



Social Security (Guidelines for Determining whether Income Stream is Asset-test Exempt) (DEWR) Determination 2007 (No. 1)

I, PETER J BOXALL AO, Secretary of the Department of Employment and Workplace Relations, make this Determination under subsections 9A (6) and 9B (5) of the *Social Security Act 1991*.

Dated

19 September 2007

Peter J Boxall
Secretary of the Department of Employment and Workplace Relations

1 Name of Determination

This Determination is the *Social Security (Guidelines for Determining whether Income Stream is Asset-test Exempt) (DEWR) Determination 2007 (No. 1)*.

2 Commencement

This Determination commences on 20 September 2007.

3 Definitions

In this Determination:

Act means the *Social Security Act 1991*.

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

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*.

hardship amount has the meaning given by subsection 9A (7) of the Act.

immediate annuity means an annuity that is presently payable.

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

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 section 17A of the *Superannuation Industry (Supervision) Act 1993*.

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

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*.

4 Purpose of Determination

This Determination sets out guidelines with which the Secretary must comply when making a determination under subsection 9A (5) or 9B (4) of the Act in relation to certain income streams commencing on or after 20 September 2007.

Note Under subsection 9A (5) or 9B (4) of the Act, the Secretary may determine that an income stream is an asset-test exempt income stream for the purposes of the Act.

5 Guidelines for an asset-test exempt income stream resulting from original asset-test exempt income stream purchased before 20 September 2004

- (1) The Secretary 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**) is covered by section 9A or 9B of the Act or would have been covered by those sections if paragraph 9A (1) (aa) or subparagraph 9B (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 9A (1) or (1A) or section 9B 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 9A (1) or (1A) or section 9B of the Act; and
 - (b) it is not an income stream to which section 8 or 9 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 9A (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 December 2007, J and H ceased to be members of a couple together. On 15 December 2007, J commutes the original income stream and purchases another income stream (the **new income stream**) covered by subsection 9A (1) of the Act. The new income stream is covered by this Determination and retains the 100% exemption from the social security assets test.

- (4) This subsection applies to an original income stream if:
- (a) it is a defined benefit pension covered by section 9A or 9B of the Act that is provided by a regulated superannuation fund; and
 - (b) it is an income stream in relation to which the Secretary is not satisfied as required by paragraph 9A (1) (b) or 9B (1A) (b) of the Act, as applicable.

Example

On 1 March 2002, P purchased an income stream (the **original income stream**) that is a defined benefit pension covered by section 9A of the Act that is provided by a regulated superannuation fund. Paragraph 9A (1) (b) of the Act applies to the original income stream. On 1 September 2008, the Secretary is not satisfied that the requirements of paragraph 9A (1) (b) of the Act are met in relation to the original income stream. On 15 September 2008, P commutes the original income stream to purchase another income stream (the **new income stream**) that is covered by section 9A of the Act. The new income stream is covered by this Determination and retains the 100% exemption from the social security assets test.

Note Paragraphs 9A (1) (b) and 9B (1A) (b) of the Act require the Secretary 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 Secretary is not satisfied as required by paragraph 9A (1) (b) or 9B (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 9A (1) (b) and 9B (1A) (b) of the Act require the Secretary 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.

6 Guidelines for an 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 Secretary 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*) is covered by section 9A or 9B of the Act or would have been covered by those if paragraph 9A (1) (aa) and subparagraph 9B (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 purchased on or after 20 September 2004 and before 20 September 2007 which was commuted from another income stream (the *original income stream*); and
 - (c) the original income stream was purchased before 20 September 2004; and
 - (e) 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 9A (1) or (1A) or section 9B 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 9A (1) or (1A) or section 9B of the Act; and
 - (b) it is not an income stream to which section 8 or 9 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 9A (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 social security assets test. At the time of the purchase, J and H were members of a couple together.

On 15 September 2005, J commutes the original income stream to meet a hardship payment under subsection 9B (6) of the Act. J uses the remaining capital to purchase another income stream (the **new income stream**). The new income stream is covered by the *Social Security (Partially Asset-test exempt Income Stream — Exemption) (FACS) Principles 2005* and retains the 100% exemption held by the original income stream.

