



# **Social Security (Guidelines for determining whether income stream is asset-test exempt) (DSS) Determination 2011<sup>1</sup>**

made under subsections 9A(6) and 9B(5) of the *Social Security Act 1991*

## **Compilation No. 1**

**Compilation date:** 12 December 2019

**Includes amendments up to:** Social Security Legislation Amendment (2019 Measures No. 1) Determination 2019 – F2019L01603

Prepared by the Department of Social Services

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## About this compilation

### **This compilation**

This is a compilation of the *Social Security (Guidelines for determining whether income stream is asset-test exempt) (DSS) Principles 2011* that shows the text of the law as amended and in force on 12 December 2019 (the **compilation date**).

The notes at the end of this compilation (the **endnotes**) include information about amending laws and the amendment history of provisions of the compiled law.

### **Uncommenced amendments**

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register ([www.legislation.gov.au](http://www.legislation.gov.au)). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

### **Application, saving and transitional provisions for provisions and amendments**

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

### **Modifications**

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

### **Self-repealing provisions**

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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## Part 1 Preliminary

### 1 Name of Determination

This Determination is the *Social Security (Guidelines for determining whether income stream is asset-test exempt) (DSS) Determination 2011*.

### 2 Commencement

This Determination commences on the day after it is registered.

### 3 Revocation

The *Social Security (Guidelines for Determining whether Income Stream is Asset-test Exempt) (FaCSIA) Determination 2007 (No. 1)* made by the Secretary on 19 September 2007 is revoked.

### 4 Definitions

In this Determination:

**2005 Principles** means the *Social Security (Partially Asset-test Exempt Income Stream — Exemption) (FaHCSIA) Principles 2005*.

**2007 Determination** means the *Social Security (Guidelines for Determining whether Income Stream is Asset-test Exempt) (FaCSIA) Determination 2007 (No. 1)*.

**Act** means the *Social Security Act 1991*.

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

**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 9A(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*.

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

**sub-fund** has the meaning given by section 69A of the *Superannuation Industry (Supervision) Act 1993*

**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 in Part 1.2 of Chapter 1 of the Act, for example:

- asset-test exempt income stream (subsection 9(1) and sections 9A, 9B and 9BA)
- defined benefit income stream (subsections 9 (1) and (1F))
- family law affected income stream (subsection 9(1) and section 9C)
- income stream (subsection 9(1))
- original family law affected income stream (subsection 9(1) and section 9C)
- primary FLA income stream (subsection 9 (1) and section 9C).

## 5 Purpose

This Determination sets out guidelines with which the Secretary must comply when making a determination under subsection 9A(5) or 9B(4) of the Act in relation to certain income streams.

*Note* Under subsection 9A(5) or 9B(4) of the Act, the Secretary may determine that an income stream is an asset-test exempt income stream for the purposes of the Act.

## 6 Application

- (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.

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## 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 Superannuation Industry (Supervision) Regulations 1994

The Secretary 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 9A or 9B of the Act or would have been covered by those sections if paragraph 9A(1)(aa) or subparagraph 9B(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 9A or 9B of the Act or would have been covered by those sections if paragraph 9A(1)(aa) or subparagraph 9B(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 covered by the 2005 Principles during the period starting on 20 September 2004 and ending at the end of 19 September 2007; or
  - (iii) was, until the commencement of this Determination, covered by the 2007 Determination; or
  - (iv) is covered by this Determination.

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

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

- (1) The Secretary may determine that an income stream is an asset-test exempt income stream for the purposes of the Act if:
  - (a) the income stream (the *present income stream*) is covered by section 9A or 9B of the Act or would have been covered by those sections if paragraph 9A(1)(aa) or subparagraph 9B(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 1 of the following subsections applies.
- (2) This subsection applies to an original income stream if:
  - (a) it is covered by subsection 9A (1) or (1A) or section 9B 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 9A(1) or (1A) or section 9B of the Act; and
  - (b) it is not an income stream to which section 11 or 12 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 9A(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 9A(1) of the Act. The new income stream is covered by this Determination and retains the 100% exemption from the social security assets test.

