

EXPLANATORY STATEMENT

Issued by the authority of the Acting Branch Manager, Older Australians Branch,
Department of Social Services, Delegate of the Secretary of the Department of
Social Services

Social Security Act 1991

*Social Security (Pension Bonus Scheme – Non-accruing Members) Amendment
Declaration 2020*

Purpose

Subsection 92Q(1) of the *Social Security Act 1991* (**the Act**) allows the Secretary (or delegate) 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 throughout a period. The Social Security (Pension Bonus Scheme — Non-accruing Members) Declaration 2018 (**the 2018 Declaration**) was made for this purpose.

Under Part 2.2A of the Act, the Scheme allows persons 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 will accrue 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. A time limit is imposed under the *Social Security (Administration) Act 1999* (sections 20 to 26) that requires a person who has accrued their last bonus period to claim their bonus, effectively ending their membership of the Scheme.

The Social Security (Pension Bonus Scheme – Non-accruing Members) Amendment Declaration 2020 (**the instrument**) amends the 2018 Declaration to specify a new class of members of the Scheme who are non-accruing members.

The intention of the instrument is to enable certain people registered with the Scheme to be taken to be non-accruing members of the Scheme for a specified period. Where a person is unable to work due to the impact of the coronavirus known as COVID-19, and as a result, is unable to pass the work test in order to accrue a bonus period, the person will be taken to be a non-accruing member for that period and will be able to continue in the Scheme. This will also apply if the person is over 75 (a 'post-75 member'). Although post-75 members can no longer accrue further bonus periods, they still need to pass the work test to continue to be eligible for a bonus. The instrument also applies to a person whose partner is a member of the Scheme or is a member of the corresponding scheme under the *Veterans' Entitlements Act 1986* ('the Veterans' Entitlements Act').

The instrument also makes some technical amendments to other elements of the 2018 Declaration.

The instrument is a legislative instrument that is subject to disallowance.

Commencement

The instrument commences the day after it is registered on the Federal Register of Legislation.

The instrument will operate in relation to a period that begins prior to the date on which the instrument is registered. However this is expressly permitted by subsection 92Q(1A) of the Act. Subsection 92Q(1B) provides that subsection 12(2) of the *Legislation Act 2003*, which may otherwise limit the retrospective application of the instrument, does not apply.

The instrument is beneficial in any event as it is limited to periods when the person or their partner who meets certain criteria was unable to pass the work test and could not accrue a bonus period.

Authority

The instrument is made under subsection 92Q(1) of the Act.

The Secretary has delegated her powers under subsection 92Q(1) of the Act to senior executive employees in the Department of Social Services, including the Branch Manager, Older Australians Branch.

The instrument amends the 2018 Declaration. Subsection 33(3) of the *Acts Interpretation Act 1901* provides that the power to make a legislative instrument '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'. In making the instrument, the Secretary (or delegate) is relying upon this subsection in conjunction with the instrument-making power in the Act.

Consultation

Consultation was not undertaken with registered scheme members likely to be affected by this Declaration as many would not have updated their contact details with Services Australia since their registration, from between six years to over 20 years ago. This Declaration provides beneficial treatment to registered members where their gainful work is adversely affected by COVID-19. Consultation has occurred with the Department of Veterans' Affairs as they have a similar Pension Bonus Scheme.

Regulation Impact Statement (RIS)

The Office of Best Practice Regulation has stated that a Regulation Impact Statement is not required as the instrument is unlikely to have regulatory impact on businesses, individuals or community organisations (ID 43137).

Explanation of the provisions

Section 1 provides that the name of the instrument is the *Social Security (Pension Bonus Scheme – Non-accruing Members) Amendment Declaration 2020*.

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

Section 3 provides that the instrument is made under subsection 92Q(1) of the Act.

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

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

Schedule 1 amends the Social Security (Pension Bonus Scheme — Non-accruing Members) Declaration 2018.

Item 1 repeals and replaces section 4. The note to the new section 4 sets out a number of expressions used in the Declaration that are defined in the Act. New section 4 sets out definitions of certain terms used in the Declaration.

Items 2 to 6, and 8 to 9 are technical amendments that are not intended to change the meaning of affected sections of the 2018 Declaration:

- **Item 2** amends section 6 to better match the wording to the instrument-making power under the Act so that the period a person is declared to be a non-accruing member is referenced in the operative provision.
- **Items 3 and 4** amend paragraphs 6(b) and 6(c) to remove Act references as the terms defined in those paragraphs are included in the list of terms in the new section 4 which references definitions in the Act.
- **Item 5** amends paragraphs 6(e) and (f) to omit the words “would not” and substitute “is unable to” to change the language to present tense and align the form of the paragraphs with the words used in paragraph 6(h).
- **Items 6 and 8** repeal and replace paragraphs 6(i) and 8(1)(b) respectively to clarify the previous wording that a person is a non-accruing member if their partner is a member of either the Scheme or a corresponding scheme under the Veterans’ Entitlements Act, and is unable to pass the work test for a bonus period because the amount of gainful work available in the bonus period is reduced by a major disaster or the effects of Cyclone Larry respectively. This does not change the substantive effect of these sections. ‘Passing the work test’ and ‘gainful work’ are both defined in the new section 4 of the instrument, and take their meaning from Part 2.2A of the Act.
- **Item 9** amends subsection 8(2) to better match the wording to the instrument-making power under the Act so that the period a person is declared to be a non-accruing member is referenced in the operative provision.

