

EXPLANATORY STATEMENT

Veterans' Entitlements (Pension Bonus Bereavement Payment – Disregarded Income) Instrument 2018 (Instrument 2018 No. R1)

EMPOWERING PROVISION

Subsection 45UUB(2) of the *Veterans' Entitlements Act 1986* (the Act).

PURPOSE

The attached instrument (2018 No. R1) revokes and re-makes the *Veterans' Entitlements (Pension Bonus Bereavement Payment – Disregarded Income) Specification 2007* (the revoked instrument) for the purposes of the sunseting exercise. On 1 April 2018 the instrument will “sunset” (expire) unless re-made.

The Department of Veterans' Affairs (DVA) has reviewed the instrument and found it is still required. Accordingly, it is being remade in substantially the same terms.

The attached instrument specifies the kind of income to be disregarded when the Repatriation Commission is working out the amount of a person's pension bonus bereavement payment under section 45UUB of the Act.

The kind of income specified is a compensation amount (within the meaning of subsection 5NB(2) of the Act) paid in the form of periodic payments to a person or their partner.

Subsection 5NB(2) of the Act covers compensation payments such as an award for damages or a payment made in settlement of a claim for damages. Income of this kind will be disregarded in the calculation of any pension bonus bereavement payment that may be payable to the person.

Under the Act, a person qualifies for a pension bonus bereavement payment if the person's partner dies and, immediately before their death, the partner was a registered member of the pension bonus scheme but had not made a claim for an age service pension, partner service pension, income support supplement or a pension bonus.

To work out the amount of pension bonus bereavement payment, the amount of pension bonus that would have been payable had the partner of the person made claims for both the age service pension, partner service pension or income support supplement and the pension bonus just before the partner died is determined. However, in determining the amount payable, any ‘PBBP employment income’ (a term that is defined in section 45UUC of the Act) is disregarded as well as any income that is specified by a legislative instrument under subsection 45UUB(2) of the Act.

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 lump sum payments under the Scheme once they cease employment and claim their bonus.

Accordingly, instruments that help calculate a person's entitlement under the Scheme are required to remain in place for the duration of the Scheme.

The authority to revoke the earlier instrument 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 during the course of the preparation of the attached instrument to ensure a co-ordinated and consistent approach to the treatment of income types disregarded for the purposes of calculating pension bonus bereavement payments 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 (ICESCR).

The instrument promotes the right to social security for those people whose entitlements under the VEA are affected by receiving a pension bonus bereavement payment. The rights will be promoted by disregarding payments of compensation when calculating the amount of any pension bonus bereavement payment that may be payable to a person.

The instrument will ensure that a relevant DVA client who may be entitled to a pension bonus bereavement payment will have any compensation paid in the form of periodic payments to the person or the person's deceased partner disregarded when working out the amount of the pension bonus bereavement payment.

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 (Pension Bonus Bereavement Payment – Disregarded Income) Instrument 2018*.

Section 2

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

Section 3

This section sets out the primary legislation that authorises the making of the instrument, namely subsection 45UUB(2) of the Act.

Section 4

This section revokes the *Veterans' Entitlements (Pension Bonus Bereavement Payment – Disregarded Income) Specification 2007* which is due to sunset on 1 April 2018.

Section 5

This is the interpretation section. It defines the term *Act* as it is used in the instrument to mean the *Veterans' Entitlements Act 1986*.

Section 6

This section specifies the kind of income that is to be disregarded in determining a pension bonus bereavement payment that may be payable to a person. The kind of income specified is compensation within the meaning of subsection 5NB(2) of the Act that is paid in the form of periodic payments.

Relevantly, *compensation* is defined under subsection 5NB(2) of the Act as:

- (a) a payment of damages or compensation; or
- (b) a payment under a scheme of insurance or compensation under a law of the Commonwealth or of a State or Territory, or under a contract entered into under such a scheme; or
- (c) a payment (with or without admission of liability) in settlement of a claim for damages or a claim under such an insurance scheme

whether the payment is in the form of a lump sum or in the form of a series of periodic payments and whether it is made within or outside Australia that is made wholly or partly in respect of lost earnings or lost capacity to earn.

However, *compensation* excludes a payment under a law of the Commonwealth, a State or a Territory that provides for the payment of compensation for a criminal injury suffered, or a disease or injury contracted, as a result of the commission of an offence.

The effect of this section is that such compensation, provided it is paid in the form of periodic payments, is disregarded whether it is payable to the person who may be eligible for a pension bonus bereavement payment or their partner.