

EXPLANATORY STATEMENT

Veterans' Entitlements (Pension Bonus Scheme – Non-accruing Members) Declaration 2018 (Instrument 2018 No. R4)

EMPOWERING PROVISION

Subsection 45TO(1) of the *Veterans' Entitlements Act 1986* (the Act).

PURPOSE

The attached declaration (2018 No. R4) revokes and re-makes the *Veterans' Entitlements (Pension Bonus Scheme – Non-accruing Members) Declaration 2007* (the revoked instrument) for the purposes of the sunset exercise. On 1 April 2018 the declaration will “sunset” (expire) unless re-made.

The Department of Veterans' Affairs (DVA) has reviewed the declaration and found it is still required. Accordingly it is being re-made in substantially the same terms.

The attached declaration specifies certain kinds of persons registered under the Pension Bonus Scheme (the Scheme) to be non-accruing members of the Scheme for a specified maximum period in certain circumstances.

Once a person has registered with the Scheme they will then generally be treated as an accruing member as long as they pass the work test until they reach the upper age limit. The Act provides criteria for passing the work test for pension bonus purposes, which requires a member or their accruing partner to work 960 hours of gainful employment for each full year period they remain in the Scheme.

Subsection 45TO(1) of the Act enables the Repatriation Commission (the Commission) to declare, via a legislative instrument, that a specified kind of member of the Scheme is a non-accruing member throughout a period ascertained in accordance with the declaration.

The effect of this declaration is that members of the kind specified in the instrument, are not required to pass the work test for the period specified. This means, in effect, that the period in which they are required to pass the work test is extended by the period specified in an instrument in relation to that particular circumstance specified for the type of non-accruing member. This allows members to continue their membership in the Scheme and not be excluded from receiving the pension bonus where they or their partner needs to take time away from gainful employment.

The types of non-accruing members included in the attached declaration are:

- a member of the Community Development Employment Project (CDEP);
- a member in gaol or psychiatric confinement;

- a non-working member whose partner, prior to 1 July 2014, intended to participate in the Scheme;
- a member (or member's partner) who is on leave from gainful work and does not pass the work test for the Scheme;
- a member who is the surviving member of a couple and is undergoing a period of bereavement;
- a member who has received compensation and is unable to pass the work test for the Scheme; and
- a member who is unable to pass the work test because of a major disaster.

The Pension Bonus Scheme (the Scheme) is designed to encourage people of retirement age to remain in the workforce longer by offering a one-off, tax-free lump sum bonus if they deferred receipt of an income support payment.

The Scheme closed to new registrations from 1 July 2014. Existing members can remain in the Scheme while they continue to meet the work requirements under the legislation to accrue a pension bonus. Whilst the Scheme has closed to new registrations, there are still members who have deferred their income support entitlements and will be eligible to claim their pension bonuses under the Scheme once they cease employment.

While there are members who remain under the Scheme, this declaration is still required to help ascertain whether the "work test" has been met when the members cease work and claim the pension bonus.

The authority to revoke the former declaration is found in 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.

CONSULTATION

Section 17 of the *Legislation Act 2003* requires the rule-maker to be satisfied that any consultation that is considered appropriate and reasonably practicable to undertake, has been undertaken.

The Department of Social Services (DSS) has been consulted as that Department administers a similar declaration under the *Social Security Act 1991*, which will be remade in similar terms. DSS was consulted in the course of this exercise to ensure a co-ordinated and consistent approach to the declaration of non-accruing members under the Act and social security law.

The nature of consultation was by way of email correspondence.

In these circumstances, it is considered that the requirements of section 17 of the *Legislation Act 2003* have been met.

RETROSPECTIVITY

None.

DOCUMENTS INCORPORATED-BY-REFERENCE

None.

REGULATORY IMPACT

None.

HUMAN RIGHTS STATEMENT

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

The attached declaration engages the right to social security as recognised in Article 9 of the International Covenant on Economic, Social and Cultural Rights.

The purpose of the declaration is to specify kinds of members under the Scheme to be considered as non-accruing members throughout a period as provided in the declaration.

The declaration promotes the right to social security. The right will be promoted by providing that particular clients are not required to pass the work test for a specified maximum period.

This will minimise the circumstances in which the Scheme's rules prevent members from obtaining access to any pension bonus in the future.

Conclusion

The attached declaration is compatible with human rights, relevantly, the right to social security.

