

Veterans’ Entitlements (Guidelines for determining whether income stream is asset-test exempt) Determination 20111

*Veterans’ Entitlements Act 1986*

The REPATRIATION COMMISSION makes this Determination under subsections 5JA (6) and 5JB (5) of the *Veterans’ Entitlements Act 1986*.

Dated  4th November  2011

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IAN CAMPBELL SHANE CARMODY MAJOR GENERAL MARK KELLY

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Part 1 Preliminary

1 Name of Determination

This Determination is the *Veterans’ Entitlements (Guidelines for determining whether income stream is asset-test exempt) Determination 2011*.

2 Commencement

This Determination commences on the day after it is registered.

3 Revocation

The *Veterans’ Entitlements (Guidelines for Determining whether Income Stream is Asset-test Exempt) Determination 2007 (No. 1)* is revoked.

4 Definitions

In this Determination:

***Act*** means the *Veterans’ Entitlements* *Act 1986*.

***benefit fund*** has the meaning given by subsection 16B (1) of the *Life Insurance Act 1995*.

***Commission*** has the same meaning as in section 5A of the Act.

***defined benefit pension*** has the meaning given by regulation 9.04E of the *Superannuation Industry (Supervision) Regulations 1994*.

***dependant*** means a dependant mentioned in subregulation 6.21 (2A) of the *Superannuation Industry (Supervision) Regulations 1994*.

***hardship amount*** has the meaning given by subsection 5JA (7) of the Act.

***immediate annuity*** means an annuity that is presently payable.

***life company*** has the meaning given in the Dictionary to the *Life Insurance Act 1995*.

***regulated superannuation fund*** has the meaning given by subsection 10 (1) of the *Superannuation Industry (Supervision) Act 1993*.

***self managed superannuation fund*** has the meaning given by section 17A of the *Superannuation Industry (Supervision) Act 1993*.

***statutory fund*** has the meaning given by section 29 of the *Life Insurance Act 1995*.

***successor fund*** has the meaning given by subregulation 1.03 (1) of the *Superannuation Industry (Supervision) Regulations 1994*.

***third party*** has the meaning given by section 90AB of the *Family Law Act 1975*.

*Note*   Several other words and expressions used in this Determination have the meaning given by Part I of the Act. For example:

• asset-test exempt income stream (subsection 5J (1) and sections 5JA, 5JB and 5JBA)

• defined benefit income stream (subsections 5J (1) and (1E))

• family law affected income stream (subsection 5J (1) and section 5JC)

• income stream (subsection 5J (1))

• original family law affected income stream (subsection 5J (1) and section 5JC)

• primary FLA income stream (subsection 5J (1) and section 5JC).

5 Purpose of Determination

This Determination sets out guidelines with which the Commission must comply when making a determination under subsection 5JA (5) or 5JB (4) of the Act in relation to certain income streams.

*Note*   Under subsection 5JA (5) or 5JB (4) of the Act, the Commission may determine that an income stream is an asset-test exempt income stream for the purposes of the Act.

6 Application of Determination

(1) Part 2 applies to certain income streams commencing on or after 1 July 2007.

(2) Part 3 applies to certain income streams commencing on or after 20 September 2007.

Part 2 Guidelines for certain income streams commencing on or after 1 July 2007

7 Guidelines for asset‑test exempt income stream resulting from commutation or rollover because of regulation 6.21 of the *Superannuation Industry (Supervision) Regulations 1994*

The Commission may determine that an income stream is an asset‑test exempt income stream for the purposes of the Act if:

(a) it is covered by section 5JA or 5JB of the Act or would have been covered by those sections if paragraph 5JA (1) (aa) or subparagraph 5JB (1) (a) (i) of the Act did not apply; and

(b) it is purchased by the primary beneficiary on or after 1 July 2007; and

(c) it results from another asset‑test exempt income stream (the ***original income stream***) being commuted or rolled over to comply with subregulation 6.21 (2A) of the *Superannuation Industry (Supervision) Regulations 1994*;and

(d) the original income stream was covered by section 5JA or 5JB of the Act or would have been covered by those sections if paragraph 5JA (1) (aa) or subparagraph 5JB (1) (a) (i) of the Act did not apply; and

(e) the original income stream:

(i) was purchased before 20 September 2004; or

(ii) was, immediately before 20 September 2007, covered by the *Veterans’ Entitlements (Partially Asset‑test Exempt Income Stream — Exemption) Principles 2005*; or

(iii) was, until the commencement of this Determination, covered by the *Veterans’ Entitlements (Guidelines for Determining whether Income Stream is Asset-test Exempt) Determination 2007 (No. 1)*; or

(iv) is covered by this Determination.

