

# EXPLANATORY STATEMENT

## Military Superannuation and Benefits (Eligible Members) Amendment Declaration 2018

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 complete 20 years of service.

Part 8 of the Act was repealed under Schedule 4 of the *Defence Legislation Amendment Act (No. 1) 2005* (the amending Act). However, due to a saving provision in item 4 of Schedule 4 of the amending 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.

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

To be eligible for the retention benefit under the Act, a person must be an ‘eligible member’. An eligible member is defined in subsection 30(1) of the Act and includes a member declared by the Minister to be an eligible member (paragraph (f) of the definition).

The purpose of this instrument is amend the *Military Superannuation and Benefits (Eligible Members) Declaration 2018* to include an additional four members as eligible members.

Section 1 of this Determination sets out the manner in which this Determination may be cited.

Section 2 provides that this instrument commences on the day after it is registered on the Federal Register of Legislation.

Section 3 identifies paragraph (f) of the definition of **eligible member** in subsection 30(1) of the Act, as it continues to apply under item 4 of Schedule 4 to the amending Act, as the authority for making this instrument.

Section 4 provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

### Schedule 1 – Amendment to Military Superannuation and Benefits (Eligible Members) Declaration 2018

Section 1 amends the table in clause 1 of Schedule 2 to the *Military Superannuation and Benefits (Eligible Members) Declaration 2018*, which lists individuals who have been declared to be eligible members for the purpose of payment of a retention benefit. The table has been amended to include four additional members.

Consultation was undertaken with the three Australian Defence Force Career Management Agencies (who nominate individual members to be listed in the Schedule), the Defence Finance Office and the Office of Best Practice Regulation (OBPR) during the development of this Declaration. OBPR has advised that no further regulatory analysis is required as the impacts on business and individuals or the economy of the instrument are low.

**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.

# Statement of Compatibility with Human Rights

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

## ***Military Superannuation and Benefits (Eligible Members) Declaration 2018***

This Determination 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 Determination**

The purpose of this beneficial legislative Declaration is to declare four members of the inter-employment category eligible members.

### **Human rights implications**

*Right to the enjoyment of just and favourable conditions of work*

The protection of a person's right to remuneration engages Article 7 of the International Covenant on Economic, Social and Cultural Rights. Article 7 guarantees just and favourable conditions of work, including remuneration, safe and healthy conditions, equal opportunity and reasonable limitations.

Providing an additional financial benefit to members assists them to exercise their right to the enjoyment of just and favourable conditions of work.

### **Conclusion**

This Determination is compatible with human rights because it advances the protection of human rights.

Darren Chester, Minister for Defence Personnel