

EXPLANATORY STATEMENT

Social Security (Retention of exemption for asset-test exempt income streams) (FaHCSIA) Principles 2011

Summary

The *Social Security (Retention of exemption for asset-test exempt income streams) (FaHCSIA) Principles 2011* (the Principles) are made under subparagraphs (a)(iii) and (b)(ii) of the definition of **partially asset-test exempt income stream** in subsection 1118(1A) of the *Social Security Act 1991* (the Act).

The purpose of these Principles is to specify circumstances in which certain income streams are fully or partially exempt from the assets test under the Act. In particular, the Principles provide that certain 50% and 100% asset-test exempt income streams retain their asset-test exempt status where they have been commuted for particular tax or family law purposes.

Background

A partially asset-test exempt income stream is 50% asset-test exempt (that is, half of the value of the assets backing the income stream is taken into account under the assets test).

The effect of paragraph (a) of the definition in subsection 1118(1A) of the Act is that a **partially asset-test exempt income stream** is an asset-test exempt income stream that:

- (i) is a market-linked income stream (covered by subsections 9BA(1)) or an 'assets-test exempt income stream' covered by subsections 9A(1), 9A(1A) or 9B(1)) that is not in either case a defined benefit income stream; and
- (ii) commences between 20 September 2004 and 19 September 2007 inclusive; and
- (iii) is not covered by principles that the Secretary has determined for this subparagraph.

The purpose of this provision is to ensure that income streams purchased between 20 September 2004 and 19 September 2007, which would in certain circumstances otherwise lose asset-test exempt status, retain their fully (100%) asset-test exemption, if they are covered by principles made under subparagraph 1118(1A)(a)(iii). Thus, income streams covered by those principles retain their 100% asset-test exemption.

Part 2 of these Principles is made for the purposes of subparagraph (a)(iii) of the definition in subsection 1118(1A). That is, income streams covered by Part 2 of these Principles retain their 100% asset-test exemption.

Part 2 covers certain income streams (the 'new income stream') that are purchased or acquired as the result of the commutation or rollover of an existing 100% asset-test exempt income stream.

If the new income stream is purchased or acquired between 20 September 2004 and 19 September 2007 inclusive, and the income stream is covered by Part 2 of these Principles, the new income stream will retain the 100% asset-test exemption that applied to the original income stream, provided the new income stream was commuted or rolled over from, and retains the features of, the original income stream. The effect of not being covered by Part 2 of these Principles is that these income streams will lose the 100% asset-test exemption and will only be entitled to a 50% asset-test exemption (that is, will be 'partially asset-test exempt income streams' rather than being 'asset-test exempt income streams'), even if they retain the features of the original income stream.

Part 2 of the Principles, in effect, only applies to those income streams that retained their 100% asset-test exempt status because they were purchased between 20 September 2004 and 19 September 2007, were covered by the *Social Security (Partially Asset-test Exempt Income Stream – Exemption) (FaHCSIA) Principles 2005* (the 2005 Principles) or the *Social Security (Retention of Exemption for Asset-test Exempt Income Streams) (FaCSIA) Principles 2007* (the 2007 Principles). These income streams must have been commuted or rolled over from 100% asset-test exempt income streams purchased before 20 September 2004 which met the requirements of sections 9A or 9B of the Act. Income streams purchased on or after 20 September 2007 which derive from 100% asset-test exempt income streams can retain their 100% asset-test exempt status only if they are determined by the Secretary under subsection 9A(5) or 9B(4) of the Act to be asset-test exempt, having regard to guidelines made under subsection 9A(6) or 9B(5) of the Act respectively. The Secretary has made guidelines under subsections 9A(6) and 9B(5) of the Act, being the *Social Security (Guidelines for determining whether income stream is asset-test exempt) (FaHCSIA) Determination 2011*.

Paragraph (b) of the definition of ***partially asset-test exempt income stream*** in subsection 1118(1A) of the Act provides that a *partially asset-test exempt income stream* is an income stream that:

- (i) commences on or after 20 September 2007; and
- (ii) is covered by principles that the Secretary has determined in relation to this issue.