Part 3 Guidelines for certain income streams commencing on or after 20 September 2007

8 Guidelines for an asset‑test exempt income stream resulting from original asset‑test exempt income stream purchased before 20 September 2004

(1) The Commission may determine that an income stream is an asset‑test exempt income stream for the purposes of the Act if:

(a) the income stream is covered by section 5JA or 5JB of the Act or would have been covered by those sections if paragraph 5JA (1) (aa) or subparagraph 5JB (1) (a) (i) of the Act did not apply; and

(b) it is purchased by the primary beneficiary on or after 20 September 2007 from funds arising from the commutation of another asset‑test exempt income stream (the ***original income stream***); and

(c) the original income stream was purchased before 20 September 2004; and

(d) the original income stream is a kind of income stream to which one of the following subsections applies.

(2) This subsection applies to an original income stream if:

(a) it is covered by subsection 5JA (1) or (1A) or section 5JB of the Act; and

(b) it was purchased by the primary beneficiary for the benefit of the primary beneficiary and a reversionary beneficiary; and

(c) payments made under the income stream are calculated on the basis of the life expectancy of the reversionary beneficiary; and

(d) the reversionary beneficiary predeceases the primary beneficiary.

(3) This subsection applies to an original income stream if:

(a) it is covered by subsection 5JA (1) or (1A) or section 5JB of the Act; and

(b) it is not an income stream to which section 11 or 12 of this Determination applies; and

(c) it is purchased by the primary beneficiary for the benefit of the primary beneficiary and a reversionary beneficiary who, at the time of the purchase, are members of a couple together; and

(d) the primary beneficiary and reversionary beneficiary are no longer members of a couple together.

Example

On 1 March 2002, J purchased an income stream (the ***original income stream***) covered by subsection 5JA (1) of the Act for the benefit of J, the primary beneficiary, and H, the reversionary beneficiary. At the time of the purchase, J and H were members of a couple together. On 1 December 2007, J and H ceased to be members of a couple together. On 15 December 2007, J commutes the original income stream and purchases another income stream (the ***new income stream***) covered by subsection 5JA (1) of the Act. The new income stream is covered by this Determination and retains the 100% exemption from the assets test.

(4) This subsection applies to an original income stream if:

(a) it is a defined benefit pension covered by section 5JA or 5JB of the Act that is provided by a regulated superannuation fund; and

(b) it is an income stream in relation to which the Commission is not satisfied as required by paragraph 5JA (1) (b) or 5JB (1A) (b) of the Act.

Example

On 1 March 2002, P purchased an income stream (the ***original income stream***) that is a defined benefit pension covered by section 5JA of the Act that is provided by a regulated superannuation fund. Paragraph 5JA (1) (b) of the Act applies to the original income stream. On 1 September 2008, the Commission is not satisfied that the requirements of paragraph 5JA (1) (b) of the Act are met in relation to the original income stream. On 15 September 2008, P commutes the original income stream to purchase another income stream (the ***new income stream***) that is covered by section 5JA of the Act. The new income stream is covered by this Determination and retains the 100% exemption from the assets test.

*Note*   Paragraphs 5JA (1) (b) and 5JB (1A) (b) of the Act require the Commission to be satisfied, in relation to an income stream, that there is in force a current actuarial certificate stating 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.

(5) This subsection applies to an original income stream if:

(a) it is an immediate annuity under a statutory fund established by a life company, or under a benefit fund; and

(b) it:

(i) is an income stream in relation to which the Commission is not satisfied as required by paragraph 5JA (1) (b) or 5JB (1A) (b) of the Act; or

(ii) fails to satisfy relevant standards published by the Australian Prudential Regulation Authority about minimum surrender values and paid up values.

