

EXPLANATORY STATEMENT

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

Social Security (Administration) Act 1999
Social Security (Administration) (Delayed Lodgement of Claims for Pension Bonus)
Guidelines 2018

Purpose

Under subsection 17(6) of the *Social Security (Administration) Act 1999* (the Act), the Secretary is given the power to make guidelines setting out special circumstances for the purposes of subsection 17(5). The effect of these guidelines is to indicate (without doing so exclusively) special circumstances that may be sufficient for the Secretary to determine that a person's claim for pension bonus that is lodged after that person's claim for age pension is taken to have been made at the same time as the age pension claim.

Subsection 17(1) of the Act requires that a pension bonus claim is lodged together with a claim for age pension or in accordance with an invitation to claim under section 17(3).

The intention of these guidelines is to specify circumstances where a registered member of the pension bonus scheme makes a claim for pension bonus not at the same time of lodging their age pension claim. A claim for pension bonus if made within two years of their age pension claim, may be granted if a person was unable to place their claim for pension bonus due to certain failures, either by the Secretary or by the person, to meet the requirements for claims in subsection 17(1) of the Act. However, these circumstances are not intended to fall within the ambit of "special circumstances" if the person knowingly gives the Secretary incorrect information and this is the reason why the Secretary does not invite the person to make a claim under subsection 17(3) of the Act.

These Guidelines will commence on 1 April 2018 following the repeal of the *Social Security (Administration) (Delayed Lodgement of Claims for Pension Bonus) Guidelines 2007* on that date. The 2007 Guidelines cease operation on 1 April 2018 due to the sunset provisions in the *Legislation Act 2003*. These Guidelines are substantially in the same terms as the 2007 Guidelines.

These Guidelines are a legislative instrument for the purposes of the *Legislation Act 2003*.

Commencement

These Guidelines commence on 1 April 2018.

Consultation

The Department of Human Services and the Department of Veterans' Affairs were consulted during the preparation of this instrument. This was done to ensure a

co-ordinated and consistent approach to the treatment of claims for pension bonus under both the social security law and the *Veterans' Entitlements Act 1986*.

This instrument is beneficial to persons who are members of the pension bonus scheme because it increases the range of situations in which claims for pension bonus can be lodged. Public consultation was therefore seen as unnecessary.

Regulatory Impact Statement

This instrument does not require a Regulatory Impact Statement (RIS). This instrument 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 as a result of the effect of this instrument.

Explanation of Provisions

Section 1 states the name of the Guidelines.

Section 2 states that the Guidelines commence on 1 April 2018.

Section 3 states that the authority for making these Guidelines is subsection 17(6) of the *Social Security (Administration) Act 1999*.

Section 4 contains the interpretation of the term *Act* as it is used in the Guidelines. It means the *Social Security (Administration) Act 1999*.

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 that Schedule concerned, and any other item in that Schedule to this instrument has effect according to its terms.

Section 6 contains the guidelines for when special circumstances apply in relation to the lodgement of a person's claim for pension bonus by persons who are registered members of the pension bonus scheme when lodging a claim for age pension. The two circumstances specified intend to apply to claims for pension bonus within two years of the lodgement of a person's age pension claim.

The first circumstance is intended to apply where the Secretary should have invited, but did not invite, the person to make the claim for pension bonus according to subsection 17(3) of the Act. An invitation should have been made to the claimant because, among other things, the person's age pension claim was made in accordance with a form that did not require the claimant to disclose whether the person was a registered member of the pension bonus scheme or the corresponding scheme under Part IIIAB of the *Veterans' Entitlements Act 1986*.

However, this circumstance is not a "special circumstance" for the purposes of paragraph 17(5)(c) of the Act if the invitation was not offered to the person because the person knowingly gave the Secretary incorrect information that led the Secretary to conclude that the making of the invitation would be inappropriate.

The second circumstance is intended to apply where the person's age pension claim was made in accordance with a form that required the claimant to disclose whether the person was a registered member of the pension bonus scheme or the corresponding scheme under Part IIIAB of the *Veterans' Entitlements Act 1986*. This circumstance will apply where the claimant did not disclose that they were a member of that scheme, and the Secretary did not seek disclosure of that information before granting the claim for age pension.

Schedule 1 repeals the *Security (Administration) (Delayed Lodgement of Claims for Pension Bonus) Guidelines 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 (Administration) (Delayed Lodgement of Claims for Pension Bonus) Guidelines 2018

The *Social Security (Administration) (Delayed Lodgement of Claims for Pension Bonus) Guidelines 2018* (the Guidelines) are 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

These Guidelines are made under subsection 17(6) of the *Social Security (Administration) Act 1999* (the Act).

These Guidelines specify circumstances where a registered member of the pension bonus scheme makes a claim for pension bonus, not at the time of lodging their age pension claim, but within two years of their age pension claim due to a failure, either by the Secretary or by the person, to meet the requirements for claims in subsection 17(1) of the Act.

These Guidelines will commence on 1 April 2018 following the repeal of the *Social Security (Administration) (Delayed Lodgement of Claims for Pension Bonus) Guidelines 2007* on that date. The 2007 Guidelines cease operation on 1 April 2018 due to the sunset provisions in the *Legislation Act 2003*.

Human rights implications

Right to Social Security

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

These Guidelines allow a person who lodges a delayed claim for pension bonus, under certain circumstances, to be taken to have made the claim at the same time as the person claimed age pension, and are therefore compatible with human rights.

Conclusion

These Guidelines are compatible with human rights as they enable a person to access social security in the form of a pension bonus.

Kathryn Campbell
Secretary of the Department of Social Services