The purpose of this provision is to ensure that income streams purchased on or after 20 September 2007 which derive from 50% asset-test exempt income streams retain the 50% asset-test exempt status if they are covered by principles made under subparagraph 1118(1A)(b)(ii).

Part 3 of these Principles is made for the purposes of subparagraph (b)(ii) of the definition in subsection 1118(1A). That is, income streams covered by Part 3 retain their 50% asset-test exempt status (they are “partially asset-test exempt income streams” rather than having no exemption status at all).

Part 3 also covers certain income streams that derive from pre-existing partially asset-test exempt income streams. For the final income stream, in a series of income streams that have been commuted and rolled over, to be a partially asset-test exempt, the very first income stream in a series of related income streams will have been purchased or acquired between 20 September 2004 and 19 September 2007 inclusive and have met the definition of a partially asset-test exempt income stream, although that initial income stream may have been commuted or rolled over into new income streams since that time. So long as the chain of partially asset-test exempt income streams has not been broken since that initial income stream purchased between 20 September 2004 and 19 September 2007 (because each income stream in the chain has either not been covered by the 2005 Principles between 20 September 2004 and 19 September 2007, or has been covered by a prior application of Part 3 of the 2007 Principles or these Principles on or after 20 September 2007), then income streams derived from earlier income streams in that chain (and otherwise complying with Part 3) will also retain the 50% asset-test exemption.

Explanation of the Provisions

Section 1.1 states that the name of the Principles is the *Social Security (Retention of exemption for asset-test exempt income streams) (FaHCSIA) Principles 2011*.

Section 1.2 sets out that the Principles commence on the day after they are registered on the Federal Register of Legislative Instruments.

Section 1.3 provides that the *Social Security (Retention of Exemption for Asset-test Exempt Income Streams) (FaCSIA) Principles 2007* made by the Secretary on 19 September 2007 is revoked.

Section 1.4 provides definitions of terms used in the Principles.

Section 1.5 sets out the purpose of the Principles. Paragraph (a) provides that Part 2 specifies the criteria that excludes an income stream from the class of partially asset-test exempt income streams set out in the definition under paragraph 1118(1A)(a) of the Act. Paragraph (b) provides that Part 3 specifies the criteria that must be satisfied by an income stream to be covered by paragraph 1118(1A)(b) of the Act.

The section includes a note to the effect that, 100% of the value of the assets backing an asset-test exempt income streams and 50% of the value of the assets backing partially asset-test exempt income streams is to be disregarded for the purposes of calculating the value of a person's assets in respect of the assets test.

Part 2 – Asset-test exempt income streams

Section 2.1 sets out that the Principles in Part 2 are those for the purposes of subparagraph (a)(iii) of the definition of 'partially asset-test exempt income stream' in subsection 1118(1A) of the Act. Income streams covered by the Principles under Part 2 will retain their 100% assets-test exemption.

The section includes a note signposting the definition of 'asset-test exempt income stream' in subsection 9(1) of the Act.

Section 2.2 sets out various income streams that are covered by the Principles and were purchased on or after 20 September 2004 and before 20 September 2007.

Any income stream covered by section 2.2 must meet the requirements of **subsection 2.2(1)** of the Principles: that is, the new asset-test exempt income stream (referred to as the 'present income stream') must be covered by section 9A or 9B of the Act and must be purchased by the primary beneficiary from the commutation of an asset-test exempt income stream originally purchased before 20 September 2004 (referred to in the section as the 'original income stream'). A commutation is a lump sum withdrawal of capital from the assets backing the income stream. Commutations are separate from any regular income payments that are paid from the income stream.

In addition, the original income stream must meet the more specific requirements of one of the following subsections 2.2(2) to (5).

Subsection 2.2(2) sets out that the subsection applies to an original income stream if it is covered by subsection 9A(1) or (1A) or section 9B of the Act, and if:

- the income stream was purchased for the benefit of the primary beneficiary and a reversionary beneficiary; and
- payments under the original income stream were based on the reversionary beneficiary's life expectancy; and
- that reversionary beneficiary has died before the primary beneficiary (that is, the primary beneficiary purchases a lifetime income stream and specifies that it must revert to the reversionary beneficiary who has a longer life expectancy at the time of purchase but predeceases the person who purchased the income stream).