*Note* Paragraphs 5JA (1) (b) and 5JB (1A) (b) of the Act require the Commission to be satisfied, in relation to an income stream, that there is in force a current actuarial certificate stating 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.

9 Guidelines for an asset‑test exempt income stream resulting from commutation of asset‑test exempt income stream purchased on or after 20 September 2004 and before 20 September 2007

(1) The Commission may determine that an income stream is an asset‑test exempt income stream for the purposes of the Act if:

(a) the income stream is covered by section 5JA or 5JB of the Act or would have been covered by those sections if paragraph 5JA (1) (aa) or subparagraph 5JB (1) (a) (i) of the Act did not apply; and

(b) it is purchased by the primary beneficiary on or after 20 September 2007 from the commutation of an income stream that was:

(i) also covered by section 5JA or 5JB of the Act; and

(ii) purchased on or after 20 September 2004 and before 20 September 2007; and

(iii) commuted from another income stream (the ***original income stream***); and

(c) the original income stream was purchased before 20 September 2004; and

(d) the original income stream is a kind of income stream to which one of the following subsections applies.

(2) This subsection applies to an original income stream if:

(a) it is covered by subsection 5JA (1) or (1A) or section 5JB of the Act; and

(b) it was purchased by the primary beneficiary for the benefit of the primary beneficiary and a reversionary beneficiary; and

(c) payments made under the income stream are calculated on the basis of the life expectancy of the reversionary beneficiary; and

(d) the reversionary beneficiary predeceases the primary beneficiary.

(3) This subsection applies to an original income stream if:

(a) it is covered by subsection 5JA (1) or (1A) or section 5JB of the Act; and

(b) it is not an income stream to which section 11 or 12 of this Determination applies; and

(c) it is purchased by the primary beneficiary for the benefit of the primary beneficiary and a reversionary beneficiary who, at the time of the purchase, are members of a couple together; and

(d) the primary beneficiary and reversionary beneficiary are no longer members of a couple together.

Example

On 1 March 2002, J purchased an income stream (the ***original income stream***) covered by subsection 5JA (1) of the Act for the benefit of J, the primary beneficiary, and H, the reversionary beneficiary. As it was purchased before 20 September 2004, the income stream has a 100% exemption from the assets test. At the time of the purchase, J and H were members of a couple together.

On 15 September 2005, J commutes the original income stream to meet a hardship payment under subsection 5JB (7) of the Act.  J uses the remaining capital to purchase another income stream (the ***new income stream***).  The new income stream is covered by the *Veterans’ Entitlements (Partially Asset-test Exempt Income Stream — Exemption) Principles 2005* and retains the 100% exemption held by the original income stream.

On 1 December 2008, J and H ceased to be members of a couple together. On 15 December 2008, J commutes the new income stream and purchases another income stream (the ***further income stream***) covered by subsection 5JA (1) of the Act. The further income stream is covered by this Determination and retains the 100% exemption from the assets test.

(4) This subsection applies to an original income stream if:

(a) it is a defined benefit pension covered by subsection 5JA (1) or 5JB (1A) of the Act that is provided by a regulated superannuation fund; and

(b) it is an income stream in relation to which the Commission is not satisfied as required by paragraph 5JA (1) (b) or 5JB (1A) (b) of the Act, as applicable.

Example

On 1 March 2002, P purchased an income stream (the ***original income stream***) that is a defined benefit pension covered by section 5JA of the Act and provided by a regulated superannuation fund. Paragraph 5JA (1) (b) of the Act applies to the original income stream. As it was purchased before 20 September 2004, the income stream has a 100% exemption from the assets test.

On 15 September 2005, P commutes the original income stream to meet a hardship payment under subsection 5JA (7) of the Act.  P uses the remaining capital to purchase another income stream (the ***new income stream***).  The new income stream is covered by the *Veterans’ Entitlements (Partially Asset-test Exempt Income Stream — Exemption) Principles 2005* and retains the 100% exemption from the assets test.

