Commonwealth Coat of Arms of Australia

Veterans’ Entitlements (Guidelines for Determining Whether Income Stream is

Asset-test Exempt) Determination 2022

**Instrument 2022 No. R6**

made under subsections 5JA(6) and 5JB(5) of the

*Veterans’ Entitlements Act 1986*

**Compilation No. 1**

**Compilation date:** 20 October 2022

**Includes amendments up to:** F2022L01363

**About this compilation**

**This compilation**

This is a compilation of the *Veterans’ Entitlements (Guidelines for Determining Whether Income Stream is Asset-test Exempt) Determination 2022* that shows the text of the law as amended and in force on 20 October 2022 (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). 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If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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1 Name

This instrument is the *Veterans’ Entitlements (Guidelines for Determining Whether Income Stream is Asset-test Exempt) Determination 2022.*

2 Commencement

(1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

| Commencement information | | |
| --- | --- | --- |
| Column 1 | Column 2 | Column 3 |
| Provisions | Commencement | Date/Details |
| 1. The whole of this instrument | On the day after this instrument is registered |  |

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

(2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under subsections 5JA(6) and 5JB(5) of the *Veterans’ Entitlements Act 1986*.

4 Definitions

Note: A number of expressions used in this instrument are defined in the Act, including the following:

(a) asset-test exempt income stream;

(b) defined benefit income stream;

(c) hardship amount.

In this instrument:

***2005 Principles*** means the *Veterans’ Entitlements (Partially Asset‑test Exempt Income Stream — Exemption) Principles 2005* as made.

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

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

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

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

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

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

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

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

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

***payment split***:

(a) under Part VIIIB of the *Family Law Act 1975*—has the meaning given by section 90XD of that Act; and

(b) under Part VIIIC of the *Family Law Act 1975*—has the meaning given by section 90YD of that Act.

***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 sections 17A and 17B of the *Superannuation Industry (Supervision) Act 1993*.

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

***sub-fund*** means a sub-fund within a regulated superannuation fund that is taken to be a regulated superannuation fund for the purposes of section 65JA 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*.

5 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

6 Purpose

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

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

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

1. it would have been covered by section 5JA(1) or 5JB(1) of the Act, if:
2. paragraph 5JA(1)(aa); or
3. subparagraph 5JB(1)(a)(i);

of the Act did not apply; and

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

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

(d) the original income stream was covered by section 5JA or 5JB of the Act or would have been covered by those sections if:

(i) paragraph 5JA(1)(aa); or

(ii) subparagraph 5JB(1)(a)(i);

of the Act did not apply; and

(e) the original income stream:

(i) was purchased before 20 September 2004; or

(ii) was 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 covered by the 2007 Determination during the period starting on 20 September 2007 and ending at the end of 24 November 2011; or

(iv) was covered by the 2011 Determination during the period starting on 25 November 2011 and ending at the end of the day immediately prior to the commencement of this Determination; or

(v) is covered by this Determination.

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

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

(a) the income stream (the ***present income stream***) would have been covered by sections 5JA(1) or 5JB(1) of the Act, if:

(i) paragraph 5JA(1)(aa); or

(ii) subparagraph 5JB(1)(a)(i);

of the Act did not apply; and

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

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

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

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

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

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

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

(d) the reversionary beneficiary predeceases the primary beneficiary.

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

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

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

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

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

*Example*

On 1 March 2002, J purchased an income stream (the ***original income stream***) covered by subsection 5JA(1) of the Act for the benefit of J, the primary beneficiary, and H, the reversionary beneficiary. At the time of the purchase, J and H were members of a couple together. On 1 June 2022, J and H ceased to be members of a couple together. On 15 June 2022, J commutes the original income stream and purchases another income stream (the ***new income stream***). The new income stream is covered by this Determination and retains the 100% exemption from the assets test under the Act.

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

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

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

*Example*

On 1 March 2002, P purchased an income stream (the ***original income stream***) that is a defined benefit pension covered by section 5JA of the Act that is provided by a regulated superannuation fund. Paragraph 5JA(1)(b) of the Act applies to the original income stream. On 1 July 2022, the Commission is not satisfied that the requirements of paragraph 5JA(1)(b) of the Act are met in relation to the original income stream. On 15 July 2022, P commutes the original income stream to purchase another income stream (the ***new income stream***) that is covered by section 5JA of the Act. The new income stream is covered by this Determination and retains the 100% exemption from the assets test under the Act.