Repatriation Commission

Rule-Maker

FURTHER EXPLANATION OF PROVISIONS See: [Attachment A](#)

Attachment A

FURTHER EXPLANATION OF PROVISIONS

Section 1

This section provides that the name of the declaration is the *Veterans' Entitlements (Pension Bonus Scheme – Non-accruing Members) Declaration 2018*.

Section 2

This is the commencement provision. It provides that the declaration commences on the day after it is registered.

Section 3

This section sets out the primary legislation that authorises the making of the declaration, namely subsection 45TO(1) of the Act.

Section 4

This section revokes the *Veterans' Entitlements (Pension Bonus Scheme – Non-accruing Members) Declaration 2007* which is due to sunset on 1 April 2018.

Section 5

This is a savings provision. It ensures that a person who has been declared as a non-accruing member under the revoked declaration continues to have that status on the commencement of the attached declaration.

Section 6

This is the interpretation section. It defines the terms used in the declaration.

A note at the end of subsection 6(1) informs the reader that a number of expressions used in the declaration are defined in the Act, and will have the same meanings.

Subsection 6(2) provides that the period during which a major disaster affects a person's ability to pass the work test may include a period during which preparations are made to cope with an impending disaster, for example, the evacuation of an area shortly before a cyclone is forecast to reach the area.

Section 7

Section 7 provides that a member of the Scheme is a non-accruing member if that person is a member, for the period specified in section 8, of any of the following:

- a member who is a CDEP (Community Development Employment Project) participant within the meaning of section 23 of the *Social Security Act 1991*;
- a member who is in gaol, within the meaning of subsection 55(4) of the Act;
- a member who is undergoing psychiatric confinement, within the meaning of subsections 55(5) and (6) of the Act, because the member has been charged with committing an offence;

- a non-working member whose partner, prior to 1 July 2014, intended to participate in the Scheme;
- a member who takes up to 26 weeks of paid or unpaid leave of any kind, or combination of kinds, from gainful work and who would not pass the work test for a bonus period that includes the period of leave. Leave includes, but is not limited to annual/recreation leave, long service leave, sick leave, carer's leave, special leave, maternity leave and personal leave.

Members should not be considered a non-accruing member if they could meet the Scheme's work test for their bonus period despite their periods of leave. For example, if a member works for nine months in a bonus year and takes three months leave and completes 960 hours of work in those nine months, there is no need for them to be made a non-accruing member during their leave. The member met the work test for the bonus year.

- a member whose partner takes up to 26 weeks of paid or unpaid leave of any kind, or combination of kinds, from gainful work and who would not pass the work test of a bonus period that includes the period of leave.
- a member who is a surviving member of a couple and undergoing a period of bereavement, and is unable to pass the work test for a bonus period that includes the period of bereavement.
- a member who is unable to pass the work test for a bonus period because the amount of gainful work available to him or her in the bonus period is reduced by a major disaster.
- a member whose partner is unable to pass the work test for a bonus period because the amount of gainful work available to him or her in the bonus period is reduced by a major disaster and the partner is also a member of the Scheme or the corresponding Scheme under Part 2.2A of the *Social Security Act 1991*.
- a member who has received compensation and who would not have been paid a designated pension during the compensation period if the member had not reached pension/qualifying age and the pension was a compensation affected pension, and who is unable to pass the work test for a bonus period during which the compensation period occurs.

Section 8

Section 8 sets out the period in which a member of the Scheme is a non-accruing member. It provides that a person is a non-accruing member for the duration of the period during which they are a member of a kind set out in section 7.

This is qualified by subsection 8(2) which sets out the maximum periods a member is a non-accruing member for the circumstances described in item 1 of the table.

Item 1 specifies a maximum period of 26 weeks for the members referred to in paragraphs 7(e) and 7(f) – a member or member’s partner on paid or unpaid leave of any kind. Item 2 specifies a maximum period of 13 weeks for the kinds of members referred to in paragraphs 7(g), 7(h) and 7(i) – a member undergoing a period of bereavement or a member or member’s partner whose work is reduced because of a natural disaster.

Section 8(3) makes it clear that a kind of member in paragraph 7(j) (compensation-recipient) is a non-accruing member during the whole or part of the compensation period during which the member is unable to pass the work test for the Scheme.

Section 9

Section 9 provides special provisions for members of the Scheme who were affected by Cyclone Larry. As a result of Cyclone Larry in March 2006 and the destroyed businesses that ensued, some clients who were registered under the Scheme became unemployed or had their hours of employment reduced.

The provisions relating to Cyclone Larry are still required to ensure any members who are currently registered under the Scheme and were affected by the Cyclone, are, if relevant, able to claim the benefit of these provisions when they claim their pension bonus payment in the future.