On 1 September 2008, the Commission is not satisfied that the requirements of paragraph 5JA (1) (b) of the Act are met in relation to the new income stream. On 15 September 2008, P commutes the new income stream to purchase another income stream (the ***further income stream***) that is covered by section 5JA of the Act. The further income stream is covered by this Determination and retains the 100% exemption from the assets test.

*Note*   Paragraphs 5JA (1) (b) and 5JB (1A) (b) of the Act require the Commission to be satisfied, in relation to an income stream, that there is in force a current actuarial certificate stating 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.

(5) This subsection applies to an original income stream if:

(a) it is an immediate annuity under a statutory fund established by a life company, or under a benefit fund; and

(b) it:

(i) is an income stream in relation to which the Commission is not satisfied as required by paragraph 5JA (1) (b) or 5JB (1A) (b) of the Act, as applicable; or

(ii) fails to satisfy relevant standards published by the Australian Prudential Regulation Authority about minimum surrender values and paid up values.

*Note*   Paragraphs 5JA (1) (b) and 5JB (1A) (b) of the Act require the Commission to be satisfied, in relation to an income stream, that there is in force a current actuarial certificate stating 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.

10 Guidelines for an asset‑test exempt income stream resulting from transfer to successor fund

The Commission may determine that an income stream is an asset‑test exempt income stream for the purposes of the Act if:

(a) it is covered by section 5JA or 5JB of the Act or would have been covered by those sections if paragraph 5JA (1) (aa) or subparagraph 5JB (1) (a) (i) of the Act did not apply; and

(b) it results from the transfer, on or after 20 September 2007, of another income stream (the ***original income stream***) to a successor fund; and

(c) the original income stream was covered by section 5JA or 5JB of the Act or would have been covered by those sections if paragraph 5JA (1) (aa) or subparagraph 5JB (1) (a) (i) of the Act did not apply; and

(d) the original income stream was provided by a regulated superannuation fund; and

(e) the original income stream:

(i) was purchased before 20 September 2004; or

(ii) was, immediately before 20 September 2007, covered by the *Veterans’ Entitlements (Partially Asset‑test Exempt Income Stream — Exemption) Principles 2005*; or

(iii) was, until the commencement of this Determination, covered by the *Veterans’ Entitlements (Guidelines for Determining whether Income Stream is Asset-test Exempt) Determination 2007 (No. 1)*; or

(iv) is covered by this Determination.

11 Guidelines for an asset‑test exempt income stream resulting from payment split

The Commission may determine that an income stream is an asset‑test exempt income stream for the purposes of the Act if:

(a) it is covered by section 5JA or 5JB of the Act or would have been covered by those sections if paragraph 5JA (1) (aa) or subparagraph 5JB (1) (a) (i) of the Act did not apply; and

(b) it is purchased or acquired by the primary beneficiary or the primary beneficiary’s partner or former partner on or after 20 September 2007; and

(c) it results from another asset‑test exempt income stream (the ***original income stream***) being commuted to give effect to an entitlement of the partner or former partner of the primary beneficiary in respect of the original income stream under a payment split under Part VIIIB of the *Family Law Act 1975*; and

(d) the original income stream was covered by section 5JA or 5JB of the Act or would have been covered by those sections if paragraph 5JA (1) (aa) or subparagraph 5JB (1) (a) (i) of the Act did not apply; and

(e) the original income stream:

(i) was purchased before 20 September 2004; or

(ii) was, immediately before 20 September 2007, covered by the *Veterans’ Entitlements (Partially Asset‑test Exempt Income Stream — Exemption) Principles 2005*; or

(iii) was, until the commencement of this Determination, covered by the *Veterans’ Entitlements (Guidelines for Determining whether Income Stream is Asset-test Exempt) Determination 2007 (No. 1)*; or

(iv) is covered by this Determination.

Example

On 1 March 2002, P, who was partnered to J at that date, purchased an income stream (the ***original income stream***) covered by section 5JA of the Act. On 1 December 2007, P and J separate. P’s original income stream is commuted to give effect to an entitlement of J in respect of the original income stream under a payment split under Part VIIIB of the *Family Law Act 1975*. On 15 December 2007, J uses the entitlement resulting from the payment split to purchase an income stream (the ***new income stream***) covered by section 5JA of the Act. The new income stream is covered by this Determination and retains the 100% exemption from the assets test.