On 1 December 2008, J and H ceased to be members of a couple together. On 15 December 2008, J commutes the new income stream and purchases another income stream (the **further income stream**) covered by subsection 9A (1) of the Act. The further income stream is covered by this Determination and retains the 100% exemption from the social security assets test.

- (4) This subsection applies to an original income stream if:
 - (a) it is a defined benefit pension covered by section 9A (1) or 9B (1A) of the Act that is provided by a regulated superannuation fund; and
 - (b) it is an income stream in relation to which the Secretary is not satisfied as required by paragraph 9A (1) (b) or 9B (1A) (b) of the Act, as applicable.

Example

On 1 March 2002, P purchased an income stream (the **original income stream**) that is a defined benefit pension covered by section 9A of the Act and provided by a regulated superannuation fund. Paragraph 9A (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 social security assets test.

On 15 September 2005, P commutes the original income stream to meet a hardship payment under subsection 9A (7) of the Act. P uses the remaining capital to purchase another income stream (the **new income stream**). The new income stream is covered by the *Social Security (Partially Asset-test exempt Income Stream — Exemption) (FACS) Principles 2005* and retains the 100% exemption from the social security assets test.

On 1 September 2008, the Secretary is not satisfied that the requirements of paragraph 9A (1) (b) of the Act are met in relation to the new income stream. On 15 September 2008, P commutes the new income stream to purchase another income stream (the **further income stream**) that is covered by section 9A of the Act. The further income stream is covered by this Determination and retains the 100% exemption from the social security assets test.

Note Paragraphs 9A (1) (b) and 9B (1A) (b) of the Act require the Secretary 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 Secretary is not satisfied as required by paragraph 9A (1) (b) or 9B (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 9A (1) (b) and 9B (1A) (b) of the Act require the Secretary 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.

7 **Guidelines for an asset-test exempt income stream resulting from transfer to successor fund**

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

- (a) it is covered by section 9A or 9B of the Act or would have been covered by those sections if paragraph 9A (1) (aa) and subparagraph 9B (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 9A or 9B of the Act or would have been covered by those sections if paragraph 9A (1) (aa) and subparagraph 9B (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) until the commencement of this Determination, was covered by the *Social Security (Partially Asset-test Exempt Income Stream — Exemption) (FACS) Principles 2005*; or
 - (iii) was covered by this Determination.

8 **Guidelines for an asset-test exempt income stream resulting from payment split**

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

- (a) it is covered by section 9A or 9B of the Act or would have been covered by those sections if paragraph 9A (1) (aa) and subparagraph 9B (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 spouse or former spouse 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 spouse or former spouse of the primary beneficiary in respect of the original income stream under a payment split under Part VIII B of the *Family Law Act 1975*; and
- (d) the original income stream was covered by section 9A or 9B of the Act or would have been covered by those sections if paragraph 9A (1) (aa) and subparagraph 9B (1) (a) (i) of the Act did not apply; and
- (e) the original income stream:
 - (i) was purchased before 20 September 2004; or
 - (ii) until the commencement of this Determination, was covered by the *Social Security (Partially Asset-test Exempt Income Stream — Exemption) (FACS) Principles 2005*; or
 - (iii) was covered by this Determination.

Example

On 1 March 2002, P, who was married to J at that date, purchased an income stream (the *original income stream*) covered by section 9A of the Act. On 1 December 2007, P and J divorce. 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 VIII B of the *Family Law Act 1975*. On 15 December 2007, J uses the entitlement resulting from the payment split to purchase an income stream (the *new income stream*) covered by section 9A of the Act. The new income stream is covered by this Determination and retains the 100% exemption from the social security assets test.

9 Guidelines for an asset-test exempt income stream resulting from Family Court order or injunction

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

- (a) it is covered by section 9A or 9B of the Act or would have been covered by those sections if paragraph 9A (1) (aa) and subparagraph 9B (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 spouse or former spouse 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 or 114 of the *Family Law Act 1975*; or
 - (ii) an injunction granted under section 114 of that Act that is binding on a third party under Part VIII A A 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 9A or 9B of the Act or would have been covered by those sections if paragraph 9A (1) (aa) and subparagraph 9B (1) (a) (i) of the Act did not apply; and
- (e) the original income stream:
 - (i) was purchased before 20 September 2004; or

- (ii) until the commencement of this Determination, was covered by the *Social Security (Partially Asset-test Exempt Income Stream — Exemption) (FACS) Principles 2005*; or
- (iii) was covered by this Determination.

