

EXPLANATORY STATEMENT

Social Security (Actuarial Certificate—Life Expectancy Income Stream Guidelines) Determination 2012

Summary

The *Social Security (Actuarial Certificate—Life Expectancy Income Stream Guidelines) Determination 2012* (the **Determination**) is made for the purposes of subsection 9B(1D), paragraph 9B(1A)(b) and subsection 9B(5) of the *Social Security Act 1991* (the **Act**).

The Determination is made by a delegate of the Secretary of the Department of Families, Housing, Community Services and Indigenous Affairs.

Background

Section 9B of the Act sets out the meaning of an **asset-test exempt income stream**. The term asset-test exempt income stream is relevant in a number of contexts within the Act including in determining what assets are to be disregarded in calculating the value of a person's assets for the purposes of the asset test under the Act.

Subsection 9B(1) of the Act provides that an income stream provided to a person is an asset-test exempt income stream if certain requirements are met. Among other things, one of these requirements is that, at paragraph 9B(1A)(b) and subject to subsection (1C), the Secretary is satisfied that in relation to an income stream, provided by a class of provider specified by the Secretary for the purposes of this paragraph, there is in force a current actuarial certificate that states that the actuary is of the opinion that, for the financial year in which the certificate is given, 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. Among other things, the Determination specifies classes of provider for the purposes of this paragraph.

Subsection 9B(1D) of the Act provides that the Secretary may determine, in writing, guidelines (the **Certificate Guidelines**) to be complied with when determining whether an actuarial certificate is in force and what constitutes 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. The Determination sets out Certificate Guidelines under this subsection.

Subsection 9B(1C) of the Act provides that if, on 30 June in a financial year, an actuarial certificate referred to in paragraph 9B(1A)(b) is in force in relation to an income stream, then paragraph 9B(1A)(b) does not apply in relation to the first 26 weeks of the next financial year, unless a further actuarial certificate is given to the Secretary within that time.

Subsection 9B(4) of the Act provides that the Secretary may determine, in writing, that an income stream is an asset-test exempt income stream for the

purposes of the Act. Subsection 9B(5) of the Act provides that the Secretary may, by legislative instrument, determine guidelines (the **ATE Guidelines**) to be complied with when making a determination under subsection 9B(4) of the Act. The Determination sets out ATE Guidelines under this subsection.

The Determination replaces the *Social Security (Actuarial Certificate—Life Expectancy Income Stream Guidelines) Determination 2003* (the **2003 Determination**). The Determination includes a number of changes to the 2003 Determination, generally to simplify and consolidate the form of determination, but also to include:

- New provisions requiring that actuarial certificates be certified no later than 26 weeks after the start of the relevant financial year; and
- New provisions requiring that actuarial certificates be in force for the full financial year for which they are relevant.

The Determination is a legislative instrument that commences on the day after it is registered.

Explanation of Provisions

Part 1 of the Determination sets out preliminary provisions.

Section 1.1 states the name of the Determination.

Section 1.2 states that the Determination commences on the day after it is registered and applies to actuarial certificates given on or after that day.

Section 1.3 states that the 2003 Determination is revoked.

Section 1.4 contains definitions and interpretation provisions that are relevant to the Determination.

Among other things, subsection 1.4(1) provides new definitions for the terms ***annuity backed self managed superannuation fund*** and ***annuity backed small APRA fund***.

Subsection 1.4(1) also provides that a ***high degree of probability*** means a certification by an actuary that a fund has a probability of at least 70 per cent of being able to pay the pension as required under the fund's governing rules (paragraph 1.4(1)(a)), or, a certification by an actuary that a fund has a probability of at least 50 per cent but less than 70 per cent of being able to pay the pension as required under the fund's governing rules but special circumstances arise that, in the actuary's opinion, if those circumstances had not arisen, the fund would as at the valuation date, have been able to be certified as having a high degree of probability (paragraph 1.4(1)(b)). This is unchanged from the 2003 Determination.

Section 1.5 states the purpose of the Determination.

Section 1.6 specifies that, for the purposes of paragraph 9B(1A)(b) of the Act, a provider of an income stream from a self managed superannuation fund, other than an annuity backed self managed superannuation fund, is a specified class of provider.

Section 1.7 specifies that, for the purposes of paragraph 9B(1A)(b) of the Act, a provider of an income stream from a small APRA fund, other than an annuity backed small APRA fund, is a specified class of provider.

Part 2 of the Determination sets out Certificate Guidelines and ATE Guidelines.

Section 2.1 sets out Certificate Guidelines relating to self managed superannuation funds.