Subsection 2.2(3) sets out that the subsection applies to an original income stream if it is covered by subsection 9A(1) or (1A) or section 9B of the Act and is not covered by section 2.4 or 2.5 of the Principles (payment splits and Family Court Orders). The original income stream must also have been purchased by the primary beneficiary for the benefit of both the primary beneficiary and a reversionary beneficiary who are members of a couple at the time of the purchase, but who subsequently part.

Subsection 2.2(4) sets out that the subsection applies to an original income stream which is a defined benefit pension covered by section 9A or 9B that is provided by a regulated superannuation fund and in relation to which the Secretary is not satisfied as required by paragraph 9A(1)(b) or 9B(1A)(b) (that is, the Secretary is not satisfied that there is in place a current actuarial certificate setting out that in the actuary's opinion there is high probability that the income stream's provider will be able to pay the income stream as required under the income stream's contract or governing rules).

Subsection 2.2(5) sets out that the subsection applies to an original income stream which is an immediate annuity under a statutory fund established by a life company, or under a benefit fund, and the original income stream is either:

- an income stream to which the Secretary is not satisfied as required by paragraph 9A(1)(b) or 9B(1A)(b) of the Act (that is, the Secretary is not satisfied that there is in place a current actuarial certificate setting out that in the actuary's opinion there is high probability that the income stream's provider will be able to pay the income stream as required under the income stream's contract or governing rules); or
- the income stream fails to satisfy the relevant standards published by the Australian Prudential Regulation Authority about minimum surrender values and paid up values.

Sections 2.3 to 2.9 of the Principles deal with the commutation of an 'original income stream' (as defined in each section) that was purchased before 20 September 2004 or was covered by the 2005 Principles, the 2007 Principles) or by these Principles.

The fundamental difference between section 2.2 of the Principles and sections 2.3 to 2.9, is that the 'original income stream' can be commuted and rolled over only once under the Principles specified in section 2.2, that is, the 'original income stream' will not have been sourced from a previous income stream created after 20 September 2004. By contrast, under sections 2.3 to 2.9, the 'original income stream' may be one of a succession of intermediate income streams that itself has been sourced from the commutation and rollover of a previous 'original income stream' under any one of the Principles specified in those sections. While the first of the succession of income streams must have commenced before 20 September 2004, subsequent income streams may have commenced after that date provided they satisfy the Principles specified in sections 2.3 to 2.9.

In these circumstances, the full (100%) exemption from the assets test would carry through to the new income stream. A further requirement of these sections is that the capital used to source the intermediate income stream and the new income stream must have originated only from the previous commuted income stream that is, it would not be permissible to increase this capital with assets from elsewhere, thus increasing the purchase price of the new income stream.

For a new income stream to be covered by any of sections 2.3 to 2.9 of the Principles, it must be covered by either section 9A or 9B of the Act and have been purchased on or after 20 September 2004. The original income stream, and any prior succession of income streams, which are the source of the new income stream, must also have been covered by either section 9A or 9B of the Act.

Section 2.3 of the Principles covers an income stream where it results from the transfer of the original income stream to a successor fund on or after 20 September 2004 (“successor fund” is defined in subregulation 1.03(1) of the *Superannuation Industry (Supervision) Regulations 1994*) (the SIS Regulations). The original income stream must have been provided by a regulated superannuation fund (“regulated superannuation fund” is defined in section 19 of the *Superannuation Industry (Supervision) Act 1993*). This section excludes self-managed superannuation funds and small APRA funds.

Sections 2.4 and 2.5 of the Principles cover various income streams that are commuted because of the operation of the *Family Law Act 1975* (the Family Law Act). The purpose of these sections is to ensure that the full exemption from the assets test is carried through to any new income streams sourced from the commutation of an original income stream, because of the operation of the Family Law Act.

Section 2.4 covers an income stream that has been purchased or acquired by the primary beneficiary or his or her partner or former partner on or after 20 September 2004, and the income stream results from the original income stream being commuted as a result of a payment split under Part VIIIB of the Family Law Act.

