

EXPLANATORY STATEMENT

Social Security Act 1991 *Social Security (Top up of Pension Bonus — Specified Circumstances) Determination* *2018*

Purpose

This instrument is made under subsection 93L(6) of the *Social Security Act 1991* (the Act), and specifies certain circumstances in which a pension bonus can be topped up.

The pension bonus amount is calculated on the basis of the amount of age pension on the person's start day for the bonus. Section 93K of the Act provides that a person's pension bonus can be topped up if a determination is made to increase the person's age pension and that determination takes effect within the 13 weeks following the start day for the person's pension bonus. Under that provision, a top up can only be made if the rate determination is made because of a decrease in the value of the person's income, assets or both.

The purpose of section 93L of the Act is to allow for top ups of pension bonus to be made in other specified circumstances. This instrument specifies the circumstance where a person's age pension rate is increased after 13 weeks from the start day (a top up under section 93K is therefore not possible).

Subsection 93L(6) of the Act allows the Secretary of the Department of Social Services to, by legislative instrument, specify circumstances in which a person's rate of age pension is increased for the purpose of enabling the Secretary to increase the amount of a person's pension bonus.

This determination specifies that a top up of pension bonus will only occur in a specified circumstance where all conditions are met. The conditions are that:

- A person's rate of age pension is increased with effect from a day that is more than 13 weeks after the day the person receives pension bonus (the start day) because of a decrease in value of the person's assets, income or both; and
- The determination takes effect on a day that is more than 13 weeks after the start day; and
- Within 13 weeks of the start day:
 - an administrative error was made in the determination of the relevant rate; or
 - incorrect information had been given to the Secretary by the person about the value of their assets, income or both.

The effect of the determination is that, if the circumstance applies to a person, the Secretary is able to determine that the person's pension bonus can be increased to an amount limited by subsection 93L(3) of the Act. This amount is not greater than the difference between the amount of pension bonus the person received on the start day and the amount that would have been payable to the person as a pension bonus if the error by the Secretary or by the person had not been made.

This determination will commence on 1 April 2018 following the repeal of the *Social Security (Top up of Pension Bonus — Specified Circumstances) Determination 2007* on that date. The 2007 determination ceases operation on 1 April 2018 due to the sunset provisions in the *Legislation Act 2003*. This determination is substantially in the same terms as the 2007 determination.

This instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.

Commencement

This determination commences on 1 April 2018.

Consultation

The Department of Human Services and the Department of Veterans' Affairs were consulted during the preparation of this instrument. This was done to ensure a co-ordinated and consistent approach to the treatment of calculating increases in pension bonus amounts payable to persons under both the social security law and the *Veterans' Entitlements Act 1986*.

This instrument can only have a beneficial or neutral impact on persons who are members of the pension bonus scheme. Public consultation was therefore seen as unnecessary.

Regulatory Impact Statement

This instrument does not require a Regulatory Impact Statement (RIS). This instrument will have no more than a minor regulatory impact on business, community organisations or individuals and will have no, or minimal, compliance costs or competition impact. It is not expected that any compliance costs will be incurred by business as a result of the effect of this instrument.

Explanation of Provisions

Section 1 states the name of the Determination.

Section 2 states that the Determination commences on 1 April 2018.

Section 3 states that the authority for making this Determination is subsection 93L(6) of the *Social Security Act 1991*.

Section 4 contains the interpretation of the term *Act* as it is used in the Determination. It means the *Social Security Act 1991*.

Section 5 provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Section 6 specifies the circumstance. The circumstance includes criteria about the nature and date of effect of the determination, and whether the determination was affected by a rate calculation error, or incorrect information.

The special circumstance criteria will be met if:

- a rate determination for age pension is made and that determination has effect due to the operation of the date of effect provisions in Part 3, Division 9 of the *Social Security (Administration) Act 1999* on a day that is more than 13 weeks after the start day of the person's pension bonus; and
- that determination is made due to a reduction in the value of the person's income, assets or both; and
- the determination is made because either:
 - an administrative error was made in the determination of the relevant rate within 13 weeks of the start day of the person's pension bonus; or
 - the person, within 13 weeks following the start day of the person's pension bonus, gave the Secretary incorrect information about the value of the person's assets, ordinary income or both.

Schedule 1 repeals the *Social Security (Top up of Pension Bonus — Specified Circumstances) Determination 2007* that was due to sunset on 1 April 2018.

Statement of Compatibility with Human Rights

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

Social Security Act 1991

Social Security (Top Up of Pension Bonus — Specified Circumstances) Determination 2018

The *Social Security (Top Up of Pension Bonus — Specified Circumstances) Determination 2018* 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*.

Overview of the Legislative Instrument

This Determination is made under Section 93L(6) of the *Social Security Act 1991*.

Section 93K of the *Social Security Act 1991* (the Act) provides that a person's pension bonus can be topped up if a determination is made to increase the person's age pension and that determination takes effect within the 13 weeks following the start day for the person's pension bonus. Under that provision, a top up can only be made if the rate determination is made because of a decrease in the value of the person's income, assets or both.

The purpose of section 93L of the Act is to allow for top ups of pension bonus to be made in other specified circumstances. This instrument specifies the circumstance where a person's age pension rate is increased after 13 weeks from the start day (a top up under section 93K is therefore not possible).

This determination specifies that a top up of pension bonus will only occur in a specified circumstance where all conditions are met. The conditions are that:

- A person's rate of age pension is increased with effect from a day that is more than 13 weeks after the day the person receives pension bonus (the start day) because of a decrease in value of the person's assets, income or both; and
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The effect of the Determination is that, if the circumstance applies to a person, the Secretary is able to determine that the person's pension bonus can be increased to an amount limited by subsection 93L(3) of the Act. This amount is not greater than the difference between the amount of pension bonus the person received on the start day and the amount that would have been payable to the person as a pension bonus if the error by the Secretary or by the person had not been made.

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Human rights implications

Right to Social Security

This Determination engages the human right to social security contained in Article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

This Determination provides that a person's pension bonus can be topped up if a determination is made to increase the person's age pension under certain circumstances. This Determination is therefore compatible with human rights.

Conclusion

This Determination is compatible with human rights as it enables a person to access social security in the form of a pension bonus top up.

Kathryn Campbell
Secretary of the Department of Social Services