

EXPLANATORY STATEMENT

Veterans' Entitlements (Principles—Definition of PF (Payment Factor)) Determination 2025

EMPOWERING PROVISION

The Repatriation Commission (the *Commission*) makes this instrument under section 5JBA(5A) of the *Veterans' Entitlements Act 1986* (the *Act*).

PURPOSE

This instrument repeals the *Veterans' Entitlements (Asset-test Exempt Income Stream (Market-linked) – Payment Factors Principles 2005* and remakes it before it would otherwise sunset on 1 October 2025.

OVERVIEW

Subsection 5JBA(5A) of the Act allows the Commission to determine, by legislative instrument, principles for working out the payment factor (PF) for a market-linked income stream for a financial year to maintain a 'grandfathered' asset-test exemption. A 'grandfathered' market-linked income stream is an income stream that commenced during the period from 20 September 2004 to 19 September 2007. When a grandfathered market-linked income stream meets all of the other requirements of section 5JBA of the Act, it will be classified as an 'asset-test exempt income stream' for the purpose of the means-test when calculating an individual's income support under the Act.

To meet the definition of an 'asset-test exempt income stream' in section 5JBA of the Act, within a financial year an income stream's payments must be between a minimum of 90% and a maximum of 110% of the amount worked out by the formula in subsection 5JBA(5). This instrument specifies the PF which is the denominator used in the formula in subsection 5JBA(5) of the Act. The purpose of the formula is to ensure that a person with an asset-test exempt income stream will draw down an increasing proportion of the income stream each year so that the income stream is exhausted at the expiry of its fixed term. This is consistent with other types of superannuation products, where the minimum drawdown amount increases over time.

This instrument lists the PF value relative to the term of income stream remaining in years in a table under section 6.

Subsection 6(3) has been drafted in line with updated drafting practices, but the meaning and intention of the section is not intended to depart from the equivalent section in the *Veterans' Entitlements (Asset-test Exempt Income Stream (Market-linked) — Payment Factors) Principles 2005*.

The instrument at subsection 6(3) prescribes that for a specified year (i.e. the financial years commencing on 1 July 2019, 1 July 2020, 1 July 2021 or 1 July 2022) the payment factor for working out the minimum amount payable in each of those financial years for an income stream under subsection 5JBA(5) of the Act, is to be double the relevant payment factor

specified in column 3 of the Payment Factors table in section 6 of this instrument. The doubling of the payment factor to be applied to working out the minimum drawdown amount in those financial years, effectively halves the minimum drawdown required from an income stream in order to maintain the grandfathered status, in response to the financial market volatility caused by the economic impact of the COVID-19 coronavirus.

The instrument also prescribes instructions for applying the PF when the amount worked out under subsection 5JBA(5) of the Act is not \$10, or a multiple of \$10. In these circumstances the instrument provides that the PF is taken to be the PF that results in the amount rounding to \$10, or the nearest multiple of \$10, whichever is appropriate.

The payment factors in the table are the same as those in Schedule 6 of the *Superannuation Industry (Supervision) Regulations 1994* (the *SIS Regulations*). The formula at subsection 5JBA(5) of the Act is the same formula used in the *SIS Regulations* at clause 1 of Schedule 6.

The overall policy objective of the instrument is to apply the same approach taken in the equivalent instrument under the *Social Security Act 1991*, the *Social Security (Asset test Exempt Income Stream (Market-linked) – Payment Factors) Principles 2017*.

EXPLANATION OF PROVISIONS

Section 1 states the name of the instrument.

Section 2 provides the commencement of the instrument.

Section 3 sets out the authority for the making of the instrument.

Section 4 repeals the *Veterans' Entitlements (Asset-test Exempt Income Stream (Market linked) – Payment Factors Principles 2005* (the **repealed instrument**).

Section 5 provides definitions.

Section 6 provides the payment factor (**PF**) principles.

Subsection 6(1) provides that for the formula in subsection 5JBA(5) of the Act, PF means the payment factor specified in column 3 of the table that corresponds with the remaining term of the income stream.

