

# EXPLANATORY STATEMENT

## Military Superannuation and Benefits (Eligible Members) Declaration 2022

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 get to 20 years of service.

Part 8 of the Act was repealed under Schedule 4 of the *Defence Legislation Amendment Act (No. 1) 2005*. However, due to a saving provision in item 4 of Schedule 4 of the amendment 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 paragraph (f) of the definition includes a member declared by the Minister to be an eligible member.

The purposes of this instrument are as follows.

- It repeals *Military Superannuation and Benefits (Eligible Members) Declaration 2020*.
- It declares the eligible members for the purpose of the Act who were provided under the repealed Declaration.
- It declares an additional three individual members as eligible members.

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

Section 2 provides that this instrument commences on the day after it is registered.

Section 3 provides that this instrument is made under paragraph 30(1)(f) of the definition of **eligible member** of the *Military Superannuation and Benefits Act 1991*, as it continues to apply under item 4 to the *Defence Legislation Amendment Act (No. 1) 2005*.

Section 4 provides that the instrument that is specified in Schedule 3 to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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—Eligible members by employment categories etc.

Schedule 1 to this instrument lists the employment categories and ranks that a member may hold in order to be part of the class of member to whom this Declaration applies.

### Schedule 2—Individual eligible members

Schedule 2 to this instrument lists individuals who have been declared to be eligible members for the purpose of payment of a retention benefit. The list includes an additional three members who were not included in *Military Superannuation and Benefits (Eligible Members) Declaration 2020*.

### Schedule 3—Repeal

Schedule 3 repeals *Military Superannuation and Benefits (Eligible Members) Declaration 2020*.

## Consultation

Consultation was undertaken during the development of this Declaration with the three Australian Defence Force Personnel Management Agencies (who nominate individual members to be listed in the Schedule) and Defence Legal.

**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 2022***

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 purposes of this instrument are as follows.

- It repeals *Military Superannuation and Benefits (Eligible Members) Declaration 2020*.
- It declares the eligible members for the purpose of the Act who were provided under the repealed Declaration.
- It declares an additional three individual members as 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.

#### ***Assessment of compatibility***

This Declaration provides an additional financial benefit to eligible members that assists them to exercise their right to the enjoyment of just and favourable conditions of work.

### **Conclusion**

This Determination is compatible with human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.