Section 2.5 covers an income stream that has been purchased or acquired by the primary beneficiary or his or her partner or former partner on or after 20 September 2004, and the income stream results from the original income stream being commuted as a result of:

- an order made under either section 79, 90SM, 90SS or 114 of the Family Law Act; or
- an injunction that has been granted under either section 90SS or 114 of that Act that is binding on a third party (such as the income stream provider) under Part VIIIAA of that Act; or
- any other order or injunction under the Family Law Act that relates specifically to the original income stream.

Section 2.6 of the Principles covers an income stream that has been purchased by the primary beneficiary on or after 20 September 2004, and which results from the commutation of the original income stream to pay a superannuation contributions surcharge debt.

Section 2.6A covers an income stream that has been purchased by the primary beneficiary on or after 20 September 2004, and which results from the commutation of the original income stream to pay an amount to give effect to a release authority given for the benefit of the primary beneficiary under section 292-415 of the *Income Tax Assessment Act 1997* or section 292-80C of the *Income Tax (Transitional Provisions) Act 1997*, that is, to pay the primary beneficiary's excess contributions tax liability.

Section 2.7 of the Principles covers an income stream that has been purchased by the primary beneficiary and results from the commutation of the original income stream to pay a hardship amount, which is defined in subsection 9A(7) of the Act.

Section 2.8 of the Principles covers an income stream which was not sourced from a self managed superannuation fund, has been purchased by the primary beneficiary and results from the original income stream (sourced from a self managed superannuation fund) being commuted due to the closure of the self managed superannuation fund because:

- a member of the fund supporting the original income stream has died;
or
- the administrative responsibilities of the fund supporting the original income stream have become too onerous due to the age or incapacity of a trustee.

Section 2.9 of the Principles covers an income stream which has been purchased by the primary beneficiary on or after 1 July 2007 and results from the original income stream being commuted and rolled over to a new income stream that is compliant with subregulation 6.21(2A) of the SIS Regulations.

This will also apply in certain circumstances, such as where the contract or governing rules of the original income stream are altered to make the income stream compliant with subregulation 6.21(2A) of the SIS Regulations.

Section 2.10 covers a family law affected income stream, whose contract or governing rules do not meet the requirements of subsection 9A(2) or 9B(2), if:

- either:
 - as long as the income stream did meet the requirements of those provisions up until the operation of an order under Part VIIIAA or a payment split under Part VIIIB of the Family Law Act and would have continued to meet those requirements if it had not been for the payment split; or
 - 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, the income stream was derived from an income stream that is an asset-test exempt income stream to which subsection 9A(1A) or 9B(1B) of the Act applied at the time of the relevant order or payment split; and
- the income stream is derived from an original family affected income stream:
 - 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; and
 - the original family law affected income stream was purchased before 20 September 2004.

This provision ensures that income streams created from an original income stream as a consequence of a payment split, that results in lower payments from the new income stream(s), do not necessarily cause a loss of the income stream's asset-test exempt status.

Additionally, income streams that are an immediate annuity under a statutory fund established by a life company, or under a benefit fund, must satisfy the standards published by the Australian Prudential Regulation Authority about minimum surrender values and paid up values that apply to the annuity. All other income streams must meet the requirements of **subsection 2.10(2)**.

When the Secretary is considering whether or not the contract or governing rules of the primary family law affected income stream in question would have met the requirements of subsection 9A(2) or 9B(2), but for the operation of a payment split under Part VIIIB of the Family Law Act then, where there has been any rollover, transfer, commutation or lump sum payment from the original family law affected income stream, the primary family law affected income stream will be taken to meet those requirements. This only applies where the amount rolled over, transferred, commuted or paid out is not greater than the amount that was required to satisfy the non-member partner's entitlement in relation to the payment split. Unless the Act so provides, the owner of an income stream cannot take the opportunity, where there is a payment split in relation to their income stream, to take out, from their income stream, an extra amount that is, an amount that is more than the amount of funds that they are required to pay to their former partner, and still retain an asset-test exempt status in relation to the income stream.

Where subsection (2) applies, it provides that there must be in force a current actuarial certificate in relation to the income stream that states that, in the actuary's opinion, there is a high probability that the income stream provider will be able to pay the income stream as required by the contract or governing rules. Additionally, the effect of this provision is that, where an actuarial certificate expires, it will be taken, for the purposes of these Guidelines, to remain in force for a period of 26 weeks after its expiration.