*Note* Paragraphs 5JA(1)(b) and 5JB(1A)(b) of the Act require the Commission to be satisfied, in relation to an income stream, that there is in force a current actuarial certificate stating that in the actuary’s opinion there is a high probability that the provider of the income stream will be able to pay the income stream as required under the income stream’s contract or governing rules.

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

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

(b) it:

(i) is an income stream in relation to which the Commission is not satisfied that the requirements under paragraph 5JA(1)(b) or 5JB(1A)(b) of the Act are met; or

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

*Note* Paragraphs 5JA(1)(b) and 5JB(1A)(b) of the Act require the Commission to be satisfied, in relation to an income stream, that there is in force a current actuarial certificate stating that in the actuary’s opinion there is a high probability that the provider of the income stream will be able to pay the income stream as required under the income stream’s contract or governing rules.

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

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

(a) the income stream (the ***present income stream***) would have been covered by section 5JA(1) or 5JB(1) of the Act, if:

(i) paragraph 5JA(1)(aa); or

(ii) subparagraph 5JB(1)(a)(i);

of the Act did not apply; and

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

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

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

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

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

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

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

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

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

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

(d) the reversionary beneficiary predeceases the primary beneficiary.

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

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

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

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

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

*Example*

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

On 1 June 2022, J and H ceased to be members of a couple together. On 15 June 2022, J commutes the new income stream and purchases another income stream (the ***further income stream***) that would be covered by subsection 5JA(1) of the Act if paragraph 5JA(1)(aa) of the Act did not apply. The further income stream is covered by this Determination and retains the 100% exemption from the assets test under the Act.

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

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

(b) it is an income stream in relation to which the Commission is not satisfied that the applicable requirements under paragraph 5JA(1)(b) or 5JB(1A)(b) of the Act, are met.

*Example*

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

On 1 September 2022, the Commission is not satisfied that the requirements of paragraph 5JA(1)(b) of the Act are met in relation to the new income stream. On 15 September 2022, P commutes the new income stream to purchase another income stream (the ***further income stream***) that is covered by section 5JA of the Act. The further income stream is covered by this Determination and retains the 100% exemption from the assets test under the Act.

*Note*  Paragraphs 5JA(1)(b) and 5JB(1A)(b) of the Act require the Commission to be satisfied, in relation to an income stream, that there is in force a current actuarial certificate stating that in the actuary’s opinion there is a high probability that the provider of the income stream will be able to pay the income stream as required under the income stream’s contract or governing rules.

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

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

(b) it:

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

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

*Note* Paragraphs 5JA(1)(b) and 5JB(1A)(b) of the Act require the Commission to be satisfied, in relation to an income stream, that there is in force a current actuarial certificate stating that in the actuary’s opinion there is a high probability that the provider of the income stream will be able to pay the income stream as required under the income stream’s contract or governing rules.

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

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

(a) it would have been covered by section 5JA(1) or 5JB(1) of the Act, if:

(i) paragraph 5JA(1)(aa); or

(ii) subparagraph 5JB(1)(a)(i);

of the Act did not apply; and

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

(c) the original income stream was covered by section 5JA or 5JB of the Act or would have been covered by those sections, if:

(i) paragraph 5JA(1)(aa); or

(ii) subparagraph 5JB(1)(a)(i);

of the Act did not apply; and

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

(e) the original income stream:

(i) was purchased before 20 September 2004; or

(ii) was 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 covered by the 2007 Determination during the period starting on 20 September 2007 and ending at the end of 24 November 2011; or

(iv) was covered by the 2011 Determination during the period starting on 25 November 2011 and ending at the end of the day immediately prior to the commencement of this Determination; or

(v) is covered by this Determination.

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

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

1. it would have been covered by section 5JA(1) or 5JB(1) of the Act, if:
2. paragraph 5JA(1)(aa); or
3. subparagraph 5JB(1)(a)(i);

of the Act did not apply; and

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

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

(d) the original income stream was covered by section 5JA or 5JB of the Act or would have been covered by those sections, if:

(i) paragraph 5JA(1)(aa); or

(ii) subparagraph 5JB(1)(a)(i);

of the Act did not apply; and

(e) the original income stream:

(i) was purchased before 20 September 2004; or

(ii) was 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 covered by the 2007 Determination during the period starting on 20 September 2007 and ending at the end of 24 November 2011; or

(iv) was covered by the 2011 Determination during the period starting on 25 November 2011 and ending at the end of the day immediately prior to the commencement of this Determination; or

(v) is covered by this Determination.