12 Guidelines for an asset‑test exempt income stream resulting from Family Court order or injunction

The Commission may determine that an income stream is an asset‑test exempt income stream for the purposes of the Act if:

(a) it is covered by section 5JA or 5JB of the Act or would have been covered by those sections if paragraph 5JA (1) (aa) or subparagraph 5JB (1) (a) (i) of the Act did not apply; and

(b) it is purchased or acquired by the primary beneficiary or the primary beneficiary’s spouse or former spouse on or after 20 September 2007; and

(c) it results from another asset‑test exempt income stream (the ***original income stream***) being commuted to give effect to:

(i) an order made under section 79, 90SM, 90SS or 114 of the *Family Law Act 1975*; or

(ii) an injunction granted under section 90SS or 114 of that Act that is binding on a third party under Part VIIIAA of that Act; or

(iii) any other order or injunction under the *Family Law Act 1975* that relates specifically to the original income stream; and

(d) the original income stream was covered by section 5JA or 5JB of the Act or would have been covered by those sections if paragraph 5JA (1) (aa) or subparagraph 5JB (1) (a) (i) of the Act did not apply; and

(e) the original income stream:

(i) was purchased before 20 September 2004; or

(ii) was, immediately before 20 September 2007, covered by the *Veterans’ Entitlements (Partially Asset‑test Exempt Income Stream — Exemption) Principles 2005*; or

(iii) was, until the commencement of this Determination, covered by the *Veterans’ Entitlements (Guidelines for Determining whether Income Stream is Asset-test Exempt) Determination 2007 (No. 1)*; or

(iv) is covered by this Determination.

Example

On 1 March 2002, J purchased an income stream (the ***original income stream***) covered by subsection 5JA (1) of the Act for the benefit of J, the primary beneficiary, and H, the reversionary beneficiary.  As it was purchased before 20 September 2004, the income stream has a 100% exemption from the assets test. At the time of the purchase, J and H are partnered. On 1 December 2007, J and H separate. On 15 December 2007, J commutes the original income stream in response to a Family Court order and purchases another income stream (the ***new income stream***) covered by subsection 5JA (1) of the Act. The new income stream is covered by this Determination and retains the 100% exemption from the assets test.

13 Guidelines for an asset‑test exempt income stream resulting from payment of superannuation contributions surcharge debt

The Commission may determine that an income stream is an asset‑test exempt income stream for the purposes of the Act if:

(a) it is covered by section 5JA or 5JB of the Act or would have been covered by those sections if paragraph 5JA (1) (aa) or subparagraph 5JB (1) (a) (i) of the Act did not apply; and

(b) it is purchased by the primary beneficiary on or after 20 September 2007; and

(c) it results from another asset‑test exempt income stream (the ***original income stream***) being commuted to pay a superannuation contributions surcharge debt; and

(d) the original income stream was covered by section 5JA or 5JB of the Act or would have been covered by those sections if paragraph 5JA (1) (aa) or subparagraph 5JB (1) (a) (i) of the Act did not apply; and

(e) the original income stream:

(i) was purchased before 20 September 2004; or

(ii) was, immediately before 20 September 2007, covered by the *Veterans’ Entitlements (Partially Asset‑test Exempt Income Stream — Exemption) Principles 2005*; or

(iii) was, until the commencement of this Determination, covered by the *Veterans’ Entitlements (Guidelines for Determining whether Income Stream is Asset-test Exempt) Determination 2007 (No. 1)*; or

(iv) is covered by this Determination.