Part 3 – Partially asset-test exempt income streams

Section 3.1 sets out that the Principles in Part 3 are those for the purposes of subparagraph (b)(ii) of the definition of 'partially asset-test exempt income stream' in subsection 1118(1A) of the Act. Income streams covered by the Principles under Part 3 will retain their 50% assets-test exemption.

The section includes a note signposting the definition of 'asset-test exempt income stream' in subsection 9(1) of the Act.

Any income stream covered by **section 3.2** must meet the requirements of **subsection 3.2(1)** of the Principles: that is, the new asset-test exempt income stream (referred to as the 'present income stream') must be a partially asset-test exempt income stream and must be purchased by the primary beneficiary on or after 20 September 2007 from the commutation of an asset-test exempt income stream purchased on or after 20 September 2004 and before 20 September 2007 (referred to in the section as the 'original income stream'). A commutation is a lump sum withdrawal of capital from the assets backing the income stream. Commutations are separate from any regular income payments that are paid from the income stream.

In addition, the original income stream must meet the more specific requirements of one of the following subsections 3.2(2) to (5).

Subsection 3.2(2) sets out that the subsection applies to an original income stream if it is covered by subsection 9A(1) or (1A) or section 9B or 9BA of the Act, if:

- the income stream was purchased for the benefit of the primary beneficiary and a reversionary beneficiary; and
- payments under the original income stream were based on the reversionary beneficiary's life expectancy; and
- that reversionary beneficiary has died before the primary beneficiary (that is, the primary beneficiary purchases a lifetime income stream and specifies that it must revert to the reversionary beneficiary who has a longer life expectancy at the time of purchase but predeceases the person who purchased the income stream).

Subsection 3.2(3) sets out that the subsection applies to an original income stream if it is covered by subsection 9A(1) or (1A) or section 9B or 9BA of the Act and is not covered by section 3.4 or 3.5 of the Principles (payment splits and Family Court Orders). The original income stream must also have been purchased by the primary beneficiary for the benefit of both the primary beneficiary and a reversionary beneficiary who are members of a couple at the time of the purchase, but who subsequently part.

Subsection 3.2(4) sets out that the subsection applies to an original income stream which is a defined benefit pension covered by section 9A or 9B that is provided by a regulated superannuation fund and in relation to which the Secretary is not satisfied as required by paragraph 9A(1)(b) or 9B(1A)(b) (that is, the Secretary is not satisfied that there is in place a current actuarial certificate setting out that in the actuary's opinion there is high probability that the income stream's provider will be able to pay the income stream as required under the income stream's contract or governing rules).

Subsection 3.2(5) sets out that the subsection applies to an original income stream which is an immediate annuity under a statutory fund established by a life company, or under a benefit fund, and the original income stream is either:

- an income stream to which the Secretary is not satisfied as required by paragraph 9A(1)(b) or 9B(1A)(b) of the Act (that is, the Secretary is not satisfied that there is in place a current actuarial certificate setting out that in the actuary's opinion there is high probability that the income stream's provider will be able to pay the income stream as required under the income stream's contract or governing rules); or
- the income stream fails to satisfy the relevant standards published by the Australian Prudential Regulation Authority about minimum surrender values and paid up values.

Sections 3.3 to 3.9 of the Principles deal with an 'original income stream' (as defined in each section) that was purchased on or after 20 September 2004 and before 20 September 2007 or was covered by the 2007 Principles or by these Principles.

The fundamental difference between section 3.2 of the Principles and sections 3.3 to 3.9, is that the 'original income stream' can be commuted and rolled over only once under the Principles specified in section 3.2, that is, the 'original income stream' must have been purchased on or after 20 September 2004 and before 20 September 2007. By contrast, under sections 3.3 to 3.9, the 'original income stream' may be one of a succession of intermediate income streams that itself has been sourced from the commutation and rollover of a previous 'original income stream' under any one of the principles specified in those sections. While the first of the succession of income streams must have commenced on or after 20 September 2004 and before 20 September 2007, subsequent income streams may have commenced after that date provided they satisfy the Principles specified in sections 3.3 to 3.9.

