

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Families and Social Services

Social Security Act 1991

Social Security (Pension Loans Scheme – Age Component Amount) Determination 2019

Purpose

The *Social Security (Pension Loans Scheme – Age Component Amount) Determination 2019* (the Instrument) is made under subsection 1135A(3) of the *Social Security Act 1991* (the Act). This Instrument determines a person's age component amount for the purposes of subsection 1135A(3) of the Act.

Subsection 1135A(3) of the Act will, from 1 July 2019, provide that the Minister may, by legislative instrument, make a determination for the purposes of the following:

- (a) the definition of **age component amount** in subsection 1135A(1) of this Act;
- (b) the definition of **age component amount** in subsection 52ZCA(1) of the *Veterans' Entitlements Act 1986*.

Subsection 52ZCA(1) of the *Veterans' Entitlements Act 1986* will, from 1 July 2019, provide that a person's age component amount is 'the amount that is specified in a determination under subsection 1135A(3) of the *Social Security Act 1991*'.

The age component amounts set out in this Instrument are therefore to be used to determine a person's maximum loan amount for the purposes of both the pension loans scheme in Division 4 of Part 3.12 of the Act and the pension loans scheme in Subdivision E of Division 11 of Part IIIB of the *Veterans' Entitlements Act 1986*.

Background

The *Social Services and Other Legislation Amendment (Supporting Retirement Incomes) Act 2018* (Supporting Retirement Incomes Act) amended the Act and the *Veterans' Entitlements Act 1986* to provide that a person's 'age component amount' for the purposes of the pension loans scheme is to be determined in a legislative instrument made by the Minister under subsection 1135A(3) of the Act.

A person's age component amount (along with the value of the person's assets) is used in working out a person's maximum loan amount under section 1135A of the Act.

The maximum loan amount effectively sets a cap on how much a person can borrow under the pension loans scheme. When a debt owed by a person under the pension loans scheme exceeds their maximum loan amount the person ceases participation in the scheme (see section 1141 of the Act).

This Instrument contains a table of the same effect as the table that was formerly contained in subsection 1135A(3) of the Act before it was amended by the Supporting Retirement

Incomes Act. This table sets out the age component amount for participants in the pension loans scheme from 1 July 2019 onwards.

The inclusion of an instrument making power in the Act under which the Minister can determine the age component amount gives the Minister the flexibility to update these amounts as circumstances require. This Instrument does not change the age component amounts previously contained in the Act, before it was amended by the Supporting Retirement Incomes Act.

Commencement

This Instrument commences on 1 July 2019, the same day as the Supporting Retirement Incomes Act commences.

Section 4 of the *Acts Interpretation Act 1901* applies to this Instrument. This is because the Instrument is made before the commencement of the Supporting Retirement Incomes Act but after that Act received Royal Assent. The Supporting Retirement Incomes Act will, from 1 July 2019, repeal subsection 1135A(3) of the Act and substitutes a new subsection that contains the power to make this Instrument.

Consultation

Consultation was undertaken with the Department of Human Services and the Department of Veterans' Affairs.

Regulation Impact Statement (RIS)

A Regulation Impact Statement is not required as the Determination facilitates only an administrative change. The Determination does not change the age component amounts previously contained in the Act, before it was amended by the Supporting Retirement Incomes Act, and there is no regulatory impact on people accessing the pension loans scheme.

Explanation of the provisions

Section 1 provides that the name of this instrument is the *Social Security (Pension Loans Scheme – Age Component Amount) Determination 2019*.

Section 2 provides that the Instrument commences on 1 July 2019.

Section 3 provides that the authority for making this instrument is subsection 1135A(3) of the Act.

Section 4 provides the age component amount for the purposes of the pension loans scheme in the Act and the pension loans scheme in the *Veterans' Entitlements Act 1986*.

Subsection 4(1) provides that the age component amount is the amount specified in column 2 of the Table in subsection (2), in relation to:

- (a) if the person is not a member of a couple - the age specified in column 1 that the person turned on his or her last birthday; or
- (b) if the person is a member of a couple - the age specified in column 1 that the younger member of the couple turned on his or her last birthday.

The note to section 4 provides that subsection 52ZCA(1) of the *Veterans' Entitlements Act 1986* provides that a person's age component amount is '*the amount that is specified in a determination under subsection 1135A(3) of the Social Security Act 1991*'.

The age component amounts specified in the Table also apply to the pension loans scheme under the *Veterans' Entitlements Act 1986*.

Subsection 4(2) contains the table referred to in subsection 4(1). This table sets out the specific age component amounts for people aged 55 to 90.

It also provides that for people aged 54 and younger the age component amount will be the age component amount for a person aged 55.

Further, this table also provides that for people aged 91 and older the age component amount will be the age component amount for a person aged 90.

Statement of Compatibility with Human Rights

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

Social Security (Pension Loans Scheme – Age Component Amount) Determination 2019

The 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 legislative instrument

The effect of the Determination is to provide the Minister for Families and Social Services with the flexibility to update the Age Component Amounts, as circumstances require, for the purpose of the pension loans scheme under social security law.

This Instrument contains a table of the same effect as the table that was formerly contained in subsection 1135A(3) of the Act before it was amended by the Supporting Retirement Incomes Act. This table sets out the age component amount for participants in the pension loans scheme from 1 July 2019 onwards.

This Instrument does not change the age component amounts previously contained in the Act, before it was amended by the Supporting Retirement Incomes Act.

Human rights implications

The Determination engages Article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) which recognises *‘the right of everyone to social security, including social insurance’*. The ICESCR requires a country to, within its maximum available resources, provide a minimum essential level of benefits to all individuals and families that will enable them to acquire at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education.

This Determination also engages Article 11 of the ICESCR which recognizes the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.

The Determination operates to ensure people who benefit financially from the pension loans scheme are subject to a maximum loan amount that can be borrowed having regard to their age and life expectancy. When a debt owed by a person under the pension loans scheme exceeds their maximum loan amount the person ceases participation in the scheme. This minimises the risk of people accruing a debt that exceeds the value of their assets. The Determination does not limit a person’s ability to access social security income support payments. It only operates to limit the amount a person can borrow under the pension loans scheme.

Conclusion

This Determination does not limit a person's right to social security and supports a person's human right to an adequate and improving standard of living.

The Hon Paul Fletcher MP, Minister for Families and Social Services