Subsection 6(2) provides that the PF is applied on 1 July of the financial year for which the total amount is being worked out. However, if that financial year is the year the income stream commences the PF is applied on the commencement day of the income stream.

Subsection 6(3) provides that for the financial years commencing on 1 July 2019, 1 July 2020, 1 July 2021 or 1 July 2022, the PF for working out the minimum amount payable in each of those financial years for an income stream under subsection 5JBA(5) of the Act, is to be double the relevant payment factor specified in column 3 of the table. The doubling of the payment factor to be applied for working out the minimum drawdown amount effectively halves the minimum drawdown required from an income stream in order to maintain the 'grandfathered'

status for the relevant financial years. This provides income stream recipients with the option of reducing the minimum drawdown during the specified financial years but does not require the recipients to reduce the amount that they drawdown from their income streams.

Subsection 6(4) provides that if the amount worked out under subsection 5JBA(5) of the Act is not \$10, or a multiple of \$10, the PF is taken to be the PF that results in the amount rounding to \$10, or the nearest multiple of \$10, whichever is appropriate.

Subsection 6(5) provides that for subsection 6(1), the remaining term of an income stream is rounded either up or down to the nearest year, depending on the circumstances set out in the subsection of the instrument.

Consultation

The Department of Veterans' Affairs (DVA) has consulted with the Department of Social Services (DSS), which administers a similar instrument under the *Social Security Act 1991*, the *Social Security (Asset test Exempt Income Stream (Market-linked) – Payment Factors) Principles 2017*, to obtain agreement to the redrafting of the instrument and ensure consistency.

The instrument maintains the policy intent set out in the sunseting instrument. Consequently, DVA did not consult directly with individuals likely to be affected by the remake of the instrument, as it was not considered necessary given the remake is administrative in nature, to prevent the instrument from arbitrarily sunseting on 1 October 2025.

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 (Principles—Definition of PF (Payment Factor)) 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

The *Veterans' Entitlements (Principles—Definition of PF (Payment Factor)) Determination 2025* (the **instrument**) repeals the *Veterans' Entitlements (Asset-test Exempt Income Stream (Market-linked) – Payment Factors Principles 2005* and remakes it before it would otherwise sunset on 1 October 2025.

Under section 5JBA of *Veterans' Entitlements Act 1986* (the **Act**), an income stream is an asset-test exempt income stream if it pays an amount of income each year that is not less than 90%, nor greater than 110% of the amount worked out by the formula in subsection 5JBA(5) of the Act using a payment factor.

The instrument is made under subsection 5JBA(5A) of the Act and specifies the payment factor which is the denominator used in the formula in subsection 5JBA(5) of the Act. In doing so, this instrument ensures fair and equitable means-test outcomes for recipients of income support who hold market-linked income streams.

Human rights implications

The legislative instrument promotes the right to social security in article 9 of the International Covenant on Economic Social and Cultural Rights. The right to social security requires that a system be established under law, and that public authorities must take responsibility for the effective administration of the system. The social security scheme must provide a minimum essential level of benefits to all individuals and families that will enable them to acquire at least essential health care, basic shelter and housing, water and sanitation, foodstuffs and the most basic forms of education. The instrument promotes an accurate and fair assessment through the application of the means-test under the Act. This supports the aims of the system in appropriately recognising an individual's capacity for self-support when determining their rate of income support.

The instrument also prescribes that for the financial years commencing on 1 July 2019, 1 July 2020, 1 July 2021 or 1 July 2022, the payment factor for working out the minimum amount payable in each of those financial years for an income stream under subsection 5JBA(5) of the Act, is to be double the relevant payment factor specified in column 3 of the table in section 6 of the instrument. The doubling of the payment factor to be applied to working out the minimum drawdown amount in those financial years, effectively halves the minimum drawdown required from an income stream in order to maintain the 'grandfathered' status, in response to the financial market volatility caused by the economic impact of the COVID-19 coronavirus.

Conclusion

The legislative instrument is compatible with the right to social security because it appropriately recognises an individual's capacity for self-support when determining their rate of income support. It also supports the Department of Veterans' Affairs social security system to remain sustainable into the future.

Repatriation Commission

Rule-Maker