Example

On 1 March 2002, J purchased an income stream (the *original income stream*) covered by subsection 9A (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 social security assets test. At the time of the purchase, J and H are married. On 1 December 2007, J and H divorce. On 15 December 2007, 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 9A (1) of the Act. The new income stream is covered by this Determination and retains the 100% exemption from the social security assets test.

10 Guidelines for an asset-test exempt income stream resulting from payment of superannuation contributions surcharge debt

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

- (a) it is covered by section 9A or 9B of the Act or would have been covered by those sections if paragraph 9A (1) (aa) and subparagraph 9B (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 9A or 9B of the Act or would have been covered by those sections if paragraph 9A (1) (aa) and subparagraph 9B (1) (a) (i) of the Act did not apply; and; and
- (e) the original income stream:
 - (i) was purchased before 20 September 2004; or
 - (ii) until the commencement of this Determination, was covered by the *Social Security (Partially Asset-test Exempt Income Stream — Exemption) (FACS) Principles 2005*; or
 - (iii) was covered by this Determination.

11 Guidelines for an asset-test exempt income stream resulting from payment of hardship amount

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

- (a) it is covered by section 9A or 9B of the Act or would have been covered by those sections if paragraph 9A (1) (aa) and subparagraph 9B (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 9A or 9B of the Act or would have been covered by those sections if paragraph 9A (1) (aa) and subparagraph 9B (1) (a) (i) of the Act did not apply; and
- (e) the original income stream:
 - (i) was purchased before 20 September 2004; or
 - (ii) until the commencement of this Determination, was covered by the *Social Security (Partially Asset-test Exempt Income Stream — Exemption) (FACS) Principles 2005*; or
 - (iii) was covered by this Determination.

Example

On 1 March 2002, J purchased an income stream (the *original income stream*) covered by subsection 9A (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 social security assets test. At the time of the purchase, J and H are married. On 1 December 2005, J and H divorce. On 15 December 2005, 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 9A (1) of the Act. The new income stream is covered by the *Social Security (Partially Asset-test exempt Income Stream — Exemption) (FACS) Principles 2005* and retains the 100% exemption from the assets test.

On 3 March 2008, J commutes part of the new income stream to pay a hardship amount. On 3 March 2008, 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 social security assets test.

12 Guidelines for an asset-test exempt income stream resulting from closure of a self managed superannuation fund

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

- (a) it is covered by section 9A or 9B of the Act or would have been covered by those sections if paragraph 9A (1) (aa) and subparagraph 9B (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 has died; or
 - (ii) the administrative responsibilities of the fund supporting the original income stream have become too onerous due to the age or incapacity of a trustee; and
- (e) the original income stream was:

- (i) covered by section 9A or 9B of the Act or would have been covered by those sections if paragraph 9A (1) (aa) and subparagraph 9B (1) (a) (i) of the Act did not apply; and
- (ii) sourced from a self managed superannuation fund; and
- (f) the original income stream was:
 - (i) until the commencement of this Determination, covered by the *Social Security (Partially Asset-test Exempt Income Stream — Exemption) (FACS) Principles 2005*; or
 - (ii) 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 2015. 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 9A of the Act. The new income stream is covered by this Determination and retains the 100% exemption from the social security assets test.

13 Guidelines for asset-test income stream resulting from commutation or rollover because of regulation 6.21 of the *Superannuation Industry (Supervision) Regulations 1994*

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

- (a) it is covered by section 9A or 9B of the Act or would have been covered by those sections if paragraph 9A (1) (aa) and subparagraph 9B (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 9A or 9B of the Act or would have been covered by those sections if paragraph 9A (1) (aa) and subparagraph 9B (1) (a) (i) of the Act did not apply; and
- (e) the original income stream:
 - (i) was purchased before 20 September 2004; or
 - (ii) until the commencement of this Determination, was covered by the *Social Security (Partially Asset-test Exempt Income Stream — Exemption) (FACS) Principles 2005*; or
 - (iii) was covered by this Determination.