

EXPLANATORY STATEMENT

Issued by the authority of the Secretary of the Department of Social Services

Social Security Act 1991
Social Security (Pension Bonus Bereavement Payment — Disregarded Income)
Specification 2018

Purpose

The purpose of this specification is to specify kinds of income for the purposes of subparagraph 93WB(1)(b)(ii) of the Act.

A person is qualified 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 age pension or a pension bonus.

The amount of pension bonus bereavement payment is determined by working out the amount of pension bonus that would have been payable had the partner of the person made a claim for both age pension and pension bonus just before the partner died. However, in determining the amount payable, any 'PBBP employment income' (a term that is defined in the Division 12 of Part 2.2A of the Act – see subsection 93WC(1)) is disregarded as well as any income that is specified in this instrument.

This instrument specifies that a payment of compensation, so long as it is paid as a periodic payment, is also to be disregarded when calculating the quantum of any pension bonus bereavement payment that may be payable to a person.

For the purposes of this instrument, the term "compensation" is defined in subsection 17(2) of the Act and means:

- a payment of damages;
 - a payment under a scheme of insurance or compensation under a Commonwealth, State or Territory law, including a payment under a contract entered into under such a scheme;
 - a payment (with or without admission of liability) in settlement of a claim for damages or a claim under such an insurance scheme; or
 - certain other compensation or damages payment (but excluding certain compensation for a criminal injury)
- that is made wholly or partly in respect of lost earnings or lost capacity to earn resulting from personal injury.

This specification will commence on 1 April 2018 following the repeal of the *Social Security (Pension Bonus Bereavement Payment — Disregarded Income) Specification 2007* on that date. The 2007 specification ceases operation on 1 April 2018 due to the sunset provisions in the *Legislation Act 2003*. This specification is substantially in the same terms as the 2007 specification.

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

Commencement

This specification commences on 1 April 2018.

Consultation

The Department of Human Services and the Department of Veterans' Affairs were consulted during the preparation of this specification. This was done to ensure a co-ordinated and consistent approach to the treatment of income types disregarded for the purpose of calculating pension bonus bereavement payments under both the social security law and the *Veterans' Entitlements Act 1986*.

This instrument is beneficial to persons whose deceased partners were members of the pension bonus scheme because it has the effect of either increasing or not affecting the amount of any pension bonus bereavement payment that may be payable to them. Public consultation was therefore seen as unnecessary.

Regulatory Impact Statement

This specification does not require a Regulatory Impact Statement (RIS). This specification 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.

Explanation of Provisions

Section 1 states the name of the instrument.

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

Section 3 states that the authority for making this Specification is subsection 93WB(2) of the *Social Security Act 1991*.

Section 4 contains the interpretation of the term *Act* as it is used in the Specification. 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 an income type to be disregarded in determining a pension bonus bereavement payment that may be payable to a person. That income type is compensation within the meaning of subsection 17(2) of the Act that is paid in the form of periodic payments.

Relevantly, *compensation* is defined in the Act as:

- (a) a payment of damages; or
- (b) a payment under a scheme of insurance or compensation under a Commonwealth, State or Territory law, including a payment 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; or
- (d) any other compensation or damages payment;

(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 resulting from personal injury.

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 condition contracted, as a result of the commission of an offence (see subsections 17(2B) and 17(2C) of the Act).

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.

Schedule 1 repeals the *Social Security (Pension Bonus Bereavement Payment — Disregarded Income) Specification 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 (Pension Bonus Bereavement Payment — Disregarded Income) Specification 2018

The *Social Security (Pension Bonus Bereavement Payment — Disregarded Income) Specification 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 Specification is made for the purpose of subparagraph 93WB(1)(b)(ii) of the *Social Security Act 1991* (the Act).

Section 93WA of the Act states that a person is qualified 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 age pension or a pension bonus.

The amount of pension bonus bereavement payment is determined by working out the amount of pension bonus that would have been payable had the partner of the person made a claim for both age pension and pension bonus just before the partner died. This instrument specifies that a payment of compensation, so long as it is paid as a periodic payment, is also to be disregarded when calculating the quantum of any pension bonus bereavement payment that may be payable to a person.

This Specification will commence on 1 April 2018 following the repeal of the *Social Security (Pension Bonus Bereavement Payment — Disregarded Income) Specification 2007* on that date. The 2007 specification ceases operation on 1 April 2018 due to the sunset provisions in the *Legislation Act 2003*. This specification is substantially in the same terms as the 2007 specification.

Human rights implications

Right to Social Security

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

This Specification allows a person whose partner died, where the partner was a member of the Pension Bonus Scheme, to have specified kinds of income disregarded when their pension bonus bereavement payment claim is calculated. This specification is compatible with human rights, as it would have the effect of increasing the amount of the bereavement payment a person is entitled to (and may

allow certain people to access the payment where they otherwise would not have been able to.)

Conclusion

This Specification is compatible with human rights as it may increase the amount a person is entitled to, and may enable a person to access social security, in the form of a pension bonus bereavement payment.

Kathryn Campbell
Secretary of the Department of Social Services