Item 7 inserts new subsection 7(2A) to include a period during which preparations are made to manage an impending disaster in the period during which a member may be a non-accruing member (if they meet the requirements mentioned in paragraph 6(h) or (i)). The new subsection sets out an example, which is the period during which an evacuation of an area occurs shortly before a cyclone is predicted to reach the area. The note to new subsection 7(2A) explains that paragraphs 6(h) and (i) deal with when a member or their partner is unable to pass the work test because of a reduction in the amount of gainful work available due to a major disaster.

Item 10 adds new section 9 which sets out provisions in relation to the impact of COVID-19.

New subsection 9(1) provides that for the purposes of subsection 92Q(1) of the Act, a member of the Scheme covered by new subsection 9(2) will be a non-accruing member for the period ascertained in accordance with new subsection 9(3).

New subsection 9(2) covers a member of the Scheme if they, or their partner who is a member of the Scheme or the corresponding Scheme under the Veterans' Entitlements Act, is unable to pass the work test for a bonus period due to the impact of COVID-19.

New subsection 9(3) provides that the person is a non-accruing member during so much of the period beginning 30 March 2020 and ending on 31 March 2021 during which the member or their partner (if they meet the requirements under new paragraph 9(2)(b)) was unable to pass the work test. The period aligns with the commencement of JobKeeper Payment and announced future extension of the Coronavirus Supplement and other temporary measures under the social security and family assistance law.

Example

Alicia worked as a shop assistant in a window furnishings store. On 1 April 2020, during the COVID-19 pandemic, the store she worked for had to close temporarily due to lockdown restrictions. This meant Alicia could no longer work all of her shifts which would have otherwise enabled her to pass the work test. Given the lockdown restrictions and the economic effects of the COVID-19 pandemic on other businesses, Alicia was also not able to seek other gainful work to supplement her lost shifts at the store.

Since 1 November 2020, the window furnishings store which had previously temporarily closed, has re-opened to their full trading hours. As a result, Alicia has been able to work the same number of shifts as prior to the COVID-19 pandemic lockdown restrictions.

Alicia registered for the Scheme on 1 April 2006. As a result, 1 April each year is the anniversary of her registration. This means that Alicia's pension bonus year runs from 1 April to 31 March each year which is the period during which Alicia must work at least 960 hours. Each registered member has a different period for their pension bonus year, depending on their date of registration in the Scheme.

For the purposes of subsection 92Q(1) of the Act, Alicia will be treated by new section 9 of the instrument as a non-accruing member of the Scheme for the period 1 April 2020 to 31 March 2021 inclusive as she was unable to pass the work test and accrue a bonus period due to the impact of the COVID-19 pandemic.

**Andrea Wallace-Green, Acting Branch Manager, Older Australians Branch,
Department of Social Services**

Statement of Compatibility with Human Rights

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

Social Security (Pension Bonus Scheme – Non-accruing Members) Amendment Declaration 2020

The Social Security (Pension Bonus Scheme – Non-accruing Members) Amendment Declaration 2020 (**the instrument**) 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 instrument is made under subsection 92Q(1) of the *Social Security Act 1991*.

The instrument specifies the kinds of members of the Pension Bonus Scheme (**the Scheme**) who are taken to be non-accruing members throughout a period as provided in the instrument. 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 instrument is to enable people registered with the Scheme to be non-accruing members of the Scheme for a specified maximum period in certain circumstances and during a time-limited period (30 March 2020 to 31 March 2021) of the COVID-19 pandemic. The effect of the instrument is that these particular members are not required to pass the work test for that period and can continue in the Scheme. This means that the period specified in the instrument in relation to the particular circumstance will, in effect, put on hold the requirement for members to pass the work test. A person does not, however, accrue a bonus during a period of non-accruing membership.

The instrument will commence the day after it is registered on the Federal Register of Legislation.

Human rights implications

Right to Social Security

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

The instrument will enable people registered with the Scheme to continue as non-accruing members of the Scheme for a specified period in line with the Coronavirus Supplement and other temporary economic supports provided in the social services

portfolio in response to the COVID-19 pandemic. Members would have followed all the requirements of the Scheme (many of whom have worked more than 10 years past Age Pension age) and would have met the work test up until the COVID-19 pandemic occurred. The instrument will ensure that members are not disadvantaged as a result of the COVID-19 pandemic.

This instrument is beneficial and therefore compatible with human rights.

Right to Work

The instrument engages the human right to work contained in Article 6 of the ICESCR. The right to work includes the right of everyone to gain his or her living by work which he freely chooses or accepts.

Working brings economic and social benefits to the individual. The government encourages people to work past the Age Pension age. All members are at least 74 years of age and have continued to work past Age Pension age in good faith. These members would have followed all the requirements of the Scheme and would have passed the work test for each year until the COVID-19 pandemic occurred.

By allowing members to continue in the Scheme and accrue further bonus periods in the future or if the member is over 75 years, to continue working to meet the work test, the instrument is beneficial and supports the right to work.

Conclusion

The instrument is beneficial and compatible with human rights as it enables a person to continue working if they wish to do so and to access social security in the form of a pension bonus.

**Andrea Wallace-Green, Acting Branch Manager, Older Australians Branch,
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