*Example*

On 1 March 2002, P, who was partnered to J at that date, purchased an income stream (the ***original income stream***) covered by section 5JA of the Act. On 1 February 2023, P and J separate. P’s original income stream is commuted to give effect to an entitlement of J in respect of the original income stream under a payment split under Part VIIIB of the *Family Law Act 1975*. On 15 February 2023, J uses the entitlement resulting from the payment split to purchase an income stream (the ***new income stream***) covered by section 5JA of the Act. The new income stream is covered by this Determination and retains the 100% exemption from the assets test under the Act.

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

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

1. it would have been covered by section 5JA(1) or 5JB(1) of the Act, if:
2. paragraph 5JA(1)(aa); or
3. subparagraph 5JB(1)(a)(i);

of the Act did not apply; and

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

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

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

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

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

(d) the original income stream was covered by section 5JA or 5JB of the Act or would have been covered by those sections, if:

(i) paragraph 5JA(1)(aa); or

(ii) subparagraph 5JB(1)(a)(i);

of the Act did not apply; and

(e) the original income stream:

(i) was purchased before 20 September 2004; or

(ii) was 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 covered by the 2007 Determination during the period starting on 20 September 2007 and ending at the end of 24 November 2011; or

(iv) was covered by the 2011 Determination during the period starting on 25 November 2011 and ending at the end of the day immediately prior to the commencement of this Determination; or

(v) is covered by this Determination.

*Example*

On 1 March 2002, J purchased an income stream (the ***original income stream***) covered by subsection 5JA(1) of the Act for the benefit of J, the primary beneficiary, and H, the reversionary beneficiary.  As it was purchased before 20 September 2004, the income stream has a 100% exemption from the assets test under the Act.  At the time of the purchase, J and H are partnered. On 1 February 2023, J and H separate.  On 15 February 2023, J commutes the original income stream in response to a Family Court order and purchases another income stream (the ***new income stream***) covered by subsection 5JA(1) of the Act. The new income stream is covered by this Determination and retains the 100% exemption from the assets test under the Act.

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

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

1. it would have been covered by section 5JA(1) or 5JB(1) of the Act, if:
2. paragraph 5JA(1)(aa); or

(ii) subparagraph 5JB(1)(a)(i);

of the Act did not apply; and

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

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

(d) the original income stream was covered by section 5JA or 5JB of the Act or would have been covered by those sections, if:

(i) paragraph 5JA(1)(aa); or

(ii) subparagraph 5JB(1)(a)(i);

of the Act did not apply; and

(e) the original income stream:

(i) was purchased before 20 September 2004; or

(ii) was 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 covered by the 2007 Determination during the period starting on 20 September 2007 and ending at the end of 24 November 2011; or

(iv) was covered by the 2011 Determination during the period starting on 25 November 2011 and ending at the end of the day immediately prior to the commencement of this Determination; or

(v) is covered by this Determination.

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

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

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

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

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

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

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

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

(e) the original income stream:

(i) was purchased before 20 September 2004; or

(ii) was 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 covered by the 2007 Determination during the period starting on 20 September 2007 and ending at the end of 24 November 2011; or

(iv) was covered by the 2011 Determination during the period starting on 25 November 2011 and ending at the end of the day immediately prior to the commencement of this Determination; or

(v) is covered by this Determination.

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

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

(a) it would have been covered by section 5JA(1) or 5JB(1) of the Act, if:

(i) paragraph 5JA(1)(aa); or

(ii) subparagraph 5JB(1)(a)(i);

of the Act did not apply; and

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

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

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

(e) the original income stream:

(i) was purchased before 20 September 2004; or

(ii) was 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 covered by the 2007 Determination during the period starting on 20 September 2007 and ending at the end of 24 November 2011; or

(iv) was covered by the 2011 Determination during the period starting on 25 November 2011 and ending at the end of the day immediately prior to the commencement of this Determination; or

(v) is covered by this Determination.

*Example*

On 1 March 2002, J purchased an income stream (the ***original income stream***) covered by subsection 5JA(1) of the Act for the benefit of J, the primary beneficiary, and H, the reversionary beneficiary.  As it was purchased before 20 September 2004, the income stream has a 100% exemption from the assets test under the Act.  On 3 March 2023, 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 assets test under the Act.

