

## EXPLANATORY STATEMENT

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

*Social Security Act 1991*

*Social Security (Pension Bonus Scheme — Non-accruing Members) Declaration  
2018*

### **Purpose**

Section 92Q of the *Social Security Act 1991* (the Act) allows the Secretary of the Department of Social Services 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.

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 amount of the bonus, depends, among other things, on the number of bonus periods a person accrues while they are an accruing member of the Scheme.

A person accrues bonus periods under the Scheme if they pass the work test, are under age 75 and are not in a period of non-accruing membership of the Scheme. This Declaration specifies the kinds of members of the Scheme who are non-accruing members.

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 people are not required to pass the work test for that period.

The *Social Security (Administration) Act 1999* (the Administration Act) provides time limits for people to claim their pension bonus (sections 20 to 26). Non-accruing members are still members of the Scheme, but as their ability to work is affected by a specified circumstance, the time limits in the Administration Act for claiming a bonus do not apply to them while they are non-accruing members of the Scheme. 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. Non-accruing membership does not count towards the accruing of a pension bonus because the member does not meet the work test.

This Declaration will commence on 1 April 2018 following the repeal of the *Social Security (Pension Bonus Scheme — Non-accruing Members) Declaration 2007* (the 2007 Declaration) on that date. The 2007 Declaration ceases operation on 1 April 2018 due to the sunset provisions in the *Legislation Act 2003*. This Declaration is substantially in the same terms as the 2007 Declaration.

The difference from the 2007 Declaration is the amendment of paragraph 6(d) to address the impact on some non-accruing members of the closure of the Scheme to new registrations from 1 July 2014. This amendment preserves the operation for those who still need to rely upon its provisions as applied prior to 1 July 2014. A member who was not a participant in the workforce can be assessed as non-accruing under the circumstances outlined in paragraph 6(d). It is necessary to retain this amended paragraph for a member who was not a participant in the workforce but whose partner was a participant in the workforce under the rules that applied prior to 1 July 2014.

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

### **Commencement**

This Declaration commences on 1 April 2018.

### **Consultation**

The Department of Human Services and the Department of Veterans' Affairs were consulted during the preparation of this Declaration.

These changes are not inconsistent with 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 Statement**

This Declaration does not require a Regulatory Impact Statement (RIS). This Declaration 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 the provisions**

**Section 1** sets out that the name of the Declaration is the *Social Security (Pension Bonus Scheme – Non-accruing Members) Declaration 2018*.

**Section 2** states that this Declaration commences on 1 April 2018.

**Section 3** states that the authority for making this Declaration is subsection 92Q(1) of the *Social Security Act 1991*.

**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 92V of the Act for a member of the Scheme; and

- (b) sections 45TS and 45TT of the *Veterans' Entitlements Act 1986* (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 1986*.

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 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** provides that a member of the Scheme is a non-accruing member if that person is a member, for the period specified in section 7, 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, prior to 1 July 2014:
  - (i) was a participant in the workforce; and
  - (ii) was not a registered member of the Scheme or the corresponding Scheme under Part IIIAB of the *Veterans' Entitlements Act*; and
  - (iii) had intended to become a registered member of the Scheme or the corresponding Scheme under Part IIIAB of the *Veterans' Entitlements Act*.

The wording in subsection 6(d) in this Declaration is different to the wording of the equivalent subsection in the 2007 Declaration. The wording has been amended to clarify that it is no longer possible to register for the Scheme after 1 July 2014. However, this amendment does not result in any practical changes and this provision would still allow a person whose partner had intended to become a registered member prior to 1 July 2014 to be considered a 'non-accruing' member.

- (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;

The words 'period of bereavement' are used, in paragraphs 6(g)(ii) and (iii) to distinguish from the defined term 'bereavement period' in subsection 21(2) of the Act. It is intended that a policy will be developed to provide guidance on the application of the term '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 1986*; 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 7** provides for the period in which a member of the Scheme is a non-accruing member. Subsection 7(1) provides that a member of the Scheme to whom one of the provisions of section 6 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 6.

Subsection 7(2) provides that a non-accruing period can begin prior to the registration of the Declaration. The backdating of this period is permitted by section 92Q(1A) of the Act. Section 12(2) of the *Legislation Act 2003* does not apply to limit the retrospective application of a Declaration made under section 92Q of the Act.

Subsection 7(3) provides that a member, to whom a paragraph in section 6 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 6(e) and (f) is 26 weeks. Item 2 specifies that the maximum period applicable to paragraphs 6(g), (h), and (i) is 13 weeks.

**Section 8** provides for members of the Scheme who were affected by Cyclone Larry. Section 8 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. This provision preserves the continuity of a person's accruing membership.

Subsection 8(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 8(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 8(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 8(1)(b).

A note at the end of subsection 8(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.

The Cyclone Larry provision is still included, as there may still be people who were affected by this cyclone and will need to rely on this provision.

**Schedule 1** repeals the *Social Security (Pension Bonus Scheme — Non-accruing Members) Declaration 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 Scheme – Non-accruing Members) Declaration 2018*

The *Social Security (Pension Bonus Scheme – Non-accruing Members) Declaration 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 Declaration is made under Section 92Q and Part 2.2A of the *Social Security Act 1991*.

This Declaration specifies the kinds of member of the Pension Bonus Scheme (the Scheme) who are non-accruing members throughout a period as provided in the Declaration. 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.

This Declaration will commence on 1 April 2018 following the repeal of the *Social Security (Pension Bonus Scheme – Non-accruing Members) Declaration 2007* (the 2007 Declaration) on that date. The 2007 Declaration ceases operation on 1 April 2018 due to the sunset provisions in the *Legislation Act 2003*. This Declaration is substantially in the same terms as the 2007 Declaration.

### **Human rights implications**

#### *Right to Social Security*

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

This 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. This Declaration is beneficial and therefore compatible with human rights.

### **Conclusion**

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

Kathryn Campbell  
Secretary of the Department of Social Services