

EXPLANATORY STATEMENT

Social Security (Waiver of Debts – Self Managed Superannuation Funds) (DEWR) Specification 2009 (No.1)

Summary

The *Social Security (Waiver of Debts – Self Managed Superannuation Funds) (DEWR) Specification 2009 (No. 1)* (the Specification) is made under section 1237AB of the *Social Security Act 1991* (the Act).

The purpose of the Specification is to specify a class of debts arising under the Act that may be waived by the Secretary.

Background

Section 1237AB of the Act provides that the Secretary may decide to waive the Commonwealth's right to recover debts arising under the Act that are included as a class of debts specified by the Minister by legislative instrument.

Income streams sourced from a self-managed superannuation fund before 20 September 2004, and certain income stream sourced from self-managed super funds that were commuted and rolled over between 20 September 2004 and 20 September 2007 and which comply with the requirements of sections 9A and 9B of the Act, are asset-test exempt. If these income streams are commuted, the asset-test exemption may be retained provided the new income stream complies with the requirements of the *Social Security (Guidelines for Determining whether Income Stream is Asset-test Exempt) (DEWR) Determination 2007 (No. 1)*.

These income streams are required, among other things, to meet a 'high probability' actuarial test that they can continue to meet their obligations so as to comply with the requirements of sections 9A and 9B of the Act. However, some self-managed superannuation funds may no longer be able to meet this requirement due to the impact of the global financial crisis on financial markets.

Under the *Superannuation Industry Supervision Regulations 1994* (the SIS Regulations) any income streams that do not meet the high probability test must be restructured by purchasing a retail asset-test exempt product (which will comply with the requirements of the social security law) or an account-based market-linked income stream within the self managed superannuation fund. However, where the income stream is commuted to a market-linked income stream, the new income stream will no longer meet the requirements necessary to retain its asset-test exemption under sections 9A, 9B or 9BA of the Act.

As a consequence of restructuring the self-managed superannuation fund income stream to a market-linked income stream, the commutation will mean that the difference between the amount that has been paid by way of income support where the income stream was asset-test exempt and the amount that would have been

payable had the income stream been asset-tested, is a debt due to the Commonwealth under section 1223A of the Act.

This instrument will allow for this class of debts to be waived until 30 June 2010. This will enable the Secretary to waive the Commonwealth's right to recover debts arising under the Act, incurred by persons whose income streams, sourced from a self managed superannuation fund before 20 September 2004 (or were commuted and rolled over between 20 September 2004 and 20 September 2007 from those income streams) and which comply with the requirements of sections 9A and 9B of the Act are commuted to an account-based market-linked income stream as a result of not meeting the high probability actuarial test.

Explanation of the provisions

Section 1 states the name of the Specification is the *Social Security (Waiver of Debts – Self Managed Superannuation Funds) (DEEWR) Specification 2009 (No. 1)*.

Section 2 provides that the Specification commences on the day after the end of the period for disallowing it, in accordance with section 42 of the *Legislative Instruments Act 2003*. Subsection 1237AB(3) of the Act provides that an instrument made under subsection 1237AB(1) is of no effect until the time allowed for its disallowance has passed. This Specification will commence on the day after the end of the disallowance period.

Section 3 provides that the Specification ends at the end of 30 June 2010.

Section 4 contains definitions relevant to the Specification.

Section 5 specifies the class of debt that may be waived. A debt is in a specified class if:

- (a) it is a debt due to the Commonwealth by a person under section 1223A of the Act; and
- (b) the debt did not arise because the person knowingly made a false or misleading statement, or knowingly provided false information to the Commonwealth; and
- (c) immediately before the date this Specification is made, the income stream that is relevant for the purposes of section 1223A:
 - (i) was:
 - (A) an asset-test exempt income stream; or
 - (B) an asset-tested income stream (long term) that was previously an asset-test exempt income stream which failed to meet the requirements of either paragraphs 9A (1) (b) or 9B (1A) (b) of the Act; and
 - (ii) was sourced from a self managed superannuation fund; and
- (d) the income stream that is relevant for the purposes of section 1223A:
 - (i) on or after 1 July 2008 — does not meet the requirements of either paragraph 9A (1) (b) or 9B (1A) (b) of the Act; and

- (ii) after the date this Specification is made — is an account-based market-linked income stream within the self managed superannuation fund mentioned in subparagraph (c) (ii).

The reference to the date the Specification is made in paragraph 5(c) and subparagraph 5(d)(ii) above means the date the Specification is signed.

Sub-subparagraph 5(c)(i)(B) provides for those income streams that were asset-tested income streams (long term) which were previously asset-test exempt but, due to the economic crisis, failed to meet the high probability actuarial test. As these income streams are no longer able to meet the requirements of 9A(1)(b) or 9B(1A)(b) of the Act, they are unable to retain their asset-test exemption. In these circumstances, these income streams would be assessed as asset-tested income streams and this change of status would normally trigger the operation of section 1223A of the Act.

Consultation

Public consultation has not been undertaken as this instrument is of a purely beneficial character. Consultation was undertaken with Centrelink, Department of Veterans' Affairs and the Department of Families, Housing, Community Services & Indigenous Affairs in relation to this instrument. A similar instrument has also been made by the Minister for Families, Housing, Community Services and Indigenous Affairs to allow the waiver of debts arising under the Act for which the Minister for Families, Housing, Community Services and Indigenous Affairs has responsibility.

Regulatory Impact Statement

A Regulatory Impact Statement and a Business Costs Calculator are not required as the waiver of the Commonwealth's right to recover social security debts will have no regulatory or competition impacts, and will not impose compliance costs on business.