In these circumstances, the partial (50%) exemption from the assets test would carry through to the new income stream. A further requirement of these sections is that the capital used to source the intermediate income stream and the new income stream must have originated only from the previous commuted income stream that is, it would not be permissible to increase this capital with assets from elsewhere, thus increasing the purchase price of the new income stream. That is, under sections 3.3 to 3.9, the original income stream could have been purchased on or after 20 September 2007 from a previous 50% asset-test exempt income stream which itself was purchased on or after 20 September 2007 from a 50% asset-test exempt income stream (and had that status because it was not covered by the 2005 Principles when they were in force, or was covered by a prior application of Part 3 of the 2007 Principles or these Principles).

For a new income stream to be covered by any of sections 3.3 to 3.9 of the Principles, the new income stream must be covered by either section 9A, 9B or 9BA of the Act and have been purchased on or after 20 September 2007. The original income stream, which is the source of the new income stream, and any succession of income streams, must also have been covered by either section 9A, 9B or 9BA of the Act and have either been purchased on or after 20 September 2004 and before 20 September 2007, or was covered by a prior application of Part 3 of the 2007 Principles or these Principles.

Section 3.3 of the Principles covers an income stream where it results from the transfer of the original income stream to a successor fund on or after 20 September 2007 (“successor fund” is defined in subregulation 1.03(1) of the *Superannuation Industry (Supervision) Regulations 1994*). The original income stream must have been provided by a regulated superannuation fund (“regulated superannuation fund” is defined in section 19 of the *Superannuation Industry (Supervision) Act 1993*). This excludes self managed superannuation funds and small APRA funds.

Sections 3.4 and 3.5 of the Principles cover various income streams that are commuted because of the operation of the Family Law Act. The purpose of these sections is to ensure that the 50% exemption from the assets test is carried through to any new income streams sourced from the commutation of an original income stream, because of the operation of the Family Law Act.

Section 3.4 covers an income stream that has been purchased or acquired by the primary beneficiary or their partner on or after 20 September 2007, and the income stream results from the original income stream being commuted as a result of a payment split under Part VIIIB of the Family Law Act.

Section 3.5 covers an income stream that has been purchased or acquired by the primary beneficiary or their partner or former partner on or after 20 September 2007, and the income stream results from the original income stream being commuted as a result of:

- an order made under either section 79, 90SM, 90SS or 114 of the Family Law Act; or
- an injunction that has been granted under either section 90SS or 114 of that Act that is binding on a third party (such as the income stream provider) under Part VIIIAA of that Act; or
- any other order or injunction under the Family Law Act that relates specifically to the original income stream.

Section 3.6 of the Principles covers an income stream that has been purchased by the primary beneficiary on or after 20 September 2007, and which results from the commutation of the original income stream to pay a superannuation contributions surcharge debt.

Section 3.6A covers an income stream that has been purchased by the primary beneficiary on or after 20 September 2007, and which results from the commutation of the original income stream to pay an amount to give effect to a release authority given for the benefit of the primary beneficiary under section 292-415 of the *Income Tax Assessment Act 1997* or section 292-80C of the *Income Tax (Transitional Provisions) Act 1997*, that is, to pay the primary beneficiary's excess contributions tax liability. The original income stream must have been purchased in the period 20 September 2004 to 19 September 2007, inclusive, or have been covered by these Principles. This means that this provision can apply where there has been one or more intervening income streams.

Section 3.7 of the Principles covers an income stream that has been purchased by the primary beneficiary on or after 20 September 2007 and results from the commutation of the original income stream to pay a hardship amount, which is defined in subsection 9A(7) of the Act.

Section 3.8 covers market-linked income streams that meet the requirements of section 9BA of the Act, or an income stream that would have met the requirements of section 9BA except for the operation of subparagraph 9BA(1)(a)(i), if the income stream results from the commutation and rollover of all the assets of the original income stream. The changes to this section provide that the original income stream was either covered by section 9BA of the Act or would have been covered by that section if subparagraph 9BA(1)(a)(i) did not apply. The original income stream must have been purchased on or after 20 September 2004 and before 20 September 2007 or was covered by these Principles.