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



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- (a) it is a defined benefit pension covered by section 9A or 9B of the Act that is provided by a regulated superannuation fund; and
  - (b) it is an income stream in relation to which the Secretary is not satisfied as required by paragraph 9A(1)(b) or 9B(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 9A of the Act that is provided by a regulated superannuation fund. Paragraph 9A(1)(b) of the Act applies to the original income stream. On 1 September 2008, the Secretary is not satisfied that the requirements of paragraph 9A(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 9A of the Act. The new income stream is covered by this Determination and retains the 100% exemption from the social security assets test.

*Note* Paragraphs 9A(1)(b) and 9B(1A)(b) of the Act require the Secretary 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 Secretary is not satisfied as required by paragraph 9A(1)(b) or 9B(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 9A(1)(b) and 9B(1A)(b) of the Act require the Secretary 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 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 Secretary may determine that an income stream is an asset-test exempt income stream for the purposes of the Act if:
  - (a) the income stream (the *present income stream*) is covered by section 9A or 9B of the Act or would have been covered by those sections if paragraph 9A(1)(aa) or subparagraph 9B(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 9A or 9B of the Act; and
    - (ii) purchased on or after 20 September 2004 and before 20 September 2007; and

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- (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 1 of the following subsections applies.
- (2) This subsection applies to an original income stream if:
- (a) it is covered by subsection 9A(1) or (1A) or section 9B 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 9A(1) or (1A) or section 9B of the Act; and
  - (b) it is not an income stream to which section 11 or 12 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 9A(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 social security assets test. At the time of the purchase, J and H were members of a couple together.

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 9A(1) of the Act. The further income stream is covered by this Determination and retains the 100% exemption from the social security assets test.

- (4) This subsection applies to an original income stream if:
- (a) it is a defined benefit pension covered by section 9A(1) or 9B(1A) of the Act that is provided by a regulated superannuation fund; and
  - (b) it is an income stream in relation to which the Secretary is not satisfied as required by paragraph 9A(1)(b) or 9B(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 9A of the Act and provided by a regulated superannuation fund. Paragraph 9A(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 social security assets test.

On 1 September 2008, the Secretary is not satisfied that the requirements of paragraph 9A(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

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section 9A of the Act. The further income stream is covered by this Determination and retains the 100% exemption from the social security assets test.

*Note* Paragraphs 9A(1)(b) and 9B(1A)(b) of the Act require the Secretary 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 Secretary is not satisfied as required by paragraph 9A(1)(b) or 9B(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 9A (1) (b) and 9B (1A) (b) of the Act require the Secretary 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 asset-test exempt income stream resulting from transfer to successor fund**

The Secretary 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 9A or 9B of the Act or would have been covered by those sections if paragraph 9A(1)(aa) or subparagraph 9B(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 9A or 9B of the Act or would have been covered by those sections if paragraph 9A(1)(aa) or subparagraph 9B(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 covered by the 2005 Principles during the period starting on 20 September 2004 and ending at the end of 19 September 2007; or
  - (iii) was, until the commencement of this Determination, covered by the 2007 Determination; or
  - (iv) is covered by this Determination.

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## 11 Guidelines for asset-test exempt income stream resulting from payment split

The Secretary 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 9A or 9B of the Act or would have been covered by those sections if paragraph 9A(1)(aa) or subparagraph 9B(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 VIII B of the *Family Law Act 1975*; and
- (d) the original income stream was covered by section 9A or 9B of the Act or would have been covered by those sections if paragraph 9A(1)(aa) or subparagraph 9B(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 covered by the 2005 Principles during the period starting on 20 September 2004 and ending at the end of 19 September 2007; or
  - (iii) was, until the commencement of this Determination, covered by the 2007 Determination; 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 9A of the Act. On 1 February 2012, 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 VIII B of the *Family Law Act 1975*. On 15 February 2012, J uses the entitlement resulting from the payment split to purchase an income stream (the *new income stream*) covered by section 9A of the Act. The new income stream is covered by this Determination and retains the 100% exemption from the social security assets test.