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

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

(a) it would have been covered by section 5JA(1) or 5JB(1) of the Act or those sections, if

1. paragraph 5JA(1)(aa); or
2. subparagraph 5JB(1)(a)(i);

of the Act did not apply; and

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

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

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

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

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

(e) the original income stream was:

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

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

(f) the original income stream:

(i) was 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 covered by the 2007 Determination during the period starting on 20 September 2007 and ending at the end of 24 November 2011; or

(iii) was covered by the 2011 Determination during the period starting on 25 November 2011 and ending at the end of the day immediately prior to the commencement of this Determination; or

(iv) 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 2023.  W subsequently decides that she does not have the expertise or inclination to continue as a fund trustee.  W commutes her asset‑test exempt income stream and uses the proceeds to purchase from a retail income stream provider, an income stream that meets the provisions of section 5JA of the Act.  The new income stream is covered by this Determination and retains the 100% exemption from the assets test under the Act.

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

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

(a) either:

(i) the income stream meets all the requirements of paragraphs 5JA(2)(a) to (l) or 5JB(2)(a) to (l) of the Act other than those that are not met because of the operation of an order under Part VIIIAA, or a payment split under Part VIIIB or Part VIIIC, 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 VIIIAA, or 1 or more payment splits under Part VIIIB or Part VIIIC, of the *Family Law Act 1975*, the income stream is derived from an income stream that was an asset-test exempt income stream to which subsection 5JA(1A) or 5JB(1B) of the Act applied at the time of the order or payment split, or of the last of them; and

(b) the original family law affected income stream from which the income stream is derived as a result of the operation of 1 or more orders under Part VIIIAA, or 1 or more payment splits under Part VIIIB or Part VIIIC, of the *Family Law Act 1975*, was purchased before 20 September 2004; and

(c) either:

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

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

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

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

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

(a) the Commission is satisfied that there is in force a current actuarial certificate that states that in the actuary’s opinion there is a high probability that the provider of the income stream will be able to pay the income stream as required under the contract or governing rules under which the income stream is provided; or

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

(3) In considering the matter mentioned in paragraph (2)(a), the Commission must have regard to any guidelines determined under subsection 5JA(1B) or 5JB(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 Commission may determine that an income stream is an asset-test exempt income stream for the purposes of the Act if the Commission is satisfied that:

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

(b) if the income stream is also an original family law affected income stream — any amount of the income stream that is rolled over, transferred, commuted or paid as a lump sum is not more than the amount required to satisfy the non-member partner’s entitlement under a payment split under Part VIIIB or Part VIIIC 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 Commission may determine that an income stream is an asset‑test exempt income stream for the purposes of the Act if:

1. it would have been covered by section 5JA(1) or 5JB(1) of the Act, if:
2. paragraph 5JA(1)(aa); or
3. subparagraph 5JB(1)(a)(i);

of the Act did not apply; and

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

(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 5JA or 5JB of the Act or would have been covered by those sections, if:

(i) paragraph 5JA(1)(aa); or

(ii) subparagraph 5JB(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 covered by the 2007 Determination during the period starting on 20 September 2007 and ending at the end of 24 November 2011; or

(iv) was covered by the 2011 Determination during the period starting on 25 November 2011 and ending at the end of the day immediately prior to the commencement of this Determination; or

(v) is covered by this Determination.

Schedule 1—Repeals

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

1 The whole of the instrument

Repeal the instrument

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 how an amendment is to be made. If, despite the misdescription, the amendment can be given effect as intended, then the misdescribed amendment can be incorporated through an editorial change made under section 15V of the *Legislation Act 2003*.

If a misdescribed amendment cannot be given effect as intended, the amendment is not incorporated and “(md not incorp)” is added to the amendment history.

Endnote 2—Abbreviation key

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

Endnote 3—Legislation history

| Name | Registration | Commencement | Application, saving and transitional provisions |
| --- | --- | --- | --- |
| *Veterans’ Entitlements (Guidelines for Determining Whether Income Stream is*  *Asset-test Exempt) Determination 2022* | 29 Mar 2022 (F2022L00415) | 30 Mar 2022 (s 2) |  |
| *Veterans’ Entitlements Legislation Amendment (Western Australia Superannuation Splitting) Instrument 2022 (No. R39)* | 19 Oct 2022 (F2022L01363) | 20 Oct 2022 (s 2) | — |

Endnote 4—Amendment history

| Provision affected | How affected |
| --- | --- |
| s 4 | am F2022L01363 |
| s 10 | am F2022L01363 |
| s 11 | am F2022L01363 |
| s 16 | am F2022L01363 |
| s 17 | am F2022L01363 |
| s 18 | am F2022L01363 |