The Repatriation Commission makes this Determination under subsection 5JA(1B) of the Veterans’ Entitlements Act 1986

Dated this 21st day of December 2009

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PRESIDENT DEPUTY PRESIDENT COMMISSIONER
Part 1 Preliminary

1.1 Name of Determination

This determination is the Veterans’ Entitlements (Actuarial Certificate—Lifetime Income Stream Guidelines) Determination 2009

1.2 Commencement

This determination commences on the day after it is registered on the Federal Register of Legislative Instruments.

1.3 Definitions

In this determination:

Act means the Veterans’ Entitlements Act 1986;
Commission has the same meaning as in the Act.;
friendly society has the same meaning as in subsection 5J(1) of the Act and includes an approved friendly society under section 29 of the Social Security Act 1991;

high degree of probability means:

(a) a certification by an actuary that the fund has a probability of at least 70% of being able to pay the income stream as required under the fund’s governing rules; or

(b) a certification by an actuary that the fund has a probability of at least 50% but less than 70% of being able to pay the income stream as required under the fund’s governing rules but special circumstances arise that, in the actuary’s opinion, if those circumstances had not arisen the fund would, as at the valuation date, have been able to be certified as having a high degree of probability;

life insurance company has the same meaning as in subsection 10(1) of the Superannuation Industry (Supervision) Act 1993.

1.4 Purpose

The purpose of this determination is to 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

2.1 Asset-test exempt lifetime income stream—self managed superannuation fund

Provision of an actuarial certificate

(1) Subject to subsections (2) to (9), if a person is a member of a self managed superannuation fund then the person or the trustee of the fund must provide an actuarial certificate to the *Commission*.

General requirements of the actuarial certificate

(2) The actuarial certificate required to be provided to the *Commission* by the person or the trustee of the fund under subsection (1) must:

(a) be prepared in accordance with the Institute of Actuaries of Australia Guidance Note 465; and

(b) specify whether there is a high degree of probability, at the valuation date, of the fund meeting the income stream payments specified under the fund's trust deed or governing rules.

Fund with less than 5 members

(3) An actuarial certificate that relates to a fund that has less than 5 members must, in addition to the requirements of subsection (2), specify an in force period of 12 months or less from the date of certification.

In force period specified

(4) If the actuarial certificate provided in relation to the requirement under subsection (3) specifies an in force period of 12 months or less from the date of certification then that certificate will be considered to be in force during the period so specified.

(5) If the actuarial certificate provided in relation to the requirement under subsection (3) specifies an in force period of more than 12 months from the date of certification then that certificate is deemed to only be in force for a period of 12 months from the date of certification.

Expire of in force period

(6) If the in force period of 12 months or less from the date of certification of the actuarial certificate provided in relation to the requirement under subsection (3) expires then the certificate ceases to be in force from the first day after the expiry date, however, the fund will retain its asset-test exempt lifetime income
stream status for a further period of 26 weeks because of the application of subsection 5JA(1C) of the Act.

No in force period specified

(7) If the actuarial certificate provided in relation to the requirement under subsection (3) does not specify any in force period then that certificate will not be considered to be in force.

Annuity backed self managed superannuation fund

(8) An actuarial certificate is not required under subsection (1) if the income stream from the self managed superannuation fund is sourced from an annuity where that annuity is backed by the statutory fund of a life insurance company or the benefit fund of a friendly society, as the case may be.

Effect of an annuity backed self managed superannuation fund

(9) If a fund does not have to satisfy subsection (1) because the fund meets the requirements of subsection (8), then that fund is considered to have satisfied the requirements of paragraph 5JA(1)(b) of the Act.

2.2 Asset-test exempt lifetime income stream—small APRA fund

Provision of an actuarial certificate

(1) Subject to subsections (2) to (9), if a person is a member of a small APRA fund then the person or the trustee of the fund must provide an actuarial certificate to the Commission.

General requirements of the actuarial certificate

(2) The actuarial certificate required to be provided to the Commission by the person or the trustee of the fund under subsection (1) must:

(a) be prepared in accordance with the Institute of Actuaries of Australia Guidance Note 465; and

(b) specify whether there is a high degree of probability, at the valuation date, of the fund meeting the income stream payments specified under the fund’s trust deed or governing rules.

Fund with less than 5 members

(3) An actuarial certificate that relates to a fund that has less than 5 members must, in addition to the requirements of subsection (2), specify an in force period of 12 months or less from the date of certification.

In force period specified
(4) If the actuarial certificate provided in relation to the requirement under subsection (3) specifies an in force period of 12 months or less from the date of certification then that certificate will be considered to be in force during the period so specified.

(5) If the actuarial certificate provided in relation to the requirement under subsection (3) specifies an in force period of more than 12 months from the date of certification then that certificate is deemed to only be in force for a period of 12 months from the date of certification.

**Expiry of in force period**

(6) If the in force period of 12 months or less from the date of certification of the actuarial certificate provided in relation to the requirement under subsection (3) expires then the certificate ceases to be in force from the first day after the expiry date, however, the fund will retain its asset-test exempt lifetime income stream status for a further period of 26 weeks because of the application of subsection 5JA(1C) of the Act.

**No in force period specified**

(7) If the actuarial certificate provided in relation to the requirement under subsection (3) does not specify any in force period then that certificate will not be considered to be in force.

**Annuity backed small APRA fund**

(8) An actuarial certificate is not required under subsection (1) if the income stream from the small APRA fund is sourced from an annuity where that annuity is backed by the statutory fund of a life insurance company or the benefit fund of a friendly society, as the case may be.

**Effect of an annuity backed small APRA fund**

(9) If a fund does not have to satisfy subsection (1) because the fund meets the requirements of subsection (8), then that fund is considered to have satisfied the requirements of paragraph 5JA(1)(b) of the Act.

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

If the actuarial certificate provided to the Commission by the person or the trustee of the fund under subsection 2.1(1) or subsection 2.2(1) does certify that there is a *high degree of probability* that the fund will be able to pay the income stream as required under the fund’s governing rules then paragraph 5JA(1)(b) of the Act is satisfied.
2.4 Application of paragraph 5JA(1)(b) of the Veterans’ Entitlements Act 1986 following non-certification of a high degree of probability

Actuarial certificate provided

(1) If the actuarial certificate provided to the Commission by the person or the trustee of the fund under subsection 2.1(1) or subsection 2.2(1) does not certify that there is a high degree of probability that the fund will be able to pay the income stream as required under the 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).

Actuarial certificate not provided

(2) If an actuarial certificate is not provided to the Commission by the person or the trustee of the fund under subsection 2.1(1) or 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).