

## EXPLANATORY STATEMENT

### Veterans' Entitlements (Asset-test Exempt Income Stream—Lifetime Income Stream Guidelines) Determination 2025

## EMPOWERING PROVISION

The Repatriation Commission makes this instrument under subsection 5JA(6) of the *Veterans' Entitlements Act 1986* (the *Act*).

## PURPOSE

This instrument repeals the *Asset-test Exempt Income Stream (Lifetime Income Stream Guidelines) Determination 2015* and remakes it before it would otherwise sunset on 1 October 2025.

## OVERVIEW

This instrument determines guidelines to be complied with when deciding, under subsection 5JA(5) of the Act, that an income stream is an **asset-test exempt income stream**. Under paragraph 52(1)(d) of the Act, an asset-test exempt income stream is exempt from the asset-test in the Act.

## EXPLANATION OF PROVISIONS

**Section 1** states the name of the Instrument.

**Section 2** provides that the Instrument commences on the day after it is registered.

**Section 3** sets out the authority for the Repatriation Commission making the Instrument, namely subsection 5JA(6) of the Act.

**Section 4** repeals the *Asset-test Exempt Income Stream (Lifetime Income Stream Guidelines) Determination 2015* (Instrument 2015 No. R9) (the **repealed instrument**).

**Section 5** sets out definitions.

**Section 6** determines guidelines for deciding whether a lifetime income stream from a public sector fund or public sector superannuation scheme is asset-test exempt.

The Commission may determine that an income stream from a public sector fund or public superannuation scheme is an asset-test exempt income stream if the income stream:

- (a) is a lifetime income stream; and
- (b) is a defined benefit income stream; and
- (c) is paid from a fund or a scheme that was established before 20 September 1998; and
- (d) was a superannuation pension, regardless of its commencement day:
  - (i) under the 1998 Act; and

- (ii) the value of which was disregarded in calculating the beneficiary's assets under section 52 of the 1998 Act.

**Section 7** determines guidelines for deciding whether a lifetime income stream from a private sector fund is asset-test exempt.

The Commission may determine that an income stream arising from a private sector fund is an asset-test exempt income stream if the income stream:

- (a) is a lifetime income stream; and
- (b) is a defined benefit income stream; and
- (c) is paid from a fund that was established before 20 September 1998; and
- (d) was a superannuation pension, regardless of its commencement day:
  - (i) under the 1998 Act; and
  - (ii) the value of which was disregarded in calculating the beneficiary's assets under section 52 of the 1998 Act; and
- (e) became payable to the primary beneficiary or a reversionary beneficiary because of the primary beneficiary's previous employment.

## **Consultation**

The Department of Social Services (DSS) administers the equivalent instrument under the *Social Security Act 1991 – the Asset-test Exempt Income Stream (Lifetime Income Stream Guidelines) (Social Security) Determination 2015*. The Department of Veterans' Affairs has consulted with DSS to ensure consistency.

In remaking the instrument, no policy changes have been made to the asset-test exemption of certain income streams compared with the repealed instrument. Consequently, there has been no broader external consultation.

## **Human rights implications**

This instrument is compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full statement of compatibility is set out in **Attachment A**.

## **Making the instrument**

The instrument is made by the Repatriation Commission.

## **Approved by**

Repatriation Commission  
Rule-maker

## **Attachment A**

### **Statement of Compatibility with Human Rights**

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

#### ***Veterans' Entitlements (Asset-test Exempt Income Stream—Lifetime Income Stream Guidelines) Determination 2025***

This Disallowable 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* (the ***recognised rights***).

### **Overview of the Disallowable Legislative Instrument**

This instrument repeals the *Asset-test Exempt Income Stream (Lifetime Income Stream Guidelines) Determination 2015* and remakes it before it would otherwise sunset on 1 October 2025.

This instrument determines guidelines to be complied with when deciding, under subsection 5JA(5) of the Act, that an income stream is an ***asset-test exempt income stream***. Under paragraph 52(1)(d) of the Act, an asset-test exempt income stream is exempt from the asset-test in the Act.

### **Human rights implications**

This legislative instrument promotes the right to social security in article 9 of the International Covenant on Economic Social and Cultural Rights by enabling certain superannuation income streams to be exempt from the pension means-test under the Act.

### **Conclusion**

This legislative instrument is compatible with the right to social security.

Repatriation Commission

Rule-Maker