## 12 Guidelines for asset-test exempt income stream resulting from Family Court order or injunction

The Secretary 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 9A or 9B of the Act or would have been covered by those sections if paragraph 9A(1)(aa) or subparagraph 9B(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:

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- (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 VIII A A 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 9A or 9B of the Act or would have been covered by those sections if paragraph 9A(1)(aa) or subparagraph 9B(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 covered by the 2005 Principles during the period starting on 20 September 2004 and ending at the end of 19 September 2007; or
    - (iii) was, until the commencement of this Determination, covered by the 2007 Determination; or
    - (iv) is covered by this Determination.

*Example*

On 1 March 2002, J purchased an income stream (the *original income stream*) covered by subsection 9A(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 social security assets test. At the time of the purchase, J and H are partnered. On 1 February 2012, J and H separate. On 15 February 2012, 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 9A(1) of the Act. The new income stream is covered by this Determination and retains the 100% exemption from the social security assets test.

### **13 Guidelines for asset-test exempt income stream resulting from payment of superannuation contributions surcharge debt**

The Secretary 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 9A or 9B of the Act or would have been covered by those sections if paragraph 9A(1)(aa) or subparagraph 9B(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 9A or 9B of the Act or would have been covered by those sections if paragraph 9A(1)(aa) or subparagraph 9B(1)(a)(i) of the Act did not apply; and
- (e) the original income stream:
  - (i) was purchased before 20 September 2004; or

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- (ii) was covered by the 2005 Principles during the period starting on 20 September 2004 and ending at the end of 19 September 2007; or
  - (iii) was, until the commencement of this Determination, covered by the 2007 Determination; or
  - (iv) is covered by this Determination.

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

The Secretary 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 9A or 9B of the Act or would have been covered by those sections if paragraph 9A(1)(aa) or subparagraph 9B(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 9A or 9B of the Act or would have been covered by those sections if paragraph 9A(1)(aa) or subparagraph 9B(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 covered by the 2005 Principles during the period starting on 20 September 2004 and ending at the end of 19 September 2007; or
  - (iii) was, until the commencement of this Determination, covered by the 2007 Determination; or
  - (iv) is covered by this Determination.

#### **15 Guidelines for asset-test exempt income stream resulting from payment of hardship amount**

The Secretary 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 9A or 9B of the Act or would have been covered by those sections if paragraph 9A(1)(aa) or subparagraph 9B(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

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- (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 9A or 9B of the Act or would have been covered by those sections if paragraph 9A(1)(aa) or subparagraph 9B(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 covered by the 2005 Principles during the period starting on 20 September 2004 and ending at the end of 19 September 2007; or
    - (iii) was, until the commencement of this Determination, covered by the 2007 Determination; or
    - (iv) is covered by this Determination.

*Example*

On 1 March 2002, J purchased an income stream (the ***original income stream***) covered by subsection 9A(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 social security assets test. On 3 March 2012, J commutes part of the new income stream to pay a hardship amount, and 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 social security assets test.

## **16 Guidelines for asset-test exempt income stream resulting from closure of a self managed superannuation fund**

The Secretary 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 9A or 9B of the Act or would have been covered by those sections if paragraph 9A(1)(aa) or subparagraph 9B(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 9A or 9B of the Act or would have been covered by those sections if paragraph 9A(1)(aa) or subparagraph 9B(1)(a)(i) of the Act did not apply; and
  - (ii) sourced from a self managed superannuation fund; and
- (f) the original income stream:

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- (i) was covered by the 2005 Principles during the period starting on 20 September 2004 and ending at the end of 19 September 2007; or
  - (ii) was, until the commencement of this Determination, covered by the 2007 Determination; 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 9A of the Act. The new income stream is covered by this Determination and retains the 100% exemption from the social security assets test.

