EXPLANATORY STATEMENT

Military Rehabilitation and Compensation Act
Education and Training Scheme (Scholarships)
Instrument 2011

EMPOWERING PROVISION

Section 258 of the Military Rehabilitation and Compensation Act 2004 (the Act).

PURPOSE

The attached instrument (M54/2011) amends the Military Rehabilitation and Compensation Act Education and Training Scheme (MRCAETS).

The MRCAETS is a legislative instrument made under section 258 of the Act and sets out the circumstances in which the Military Rehabilitation and Compensation Commission (Commission) may accept financial liability for education and training provided to eligible young people (eligible child) who are dependants of certain members or former members of the Defence Force.

The purpose of the attached instrument is to adjust the amount of certain scholarships paid to eligible children. The scholarships in question are:

- Student start-up scholarship payment
- Relocation scholarship payment

The measure implements, in relation to education schemes managed by the Department of Veterans’ Affairs (DVA), the Government’s response to the Review Into the Impact of the Australian Government’s Student Income Support Arrangements tabled in the Parliament on 14 September 2011).

The changes to the relevant scholarships are almost identical to changes made to similar scholarships granted by the Department of Education, Employment and Workplace Relations (DEEWR) under the Social Security Act 1991 (SSA).

However because DVA’s relocation scholarship, unlike the DEEWR relocation scholarship, is not means tested, the independence and geographic tests associated with the DEEWR relocation scholarship...
(resulting in students in non-regional areas receiving lower amounts of the scholarship than students in regional areas) do not apply to the DVA relocation scholarship.

This means that all recipients of the DVA relocation scholarship, whether they reside in a regional area or not, will receive the new higher rate that, under the SSA, applies only to students of regional areas.

Apart from this difference, the DVA and DEEWR positions in relation to the scholarships are the same.

The adjusted values of the scholarships (with effect from 1 January 2012) are:

- start-up scholarship – $1,025 (from $1,097 in 2011);
- relocation scholarship - $4,000 for first year away from home (from $4,124 in 2011); $2000 for second and third year away from home (from $1,031 in 2011); $1000 for each subsequent year away from home (from $1,031 in 2011).

RETROSPECTIVITY

Some aspects of the instrument may be retrospective. For the purposes of subsection 12(2) of the Legislative Instruments Act 2003 (instrument that commences before registration not to negatively affect a person) the retrospective aspects of the attached instrument favour a person. They enable higher Scholarship amounts to be backdated to the date the instrument commences (1 January 2012) if it is registered after that date.

CONSULTATION

Yes – DEEWR which is making similar adjustments to virtually identical scholarships provided under the Social Security Act 1991.

Consultation was via e-mail, telephone conversations and meetings.

DOCUMENTS INCORPORATED-BY-REFERENCE

No.

FURTHER EXPLANATION

Attachment A.
Attachment A

<table>
<thead>
<tr>
<th>Items</th>
<th>Explanation</th>
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<tbody>
<tr>
<td>[1]</td>
<td>sets out the name of the instrument.</td>
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[2] provides that the instrument does not commence if the relevant parts of the legislation introducing similar adjustments to the DEEWR Scholarships (Social Security Amendment (Student Income Support Reforms) Act 2011) have not commenced.

specifies that subject to the relevant parts of the Social Security Amendment (Student Income Support Reforms) Act 2011 commencing, the attached instrument commences, or is taken to have commenced, on 1 January 2012.

[3] sets out how the principal instrument (MRCAETS) as varied by the attached instrument applies to the adjusted amount of the relocation scholarship or start-up scholarship and to debts to the Commonwealth arising from the scholarships or, in some cases, does not apply until certain events have occurred.

(1) is about ensuring the attached instrument does not contravene subsection 12(2) of the Legislative Instruments Act 2003.

The instrument commences on 1 January 2012 but timing might result in it being registered after, rather than before, that date. Under subsection 12(2) of the Legislative Instruments Act 2003 if an instrument commences before registration it must not disadvantage a person.

In some cases the instrument reduces the amount of relocation scholarship or start-up scholarship for a student i.e. disadvantages a person.

Thus on or after 1 January 2012, putting aside the application provision ([3](1)), some students would receive a lesser amount of relocation scholarship or start-up scholarship than they would have received on or after 1 January 2012 had the attached instrument not commenced.

This situation is legally acceptable provided the instrument is registered before it commences on 1 January 2012. However the instrument may be registered after it commences on 1 January 2012 and under subsection 12(2) of the Legislative Instruments Act 2003.
In Instruments Act 2003 it is not legally acceptable for a person to be disadvantaged by a legislative instrument that commences before it is registered.

In order to provide for the situation where the instrument commences before registration and ensure a student is not disadvantaged and therefore the Legislative Instruments Act 2003 not contravened, paragraph [3](1) states that in the case of a person who would receive a lesser amount of relocation scholarship payment or start-up scholarship payment on or after 1 January 2012, because of the instrument, than the person would have received had the instrument not commenced, the amount of relocation scholarship payment or start-up scholarship payment payable to the person is the amount worked out under the MRCAETS as if it had not been varied by the instrument but when the instrument is registered, the amount of relocation scholarship payment or start-up scholarship payment payable to the person is that worked out under the MRCAETS as varied by the instrument.

