

EXPLANATORY STATEMENT

Veterans' Entitlements (Delayed Lodgment of Claims for Pension Bonus) Guidelines 2018 (Instrument 2018 No. R17)

EMPOWERING PROVISION

Subsection 45UK(6) of the *Veterans' Entitlements Act 1986* (the Act).

PURPOSE

The attached Guidelines (2018 No. R17) revoke and re-make the *Veterans' Entitlements (Delayed Lodgment of Claims for Pension Bonus) Guidelines 2007* for the purposes of the sunset exercise. On 1 April 2018 the Guidelines will “sunset” (expire) unless re-made.

The Department of Veterans' Affairs (DVA) has reviewed the Guidelines and found they are still required. Accordingly, they are being re-made in substantially the same terms.

The purpose of the attached Guidelines is to set out special circumstances for the purposes of subsection 45UK(5) of the Act, that may be sufficient for the Secretary of the Department of Veterans' Affairs (the Secretary) to determine that a person's claim for pension bonus lodged after the person's claim for a age service pension, partner service pension or income support supplement (designated pension), is taken to have been made at the same time as the claim for a designated pension.

Section 45UK of the Act provides that a claim for pension bonus by a person must be attached to a proper claim for a designated pension and lodged with it, unless the claim for pension is made on a form which does not require the person to indicate their membership of the pension bonus scheme and the Secretary is aware of their membership. In such a case, the claim for pension bonus may be made in accordance with an invitation that the Secretary is required to offer to the person under subsection 45UK(3) of the Act.

The Guidelines allow greater flexibility with regard to claims for pension bonus where a registered member of the pension bonus scheme lodges a claim for pension bonus outside the required timeframe. The Guidelines set out the special circumstances that the Repatriation Commission (the Commission) may find sufficient to determine that a person's claim for pension bonus is taken to have been made at the same time as the pension bonus claim.

The Guidelines promote fairness and benefit clients by preventing an unnecessarily harsh outcome of denying the pension bonus to a person who lodges a claim within two years of their claim for a designated pension due to a failure, either by the Secretary of the Department of Veterans' Affairs (the Secretary) or by the person, to meet the requirements for claims under subsection 45UK(1) of the Act.

However, a person will not meet the criteria for special circumstances for the Commission to accept a late claim for pension bonus if they were not invited to make a claim under subsection 45UK(3) because they knowingly gave the Secretary incorrect information.

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 defer 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 criteria 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. Accordingly, instruments that help determine a person's entitlements under the Scheme are required to remain in force for the duration of the Scheme.

The authority to revoke the earlier Guidelines 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 instrument 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 treatment of claims for pension bonus 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 instrument engages the right to social security as recognised in Article 9 of the International Covenant on Economic, Social and Cultural Rights.

The instrument sets out guidelines for special circumstances that exist in relation to the lodgment of a person's claim for pension bonus, to deem the person to have claimed the pension bonus at the same time as his or her claim for a designated pension is lodged.

The instrument promotes the right to social security for members of the pension bonus scheme as it increases the range of situations in which claims for pension bonus can be lodged.

The special circumstances outlined in the Guidelines are intended to promote fairness and benefit clients by preventing an unnecessarily harsh outcome of denying the pension bonus to a person who lodges a claim within two years of their claim for a designated pension in circumstances where, because of the nature of the claim form, the person may not have been aware of the existence of the pension bonus scheme.

Conclusion

The attached instrument 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 instrument is the *Veterans' Entitlements (Delayed Lodgment of Claims for Pension Bonus) Guidelines 2018*.

Section 2

This is the commencement provision. It provides that the Guidelines commence on the day after they are registered.

Section 3

This section sets out the primary legislation that authorises the making of the Guidelines, namely subsection 45UK(6) of the Act.

Section 4

This section revokes the *Veterans' Entitlements (Delayed Lodgment of Claims for Pension Bonus) Guidelines 2007* which is due to sunset on 1 April 2018.

Section 5

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

Section 6

This section sets out the guidelines for when special circumstances apply in relation to the lodgment of a person's claim for pension bonus. There are two circumstances that are specified.

The first circumstance is intended to apply where the person lodges a claim for pension bonus within two years of the date of lodgment of their claim for a designated pension and the Secretary should have invited, but did not invite, the person to make the claim for pension bonus pursuant to subsection 45UK(3) of the Act because the person's pension claim was made in accordance with a form that did not require the claimant to disclose whether the person was a registered member of the pension bonus scheme or the corresponding scheme under Part 2.2A of the *Social Security Act 1991*. However, this circumstance is not a "special circumstance" for the purposes of paragraph 45UK(5)(c) of the Act if the invitation was not offered to the person because the person knowingly gave the Secretary incorrect information that led the Secretary to conclude that the making of the invitation would be inappropriate.

The second circumstance is intended to apply where the person lodges a claim for pension bonus within two years of the date of lodgment of their claim for a designated pension and the person's pension claim was made in accordance with a form that did require the claimant to disclose whether the person was a registered member of the pension bonus scheme or the corresponding scheme under Part 2.2A of the *Social Security Act 1991* and the claimant did not disclose that they were a member and the Secretary did not seek disclosure of that information before granting the claim for a designated pension.