

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Social Services

Social Security Act 1991; Student Assistance Act 1973; A New Tax System (Family Assistance) (Administration) Act 1999 and Paid Parental Leave Act 2010

Social Services Laws (Present Value of Unpaid Amount – Interest Rate) Determination 2018

Purpose

Under various social services laws, the Secretary may agree to waive certain debts as part of a settlement process where a debtor pays an agreed amount that is less than the debt amount. A settlement may occur through a civil action, before the Administrative Appeals Tribunal or by an independent agreement between the Secretary and the debtor.

The Secretary may agree to waive the debt in settlement only if the agreed amount paid by the debtor is at least the 'present value' of the outstanding balance of the debt that is unpaid (the unpaid amount). The concept of 'present value' recognises that it may be more cost-effective to accept a smaller sum of money rather than pursue a larger sum of money as a series of instalments over a future period.

The following subsections authorise the Minister to specify or prescribe, by legislative instrument or rules, the relevant annual rate of interest in calculating the present value of the unpaid amount:

- subsection 1237AAB(6) of the *Social Security Act 1991* (SSA);
- subsection 43E(6) of the *Student Assistance Act 1973* (SAA);
- subsection 100(6) of the *A New Tax System (Family Assistance) (Administration) Act 1999* (FAA); and
- subsection 198(6) of the *Paid Parental Leave Act 2010* (PPL Act).

The purpose of this Determination is to specify an annual rate of interest used in calculating the present value of the unpaid amount for the purpose of the SSA, SAA, FAA and PPL Act.

This Determination also repeals and replaces the *Family Assistance (Present Value of Unpaid Amount – Interest Rate) Determination 2018* (the Family Assistance Determination) and the *Social Security (Present Value of Unpaid Amounts—Interest Rate) Determination (No. 1)* (the Social Security Determination).

For administrative convenience and ease of reference, this Determination collates and specifies (in one legislative instrument) the annual rate of interest in calculating the present value of the unpaid amount for the purpose of the SSA, SAA and FAA. Schedule 1 to this Determination inserts into the *Paid Parental Leave Rules 2010* (PPLR) a rule that specifies the annual rate of interest in calculating the present value of the unpaid amount for the purposes of the PPL Act.

Background

If a person owes a debt to the Commonwealth, the Secretary and the debtor may agree that the debt will be fully satisfied if the debtor pays the Commonwealth an agreed amount, which is less than the unpaid amount. The Secretary may enter into such agreements under section 1237AAB of the SSA, 43E of the SAA, 100 of the FAA and 198 of the PPL Act.

Such an agreement has the effect that the Secretary must waive the right to recover the difference between the unpaid amount and the agreed amount. However, the Secretary must not agree to waive the unpaid amount unless he or she is satisfied that the agreed amount is at least the present value of the unpaid amount if it is repaid in instalments of amounts, and at times, determined by the Secretary.

Relevant to the calculation of the present value of the unpaid amount is the annual rate of interest, which is specified by the Minister by legislative instrument.

The following example is illustrative:

- Facts: Bill owes a debt of \$35,000 to the Commonwealth. After repaying \$5,000 (leaving an unpaid amount of \$30,000), Bill offers to make an immediate payment of a further \$20,000 in full satisfaction of the debt. The Secretary is satisfied that Bill cannot repay a larger amount of the debt than this. The Secretary believes that \$1,500 of the debt would be recovered under Part 5.3 in a year, at which rate it would take 20 years to repay the debt. The Minister has specified an interest rate of 5% a year for the purposes of calculating the present value of the unpaid amount.
- The formula for working out the present value of unpaid amount (UA):
$$\$UA = (\text{annual payment} \div \text{interest}) \times (1 - (1 \div (1 + \text{interest})^{\text{repayment period}}))$$

$$\$18,693.32 = (\$1,500 \div 0.05) \times (1 - (1 \div (1 + 0.05)^{20}))$$
- Application: The Secretary can accept Bill's offer and agree with him to waive the right to recover the difference between the unpaid amount and the agreed amount, because \$20,000 is more than the present value of \$30,000 (the unpaid amount) repaid over 20 years at a 5% interest rate, which is \$18,693.32. If the Secretary makes the agreement, the Secretary must waive \$10,000 of the debt (the difference between the unpaid amount of \$30,000 and the agreed amount of \$20,000).