14 Guidelines for an asset-test exempt income stream resulting from payment of excess contributions tax

The Commission may determine that an income stream is an asset‑test exempt income stream for the purposes of the Act if:

(a) it is covered by section 5JA or 5JB of the Act or would have been covered by those sections if paragraph 5JA (1) (aa) or subparagraph 5JB (1) (a) (i) of the Act did not apply; and

(b) it is purchased by the primary beneficiary on or after 20 September 2007; and

(c) it results from another asset‑test exempt income stream (the ***original income stream***) being commuted to pay an amount to give effect to a release authority, given in relation to the primary beneficiary, under:

(i) section 292-415 of the *Income Tax Assessment Act 1997*; or

(ii) section 292-80C of the *Income Tax (Transitional Provisions) Act 1997*; and

(d) the original income stream was covered by section 5JA or 5JB of the Act or would have been covered by those sections if paragraph 5JA (1) (aa) or subparagraph 5JB (1) (a) (i) of the Act did not apply; and

(e) the original income stream:

(i) was purchased before 20 September 2004; or

(ii) was, immediately before 20 September 2007, covered by the *Veterans’ Entitlements (Partially Asset‑test Exempt Income Stream — Exemption) Principles 2005*; or

(iii) was, until the commencement of this Determination, covered by the *Veterans’ Entitlements (Guidelines for Determining whether Income Stream is Asset-test Exempt) Determination 2007 (No. 1)*; or

(iv) is covered by this Determination.

15 Guidelines for an asset‑test exempt income stream resulting from payment of hardship amount

The Commission may determine that an income stream is an asset‑test exempt income stream for the purposes of the Act if:

(a) it is covered by section 5JA or 5JB of the Act or would have been covered by those sections if paragraph 5JA (1) (aa) or subparagraph 5JB (1) (a) (i) of the Act did not apply; and

(b) it is purchased by the primary beneficiary on or after 20 September 2007; and

(c) it results from another asset‑test exempt income stream (the ***original income stream***) being commuted to pay a hardship amount; and

(d) the original income stream was covered by section 5JA or 5JB of the Act or would have been covered by those sections if paragraph 5JA (1) (aa) or subparagraph 5JB (1) (a) (i) of the Act did not apply; and

(e) the original income stream:

(i) was purchased before 20 September 2004; or

(ii) was, immediately before 20 September 2007, covered by the *Veterans’ Entitlements (Partially Asset‑test Exempt Income Stream — Exemption) Principles 2005*; or

(iii) was, until the commencement of this Determination, covered by the *Veterans’ Entitlements (Guidelines for Determining whether Income Stream is Asset-test Exempt) Determination 2007 (No. 1)*; or

(iv) is covered by this Determination.

Example

On 1 March 2002, J purchased an income stream (the ***original income stream***) covered by subsection 5JA (1) of the Act for the benefit of J, the primary beneficiary, and H, the reversionary beneficiary. As it was purchased before 20 September 2004, the income stream has a 100% exemption from the assets test. At the time of the purchase, J and H are partnered. On 1 December 2005, J and H separate. On 15 December 2005, J commutes the original income stream in response to a Family Court order and purchases another income stream (the ***new income stream***) covered by subsection 5JA (1) of the Act. The new income stream is covered by the *Veterans’ Entitlements (Partially Asset-test Exempt Income Stream — Exemption) Principles 2005* and retains the 100% exemption from the assets test.

On 3 March 2008, J commutes part of the new income stream to pay a hardship amount. On 3 March 2008, J purchases another income stream (the ***further income stream***) from the remaining capital backing the new income stream. The further income stream is covered by this Determination and retains the 100% exemption from the assets test.

16 Guidelines for an asset‑test exempt income stream resulting from closure of a self managed superannuation fund

The Commission may determine that an income stream is an asset‑test exempt income stream for the purposes of the Act if:

(a) it is covered by section 5JA or 5JB of the Act or would have been covered by those sections if paragraph 5JA (1) (aa) or subparagraph 5JB (1) (a) (i) of the Act did not apply; and

(b) it is purchased by the primary beneficiary; and

(c) it is not sourced from a self managed superannuation fund; and

(d) it results from another asset‑test exempt income stream (the ***original income stream***) being commuted as a result of the closure of a self managed superannuation fund because:

(i) a member of the fund supporting the original income stream died; or

(ii) the administrative responsibilities of the fund supporting the original income stream became too onerous due to the age or incapacity of a trustee; and

(e) the original income stream was:

(i) covered by section 5JA or 5JB of the Act or would have been covered by those sections if paragraph 5JA (1) (aa) or subparagraph 5JB (1) (a) (i) of the Act did not apply; and

(ii) sourced from a self managed superannuation fund; and

(f) the original income stream:

(i) was, immediately before 20 September 2007, covered by the *Veterans’ Entitlements (Partially Asset‑test Exempt Income Stream — Exemption) Principles 2005*; or

(ii) was, until the commencement of this Determination, covered by the *Veterans’ Entitlements (Guidelines for Determining whether Income Stream is Asset-test Exempt) Determination 2007 (No. 1)*; or

(iii) is covered by this Determination.

