRA fund under subsection 2.2(1) then paragraph 5JA(1)(b) of the Act is considered to be not satisfied and the income stream is to be determined to be an asset tested income stream (long term).
Consultation

Public consultation has not been undertaken because the instrument needed to be introduced quickly to fill an unintended gap in the “asset-test exempt income stream requirements” under the Act. In any event a virtually identical instrument made under the Social Security Act 1991 has been in operation since 2003.