This Determination specifies (in one legislative instrument) the annual rate of interest in calculating the present value of the unpaid amount for the purpose of the SSA, SAA and FAA. Schedule 1 to this Determination inserts into the PPLR a rule that specifies the annual rate of interest in calculating the present value of the unpaid amount for the purpose of the PPL Act.

The specified annual rate of interest (five percent) is a reasonable compromise between the competing objectives of protecting the public revenue and the desirability of setting the interest rate at a level that provides an incentive to repay debts early.

This Determination relies on subsection 33(3) of the *Acts Interpretation Act 1901*, which provides that, where an Act confers a power to make, grant or issue any

instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Commencement

This Determination commences on 1 March 2018.

Consultation

The Department of Human Services was consulted by electronic communication in the making of this Determination, to ensure a coordinated approach.

Regulation Impact Statement (RIS)

The Office of Best Practice Regulation (the OBPR) was consulted in relation to the amendments made by the regulations. The OBPR considers the Determination does not have a more than minor regulatory impact on business, community organisations or individuals.

This Determination does not require a Regulatory Impact Statement.

The OBPR reference for this Determination is 23461.

Explanation of the provisions

Section 1

This section provides that the instrument is to be cited as the *Social Services Laws (Present Value of Unpaid Amount – Annual Interest Rate) Determination 2018*.

Section 2

This section provides that the Determination commences on 1 March 2018.

Section 3

This section provides that the Determination, other than Schedule 1, is made under:

- (a) section 1237AAB of the *Social Security Act 1991*; and
- (b) section 43E of the *Student Assistance Act 1973*; and
- (c) section 100 of the *A New Tax System (Family Assistance) (Administration) Act 1999*.

Section 4

This section provides that Schedule 1 to this Determination is made under section 198 of the *Paid Parental Leave Act 2010*.

Section 5

This section provides that each instrument specified in a Schedule to this Determination is amended or repealed as set out in the applicable items in the Schedule concerned.

Section 6

This section specifies the annual rate of interest. Subsection 6(1) provides that, for the definition of interest in the subsections specified in subsection 6(2), the specified annual rate of interest is 5%.

Subsection 6(2) specifies the following subsections:

- (a) subsection 1237AAB(6) of the *Social Security Act 1991*;
- (b) subsection 43E(6) of the *Student Assistance Act 1973*;
- (c) subsection 100(6) of the *A New Tax System (Family Assistance) (Administration) Act 1999*.

Schedule 1

Schedule 1, item 1

This item amends the *Paid Parental Leave Rules 2010* by adding a new Division 4.3.3 and a new section 4.22. The new Division 4.3.3 is entitled 'Waiver of debts – settlement of civil actions'. New section 4.22 provides that for the definition of *settlement interest* in subsection 198(6) of the Act, the prescribed annual rate of interest is 5%.

Schedule 2

Schedule 2, item 1

This item repeals the *Social Security (Present Value of Unpaid Amounts—Interest Rate) Determination (No. 1)*. For administrative convenience and ease of reference, this Determination collates and specifies (in one legislative instrument) the annual rate of interest in calculating the present value of the unpaid amount.

Schedule 2, item 2

This item repeals the *Family Assistance (Present Value of Unpaid Amount—Interest Rate) Determination 2018*. For administrative convenience and ease of reference, this Determination collates and specifies (in one legislative instrument) the annual rate of interest in calculating the present value of the unpaid amount.

Statement of Compatibility with Human Rights

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

Social Services Laws (Present Value of Unpaid Amount – Annual Interest Rates) Determination 2018

The *Social Services Laws (Present Value of Unpaid Amount – Annual Interest Rates) Determination 2018* 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

The Determination, other than Schedule 1 to the Determination, is made under section 1237A of the *Social Security Act 1991*, section 43 of the *Student Assistance Act 1973* and section 100 of the *A New Tax System (Family Assistance) (Administration) Act 1999* (FAA). Schedule 1 to the Determination is made under section 198 of the *Paid Parental Leave Act 2010*.

The purpose of this determination is to specify an annual rate of interest used in calculating the 'present value' of the outstanding balance of a debt for the purposes of determining whether the debtor's offer of part payment may be accepted in full satisfaction of the debt. The Determination repeals the *Family Assistance (Present Value of Unpaid Amount – Interest Rate) Determination 2017* and the *Social Security (Present Value of Unpaid Amounts – Interest Rate) Determination (No. 1)*.

Human rights implications

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

Conclusion

The Determination is compatible with human rights as they do not raise any human rights issues.

Hon Dan Tehan MP, Minister for Social Services