Example

F and W are trustees of their self managed superannuation fund. They both have lifetime asset‑test exempt income streams that were purchased on 1 July 2003 when F was 65 and W was 64. F dies on 26 January 2015. W subsequently decides that she does not have the expertise or inclination to continue as a fund trustee. W commutes her asset‑test exempt income stream and uses the proceeds to purchase from a retail income stream provider, an income stream that meets the provisions of section 5JA of the Act. The new income stream is covered by this Determination and retains the 100% exemption from the assets test.

17 Guidelines for an asset-test exempt income stream resulting from family law affected income stream

(1) The Commission may determine that a family law affected income stream that does not meet the requirements of subsection 5JA (2) or 5JB (2) of the Act is an asset-test exempt income stream for the purposes of the Act if:

(a) either:

(i) the income stream meets all the requirements of paragraphs 5JA (2) (a) to (l) or 5JB (2) (a) to (l) of the Act other than those that are not met because of the operation of an order under Part VIIIAA, or a payment split under Part VIIIB, of the *Family Law Act 1975* relating to the income stream; or

(ii) as a result of the operation of one or more orders under Part VIIIAA, or one or more payment splits under Part VIIIB, of the *Family Law Act 1975*, the income stream is derived from an income stream that was an asset-test exempt income stream to which subsection 5JA (1A) or 5JB (1B) of the Act applied at the time of the order or payment split, or of the last of them; and

(b) the original family law affected income stream from which the income stream is derived as a result of the operation of one or more orders under Part VIIIAA, or one or more payment splits under Part VIIIB, of the *Family Law Act 1975*, was purchased before 20 September 2004; and

(c) either:

(i) for an income stream that is an immediate annuity under a statutory fund established by a life company, or under a benefit fund — the income stream satisfies standards published by the Australian Prudential Regulation Authority, about minimum surrender values and paid up values, that apply to the annuity; or

(ii) in any other case — the income stream meets the requirements of subsection (2); and

(d) the Commission is satisfied that any amount of the original family law affected income stream that is rolled over, transferred, commuted or paid as a lump sum is not more than the amount required to satisfy the non-member partner’s entitlement under an order under Part VIIIAA, or under a payment split under Part VIIIB, of the *Family Law Act 1975* relating to the original family law affected income stream; and

(e) for an income stream to which subparagraph (a) (i) applies — the Commission is satisfied that the income stream has met all the requirements mentioned in that subparagraph from the day the income stream began being paid.

(2) An income stream meets the requirements of this subsection if:

(a) the Commission is satisfied that there is in force a current actuarial certificate that states 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 contract or governing rules under which the income stream is provided; or

(b) for a period beginning when an actuarial certificate mentioned in paragraph (a) ceases to be in force and ending not more than 26 weeks later, an actuarial certificate of that kind is not in force.

(3) In considering the matter mentioned in paragraph (2) (a), the Commission must have regard to any guidelines determined under subsection 5JA (1B) or 5JB (1C) of the Act that apply to the income stream.

18 Guidelines for an asset-test exempt income stream that is defined benefit income stream

The Commission may determine that an income stream is an asset-test exempt income stream for the purposes of the Act if the Commission is satisfied that:

(a) the income stream is a defined benefit income stream, and has been so from the day the income stream began being paid; and

(b) if the income stream is also an original family law affected income stream — any amount of the income stream that is rolled over, transferred, commuted or paid as a lump sum is not more than the amount required to satisfy the non-member spouse’s entitlement under a payment split under Part VIIIB of the *Family Law Act 1975* relating to the original family law affected income stream.

**Note**

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003.* See http://www.frli.gov.au.