

EXPLANATORY STATEMENT

Veterans' Entitlements (Top Up of Pension Bonus in Specified Circumstances) Instrument 2018 (Instrument 2018 No. R3)

EMPOWERING PROVISION

Subsection 45UIC(6) of the *Veterans' Entitlements Act 1986* (the Act).

PURPOSE

The attached instrument (2018 No. R3) revokes and re-makes the *Veterans' Entitlements (Top up of Pension Bonus – Specified Circumstances) Determination 2007* (the revoked determination) for the purposes of the sunsetting 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 re-made in substantially the same terms.

The attached instrument specifies circumstances that will enable the Repatriation Commission (the Commission) to determine that a person's pension bonus can be increased (via a “top up determination”) to an amount limited by subsection 45UIC(3) of the Act.

Sections 45UIB and 45UIC allow the Commission to determine that a person's pension bonus is to be increased or ‘topped up’.

Subsection 45UIC(6) of the Act allows the Commission by legislative instrument, to specify circumstances in which a person's rate of age service pension, partner service pension or income support supplement (designated pension) is increased for the purpose of enabling the Commission to increase the amount of a person's pension bonus (via a top up determination).

The pension bonus amount is calculated on the basis of the amount of pension on the person's effective date for the bonus. Section 45UIB provides that a person's pension bonus can be topped up if a determination is made to increase the person's pension and that determination takes effect within the 13 weeks following the effective date for the person's pension bonus. Under that provision, a top up can only be made if the rate determination is made because of the reduction in the value of the person's assets or income or both.

Section 45UIC allows for a top up determination to be made in other “rate increase” circumstances specified in an instrument. The attached instrument specifies, as such circumstances, the case where a person's pension rate is increased *after* 13 weeks from the effective date (a top up under section 45UIB is therefore not possible) because of an error in the Secretary's calculation of the person's pension rate or because the person provided incorrect information in the 13 week period which lead to an incorrect determination of their designated pension rate.

The effect is that, if this circumstance is satisfied, the Commission is able to top up the person's pension bonus to an amount that is not greater than the difference between the

amount of pension bonus the person received on the effective date 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.

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 pension bonuses under the Scheme once they cease employment.

Accordingly, instruments that help determine a person's entitlements under the Scheme are required to remain in force for the duration of the Scheme.

The authority to revoke the earlier determination 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) was consulted as that Department administers a similar legislative instrument made under the *Social Security Act 1991*, which will be made in similar terms. DSS was consulted in the course of this exercise to ensure a co-ordinated and consistent approach to the treatment of calculating increases in pension bonus amounts payable to persons 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 by specifying the circumstances in which a person's designated pension can be increased for the purpose of enabling the Commission to increase the amount of a person's pension bonus.

The effect of the instrument is to supplement provisions of the Act which work to ensure a person will receive the full amount of pension bonus in circumstances where their pension rate may have increased (due to a decrease in their assets or income) in the 13 week period after the pension bonus for the person is calculated and before it is paid. The instrument extends that 13 week period to cover the case of administrative error by the Department, or in the case of the person providing incorrect information about the value of their assets or income within the 13 week period.

The instrument thus supports the right to social security by ensuring a person is not disadvantaged due to incorrect information or administrative error and receives full entitlement to the pension bonus when they leave the workforce and claim their age service pension, partner service pension or income support supplement.

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 (Top Up of Pension Bonus in Specified Circumstances) 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 45UIC(6) of the Act.

Section 4

This section revokes the *Veterans' Entitlements (Top up of Pension Bonus – Specified Circumstances) Determination 2007*, which is due to sunset on 1 April 2018.

Section 5

This is the interpretation section. It defines key terms used in the instrument.

The term *Act* is defined to mean the *Veterans' Entitlements Act 1986*.

A *designated pension* has the same meaning as it has in section 45TA of the Act and covers an age service pension, partner service pension or income support supplement.

Section 6

This section specifies the circumstances in which a person's rate of designated pension is increased for the purpose of enabling the Commission to increase the amount of a person's pension bonus.

The circumstances are that a rate determination for a designated pension is made and that determination has effect due to the operation of the date of effect provisions in section 56G of the Act on a day that is more than 13 weeks after the effective date of the person's pension bonus and that determination is made due to a reduction in the value of the person's assets or ordinary income or both and:

- due to wholly or partly, an administrative error by the Secretary that was made within 13 weeks of the effective date of the person's pension bonus; or
- because the person, within 13 weeks following the effective date of the person's pension bonus, gave the Secretary incorrect information about the value of the person's assets or ordinary income or both.