

**MILITARY SUPERANNUATION AND BENEFITS ACT 1991
MILITARY SUPERANNUATION AND BENEFITS (ELIGIBLE
MEMBERS)
DECLARATION 2016
EXPLANATORY STATEMENT**

The *Military Superannuation and Benefits Act 1991* (“the Act”) makes provision in Part 8 for the payment of a retention benefit to certain members of the Military Superannuation and Benefits Scheme (“the Scheme”) who have completed 15 years of continuous eligible service. The purpose of the benefit is to induce members to serve for another five years and so get to 20 years of service.

Part 8 of the Act was repealed under Schedule 4 of the *Defence Legislation Amendment Act (No. 1) 2005*. However, due to a saving provision in item 4 of Schedule 4 of that Act, eligibility for the retention benefit is still applicable for eligible members of the Australian Defence Force who were members of the Scheme before 6 October 2005.

An “eligible member” is defined in subsection 30(1) of the Act to include:

- an officer who holds the rank not lower than Major or equivalent (or who was previously an enlisted member);
- an enlisted member who holds the rank of Sergeant or equivalent; or
a member declared by the Minister to be an eligible member (paragraph (f) of the definition).

Members who do not satisfy the minimum rank requirement and are in employment categories, where the normal opportunities for promotion do not exist due to structural impediments, may be declared by the Minister to be eligible members for the purposes of the Act. These employment categories are referred to as “specified categories” for identifying members as eligible members for the purposes of the Act. The employment categories are listed in Ministerial Declarations such as the one to which this statement relates and allows the beneficial nature of the legislation to flow to affected members. When a specified category is identified by the relevant Service as no longer presenting structural impediments to members reaching the minimum rank required, it is withdrawn from the specified category list.

The purpose of this beneficial legislative Declaration is to withdraw specified category status from three employment categories as they no longer have structural impediments for members to reach their required rank within that category. One new category has been declared specified category status as they have structural impediments.

Schedule 1 to this Declaration lists the employment categories and ranks that a member may hold in order to be part of the class to which this Declaration applies.

Schedule 2 to this Declaration lists individual members to whom this Declaration applies.

The three Australian Defence Force Career Management Agencies (who nominate employment categories and individual members for listing in the Specified Category and Inter-Employment category Schedules), Defence Legal, the Department of Defence Chief Finance Officer and the Department of Finance have all been consulted during the development of this Declaration.

This is a legislative instrument for the purpose of the *Legislation Act* and is not subject to disallowance in accordance with item 3 of the table in section 9 of the *Legislation (Exemptions and Other Matters) Regulation 2015*.

The impacts on business and individuals or the economy of the instrument are low and the Office of Best Practice Regulation advised that no further regulatory analysis was required.

This Declaration is compatible with the human right and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. The Declaration does not engage any applicable rights or freedoms, other than to provide an additional financial benefit to the affected person that assists them to exercise their right to the enjoyment of just and favourable conditions of work (article 7 of the International Covenant of Economic, Social and Cultural Rights).

Authority: Paragraph (f) of subsection 30(1) of the *Military Superannuation and Benefits Act 1991*, as continued in force by item 4 of Schedule 4 to the *Defence Legislation Amendment Act (No.1) 2005*.