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

- (1) The Secretary may determine that a family law affected income stream that does not meet the requirements of subsection 9A(2) or 9B(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 9A(2)(a) to (l) or 9B(2)(a) to (l) of the Act other than those that are not met because of the operation of an order under Part VIII A A, or a payment split under Part VIII B, of the *Family Law Act 1975* relating to the income stream; or
    - (ii) as a result of the operation of 1 or more orders under Part VIII A A, or 1 or more payment splits under Part VIII B, 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 9A(1A) or 9B(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 1 or more orders under Part VIII A A, or 1 or more payment splits under Part VIII B, 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 Secretary is satisfied that any amount of the original family law affected income stream that is rolled over, transferred, commuted or paid as



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a lump sum is not more than the amount required to satisfy the non-member partner's entitlement under an order under Part VIII A A, or under a payment split under Part VIII B, 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 Secretary 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 Secretary 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 Secretary must have regard to any guidelines determined under subsection 9A(1B) or 9B(1D) of the Act that apply to the income stream.

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

The Secretary may determine that an income stream is an asset-test exempt income stream for the purposes of the Act if the Secretary 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 partner's entitlement under a payment split under Part VIII B of the *Family Law Act 1975* relating to the original family law affected income stream.

## **19 Guidelines for asset-test exempt income stream resulting from the closure of a regulated superannuation fund or sub fund**

The Secretary 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 9A or 9B of the Act or would have been covered by those sections if paragraph 9A(1)(aa) or subparagraph 9B(1)(a)(i) of the Act did not apply; and

(b) it is purchased on or after 20 September 2007; and

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- (c) it results from another asset-test exempt income stream (the *original income stream*) being commuted as a result of the closure of a regulated superannuation fund or sub-fund; and
  - (d) it does not result 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; and
  - (e) the original income stream was covered by section 9A or 9B of the Act or would have been covered by those sections if paragraph 9A(1)(aa) or subparagraph 9B(1)(a)(i) of the Act did not apply; and
  - (f) the original income stream:
    - (i) was purchased before 20 September 2004; or
    - (ii) was covered by the 2005 Principles during the period starting on 20 September 2004 and ending at the end of 19 September 2007; or
    - (iii) was, until the commencement of this Determination, covered by the 2007 Determination; or
    - (iv) is covered by this Determination.

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## 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>.

## Endnotes

### Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

### Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

### Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

### Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

**Endnote 2—Abbreviation key**

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	
exp = expires/expired or ceases/ceased to have effect	reloc = relocated
F = Federal Register of Legislation	renum = renumbered
gaz = gazette	rep = repealed
LA = <i>Legislation Act 2003</i>	rs = repealed and substituted
LIA = <i>Legislative Instruments Act 2003</i>	s = section(s)/subsection(s)
(md) = misdescribed amendment can be given effect	Sch = Schedule(s)
(md not incorp) = misdescribed amendment cannot be given effect	Sdiv = Subdivision(s)
mod = modified/modification	SLI = Select Legislative Instrument
No. = Number(s)	SR = Statutory Rules
	Sub-Ch = Sub-Chapter(s)
	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

## Endnote 3—Legislation history

## Endnote 3—Legislation history

<b>Name</b>	<b>Registration</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
<i>Social Security Legislation Amendment (2019 Measures No. 1) Determination 2019</i>	11 December 2019	12 December 2019	

*Social Security (Guidelines for determining whether income stream is asset-test exempt) (DSS) Determination 2011* 17

**Endnote 4—Amendment history**

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<b>Provision affected</b>	<b>How affected</b>
Section 1	am F2019L01603
Section 4	am F2019L01603
Section 19	ad F2019L01603

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