Section 3.9 of the Principles covers an income stream which was not sourced from a self managed superannuation fund, has been purchased by the primary beneficiary and results from the original income stream (sourced from a self managed superannuation fund) being commuted due to the closure of the self managed superannuation fund because:

- a member of the fund supporting the original income stream has died; or
- the administrative responsibilities of the fund supporting the original income stream have become too onerous due to the age or incapacity of a trustee.

Section 3.10 of the Principles covers an income stream which has been purchased by the primary beneficiary on or after 1 July 2007 and results from the original income stream being commuted and rolled over to a new income stream that is compliant with subregulation 6.21(2A) of the SIS Regulations.

This will also apply in certain circumstances, such as where the contract or governing rules of the original income stream are altered to make the income stream compliant with subregulation 6.21(2A) of the SIS Regulations.

Section 3.11 provides that the Secretary should determine that a family law affected income stream, whose contract or governing rules do not meet the requirements of subsection 9A(2) or 9B(2), is an asset-test exempt income stream for the purposes of the Act if:

- either:
 - as long as the income stream did meet the requirements of either paragraphs 9A(2)(a) to (l) or 9B(2)(a) to (l) up until the operation of an order under Part VIIIAA or a payment split under Part VIIIB of the Family Law Act, and would have continued to meet those requirements if it had not been for the payment split; or
 - 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, the income stream was derived from an income stream that is an asset-test exempt income stream to which subsection 9A(1A) or 9B(1B) of the Act applied at the time of the relevant order or payment split (or whichever is the latter); and
- 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 was purchased after 19 September 2004 and before 20 September 2007.

This provision ensures that income streams created from an original income stream as a consequence of a payment split that result in lower payments from the new income stream(s), do not necessarily cause a loss of the income stream's partial asset-test exempt status.

Additionally, income streams that are an immediate annuity under a statutory fund established by a life company, or under a benefit fund must satisfy the standards published by the Australian Prudential Regulation Authority about minimum surrender values and paid up values that apply to the annuity. All other income streams must meet the requirements of subsection 3.11(2).

When the Secretary is considering whether or not the contract or governing rules of the primary family law affected income stream in question would have met the requirements of subsection 9A(2) or 9B(2), but for the operation of a payment split under Part VIIIB of the Family Law Act then, where there has been any rollover, transfer, commutation or lump sum payment from the original family law affected income stream, the primary family law affected income stream will be taken to meet those requirements. This only applies where the amount rolled-over, transferred, commuted or paid out is not greater than the amount that was required to satisfy the non-member partner's entitlement in relation to the payment split. Unless the Act so provides, the owner of an income stream cannot take the opportunity, where there is a payment split in relation to their income stream, to take out, from their income stream, an extra amount that is, an amount that is more than the amount of funds that they are required to pay to their former partner, and still retain partial asset-test exempt status in relation to the income stream.

Where subsection (2) applies, it provides that there must be in force a current actuarial certificate in relation to the income stream that states that, in the actuary's opinion, there is a high probability that the income stream provider will be able to pay the income stream as required by the contract or governing rules. Additionally, the effect of this provision is that, where an actuarial certificate expires, it will be taken, for the purposes of these Principles, to remain in force for a period of 26 weeks after its expiration.

Consultation

The Department of Education, Employment and Workplace Relations was consulted in relation to these Principles to ensure a co-ordinated approach in respect of payments under the Act for which they have responsibility.

Consultation regarding these Principles was also undertaken with the Department of Veterans' Affairs as that Department administers legislation which incorporates similar rules relating to the treatment of income streams as that provided by the Act.

Regulatory Impact Analysis

There was no requirement to prepare a Regulation Impact Statement in regard to the Determination, as this measure is not likely to have a direct, or a substantial indirect, effect on business and is not likely to restrict competition.

Changes from previous instrument

The reason for remaking the *Social Security (Retention of Exemption for Asset-test Exempt Income Streams) (FaCSIA) Principles 2007* is due to the addition of further categories in which income streams may be commuted or rolled over and continue to retain their asset-test exempt status.