Subsection 2.1(1) provides that, subject to subsection (2), if the provider of an income stream is included in the class of provider specified in section 1.6 then a member or the trustee of the fund must provide an actuarial certificate to the Department of Human Services.

Subsection 2.1(2) sets out the general requirements of the actuarial certificate. These are that the certificate must be prepared in accordance with the Institute of Actuaries of Australia Guidance Note 465 (paragraph 2.1(2)(a)), certified no later than 26 weeks after the start of the financial year to which it applies and be provided to the Department of Human Services no later than 3 weeks after the end of that 26 week period (paragraph 2.1(2)(b)), and specify whether there is a high degree of probability of the fund meeting the income stream payments specified under the fund's trust deed or governing rules (paragraph 2.1(2)(c)).

The actuarial assessment should be based on the fund's financial statements for the previous financial year.

Paragraph 2.1(2)(d) provides that an actuarial certificate must also specify that it is in force for the full financial year (1 July to 30 June) in the financial year in which certification occurs.

Section 2.2 sets out Certificate Guidelines relating to small APRA funds.

Subsection 2.2(1) provides that, subject to subsection (2), if the provider of an income stream is included in the class of provider specified in section 1.7 then a member or the trustee of the fund must provide an actuarial certificate to the Department of Human Services.

Subsection 2.2(2) sets out the general requirements of the actuarial certificate. These are that the certificate must be prepared in accordance with the Institute of Actuaries of Australia Guidance Note 465 (paragraph 2.2(2)(a)), certified no later than 26 weeks after the start of the financial year to which it applies and be provided to the Department of Human

Services no later than 3 weeks after the end of that 26 week period (paragraph 2.2(2)(b)) and specify whether there is a high degree of probability, at the valuation date, of the fund meeting the income stream payments specified under the fund's trust deed or governing rules (paragraph 2.2(2)(c)).

The actuarial assessment should be based on fund's financial statements for the previous financial year.

Paragraph 2.2(2)(d) provides that an actuarial certificate must also specify that it is in force for the full financial year (1 July to 30 June) of the financial year in which certification occurs.

Section 2.3 provides that if the actuarial certificate provided to the Department of Human Services by the person or the trustee of the fund under subsection 2.1(1) or subsection 2.2(1) does certify that for the financial year in which the certificate is given, there is a high degree of probability that the fund will be able to pay the pension as required under the fund's governing rules, then paragraph 9A(1)(b) of the Act is satisfied.

Subsection 2.3(2) provides that despite subsection 2.3(1), if an actuarial certificate in relation to a financial year is not certified under subsection 2.1(1) or subsection 2.12(1) within 26 weeks beginning on 1 July of that financial year, or provided to the Department of Human Services by the person or the trustee of the fund under subsection 2.1(1) or subsection 2.2(1) within 29 weeks beginning on 1 July of that financial year then paragraph 9A(1)(b) of the Act is considered to be not satisfied and the income stream is to be determined to be an asset-tested income stream (long term).

Section 2.4 deals with situations where a high degree of probability is not certified by an actuarial certificate.

Section 2.4 provides that if the actuarial certificate provided to the Department of Human Services by the person or the trustee of the fund under subsection 2.1(1) or subsection 2.2(1) does not certify that for the financial year in which the certificate is given, there is a high degree of probability that the fund will be able to pay the pension as required under the fund's governing rules then paragraph 9B(1A)(b) of the Act is considered to be not satisfied and the income stream is to be determined to be an asset-tested income stream (long term).

Consultation

Consultation on the Determination was undertaken with the Department of Education, Employment and Workplace Relations, Department of Human Services, and the Department of Veterans' Affairs.

Regulatory Impact Analysis

The Determination is not regulatory in nature, will not impact on business activity and there will be no additional compliance costs. The Determination will have no, or minimal, competition impacts.

Statement of Compatibility with Human Rights

*Prepared in accordance with Part 3 of the Human Rights
(Parliamentary Scrutiny) Act 2011*

This Legislative Instrument is the Social Security (Actuarial Certificate— Life Expectancy Income Stream Guidelines) Determination 2012

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

Overview of the Legislative Instrument

This legislative instrument provides guidelines to be complied with when determining whether an income stream is an asset-test exempt income stream that is generally exempt from the asset testing requirements of the *Social Security Act 1991* (the Act). The instrument also provides detail in relation to the requirement to provide an annual actuarial certificate to ensure that payments from an income stream are likely to continue for the remainder of the income stream's term. Where these guidelines are not satisfied, the income stream would lose its asset-test exemption. The instrument may ultimately affect the rate of social security payable to a person.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

**The Hon Jenny Macklin MP, Minister for Families, Community Services
and Indigenous Affairs and Minister for Disability Reform**