

EXPLANATORY STATEMENT

Social Security (Pension Bonus Scheme — Non-accruing Members) Declaration 2007

Summary

Section 92Q of the *Social Security Act 1991* (the Act) allows the Secretary of the Department of Families, Housing, Community Services and Indigenous Affairs to declare that a specified kind of member of the Pension Bonus Scheme (the Scheme) is a non-accruing member through a period as provided in the Declaration.

Background

Under Part 2.2A of the Act, the Scheme allows people of age pension age to choose to continue working and defer claiming Age Pension in return for a tax free lump sum bonus payable when they eventually claim and receive Age Pension.

The intention of the Declaration is to enable people registered with the Scheme to be non-accruing members of the Scheme for a specified maximum period in certain circumstances. The effect of this Declaration is that these particular customers are not required to pass the work test for that period. This means that the period specified in the Declaration in relation to the particular circumstance will, in effect, extend the period in which a member is required to pass the work test. A person does not, however, during a period of non-accruing membership accrue a bonus.

The *Social Security (Pension Bonus Scheme – Non-accruing Members) Declaration (No 1) 1998* and the *Social Security (Pension Bonus Scheme – Non-accruing Members – Major Disaster) Declaration 2006* declared a number of types of members to be non-accruing members. These declarations are being revoked and replaced with this new declaration that provides for the same types of non-accruing members and adds two new types of non-accruing members. The new types of non-accruing members are members affected by Cyclone Larry in 2006 and members who are on paid or unpaid leave from their employment.

A declaration under section 92Q is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Explanation of the provisions

Section 1 sets out that the name of the declaration is the *Social Security (Pension Bonus Scheme – Non-accruing Members) Declaration 2007*.

Section 2 states that this Declaration commences on 1 January 2008.

Section 3 revokes the following legislative instruments:

- (a) the *Social Security (Pension Bonus Scheme – Non-accruing Members) Declaration (No 1) 1998*; and
- (b) the *Social Security (Pension Bonus Scheme – Non-accruing Members – Major Disaster) Declaration 2006*.

Section 4 defines the terms used in this Declaration as follows:

‘Act’ means the *Social Security Act 1991*.

‘pass the work test’ has the meaning given by:

- (a) sections 92U and 92 V of the Act for a member of the Scheme; and
- (b) sections 45TS and 45TT of the Veterans’ Entitlements Act (as referred to in the note at the end of this subsection) for the partner of a member of the Scheme who is a member of the corresponding Scheme under Part IIIAB of the Veterans’ Entitlements Act.

A note at the end of subsection 4(1) informs the reader that a number of expressions used in this Declaration are defined in the Act under subsections 4(2) and 23(1).

Subsection 4(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 5 provides that a member of the Scheme is a non-accruing member if that person is a member, for the period specified in section 6, of any of the following:

- (a) a member who is a CDEP participant;
- (b) a member who is in gaol, within the meaning of subsection 23(5) of the Act;
- (c) a member who is undergoing psychiatric confinement, within the meaning of subsections 23(8) and (9) of the Act, because the member has been charged with committing an offence;
- (d) a member who is not a participant in the workforce, but whose partner:
 - (i) is a participant in the workforce; and
 - (ii) is not a registered member of the Scheme or the corresponding Scheme under Part IIIAB of the Veterans’ Entitlements Act; and
 - (iii) intends to become a registered member of the Scheme or the corresponding Scheme under Part IIIAB of the Veterans’ Entitlements Act.

- (e) a member who is on 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. For the purposes of this provision, 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 the first 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.

- (f) a member whose partner is on 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. (See paragraph (e) above regarding explanations involving paid and unpaid leave, as well as passing the work test).

- (g) a member who is:

- (i) a surviving member of a couple; and
- (ii) undergoing a period of bereavement; and
- (iii) unable to pass the work test for a bonus period that includes the period of bereavement;

- (h) 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;

- (i) a member whose partner:

- (i) is a member of the Scheme or the corresponding Scheme under Part IIIAB of the Veterans' Entitlements Act; and
- (ii) 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.

Section 6 provides for the period in which a member of the Scheme is a non-accruing member. Subsection 6(1) provides that a member of the Scheme to whom one of the provisions of section 5 applies, is a non-accruing member (and continues to be such a member) throughout the period the member is a member of the kind mentioned under section 5.

Subsection 6(2) provides that a member, to whom a paragraph in section 5 applies, can be a non-accruing member up to a maximum period as provided in the table. Item 1 specifies that the maximum period applicable to paragraphs 5(e) and (f) is 26 weeks. Item 2 specifies that the maximum period applicable to paragraphs 5(g), (h), and (i) is 13 weeks.

Section 7 provides for members of the Scheme who were affected by Cyclone Larry. Section 7 cannot operate in a way that is adverse to members of the Scheme as members affected by Cyclone Larry would otherwise fail to pass the work test and be required to lodge a claim for pension bonus earlier than they may have wished to.

Subsection 7(1) applies to a member of the Scheme:

- (a) who was unable to pass the work test for a bonus period because the amount of his or her gainful work during the bonus period had been reduced by the effects of Cyclone Larry; or
- (b) whose partner:
 - (i) was a member of the Scheme or the corresponding Scheme under Part IIIAB of the Veterans' Entitlements Act; and
 - (ii) was unable to pass the work test for a bonus period because the amount of his or her gainful work during the bonus period had been reduced by the effects of Cyclone Larry.

Subsection 7(2) provides that a member of the Scheme is a non-accruing member for up to a maximum of 13 weeks if that person is a member, throughout the period:

- (a) which does not commence before 1 March 2006, that:
 - (i) the member was unable to pass the work test due to the effects of Cyclone Larry for members covered by paragraph 7(1)(a); or
 - (ii) the member's partner was unable to pass the work test due to the effects of Cyclone Larry for members covered by paragraph 7(1)(b).

A note at the end of subsection 7(2) informs the reader that 1 March 2006 is the date from which people are taken to be affected by the preparation for Cyclone Larry.

Consultation

The Department of Veterans' Affairs was consulted during the preparation of this instrument.

These changes do not alter the spirit of the relevant legislation. They will increase flexibility and fairness in the Scheme and minimise the circumstances in which the Scheme's rules prevent members from obtaining access to any pension bonus they may have accrued. Public consultation was therefore seen as unnecessary.

Regulatory Impact Analysis

This instrument does not require a Regulatory Impact Statement (RIS) and/or a Business Cost Calculator Figure. This instrument is not regulatory in nature, will not impact on business activity and will have no, or minimal, compliance costs or competition impact. It is not expected that any compliance costs will be incurred by business.