Thus, if a person is, before the date of registration of the instrument, eligible for the higher rate, even though it may not have been paid at the date of registration, the higher rate is payable.

(2) ensures that paragraph 7.3.7 only applies to amounts of relocation scholarship payments for which the qualification times are on or after 1 January 2012 which means students who receive a relocation scholarship before 1 January 2012 are not affected by the adjustments to the scholarship that commence on 1 January 2012.

The provision is subject to [3](1) and therefore excludes from its scope, relocation scholarship payments covered by paragraph [3](1) which means that even though qualification times for those payments are on or after 1 January 2012, paragraph 7.3.7 does not apply to them which means the payments are at the level they would have been had the MRCAETS not been varied by the attached instrument.

(3) provides that when determining whether new paragraph 7.3.7(1) applies it is necessary to take account of payments and value received before, on or after 1 January 2012 (the commencement of the adjusted scholarship payments).
(4) provides that when determining whether new paragraph 7.3.7(4) applies it is necessary to take account of prior years occurring before or after 1 January 2012 (the commencement of the adjusted scholarship payments).

(5) applies the revised debt provisions (7.3.8) only to debts that arise from scholarship payments made on or after 1 January 2012 (the commencement of the adjusted scholarship payments).

Schedule

1. revokes paragraph 7.2.7 of the MRCAETS and inserts new paragraph 7.2.7. New paragraph 7.2.7 resets the value of the student start-up scholarship which, from 1 January 2012, will be $1025 per payment. Eligible students will therefore receive a total payment in 2012 of $2050, as the student start-up scholarship payments are paid to students twice-yearly.

The student start-up scholarship is indexed and where the amount for a student start-up scholarship payment under the SSA is higher (SSA amount), the amount of the student start-up scholarship payment is equivalent to the SSA amount.

2. revokes paragraphs 7.3.7-7.3.10 and inserts new paragraph 7.3.7.

Consistent with former paragraph 7.3.7, under new paragraph 7.3.7(1) a person’s relocation scholarship amount will be $4000 unless the person has previously received a “student relocation payment” or, while undertaking a course included in the definition of “approved scholarship course”, was receiving a homeless student education allowance or a living away from home allowance for a tertiary student).

The term “student relocation payment” is defined in new paragraph 7.3.7(5) and captures the payments that are equivalent to a relocation scholarship.

These mirror the comparable provisions in the former paragraph 7.3.4. The result is identical to the current situation, where a person who has already received a relocation scholarship payment or equivalent (i.e. a “student relocation payment”) is not entitled to the $4000 relocation scholarship payment amount.
A person will not be eligible for the $4000 payment amount in new paragraph 7.3.7(1) where they have, at any time before the calendar year containing the qualification time, undertaken full-time study in what would have been an “approved scholarship course” had the person undertaken it at the qualification time, and they were either receiving a homeless student education allowance under the MRCAETS or receiving a living away from home allowance for a tertiary student at a time while the person was undertaking the study and which time was also more than 6 months before the qualification time (new paragraph 7.3.7(2)(b)).

The purpose of this provision is to replicate the former exception to the $4000 relocation scholarship payment amount in the former paragraph 7.3.8(b). However, the exception is broadened somewhat to capture people who were studying approved scholarship courses (or courses that would become approved scholarship courses) in calendar years earlier than the calendar year before the year in which the person qualified for a relocation scholarship payment.

Proposed paragraph 7.3.7(3) provides for the usual amount of a relocation scholarship payment. This amount is $1000, and is the amount a person is entitled to receive if the person is not entitled to the $4000 payment under paragraph 7.3.7(1) or the $2000 payment under paragraph 7.3.7(4).

Proposed paragraph 7.3.7(4) is the key provision for the new paragraph 7.3.7. In recognition of the additional barriers and high costs facing young people who need to relocate in order to undertake higher education, this provision is intended to provide eligible relocation scholarship recipients with higher rates of assistance ($2000 in 2012) in their second and third year of living away to study.

A person is entitled to a $2000 relocation scholarship amount if:

- the person was undertaking full-time study in a course (that is an approved scholarship course at the time the person qualifies for a relocation scholarship payment) in a calendar year before the year in which they qualify for a relocation scholarship payment; and
- at the time the person was undertaking that study (i.e. in that prior year), the person:
*was in receipt of a homeless student education allowance under the MRCAETS; or

*did not receive a homeless student education allowance under the MRCAETS but received, under the MRCAETS, a living away from home allowance for a tertiary student or a double orphan allowance for a tertiary student; or

*received a student relocation payment (see new subparagraph 7.3.7(5)).

The operation of paragraph 7.3.7(4)(b) – in particular its reference to “in 1 or 2 (but no more) of the prior years” – ensures that the person is only entitled to the $2000 payment no more than twice.

Paragraph 7.3.7 (5) defines the term student relocation payment for the purposes of paragraph 7.3.7. As mentioned above, the definition of student relocation payment is identical to the list of kinds of payments that, under the former provisions, make a recipient ineligible for the $4000 relocation scholarship payment.

**Paragraph 7.3.8** substitutes former paragraph 7.3.10 which concerns debts arising in respect of scholarship payments.

Paragraph 7.3.8 clarifies the circumstances in which a debt arises in respect of scholarship payments where a person does not either start or continue to undertake an approved scholarship course.

Previously, under former paragraph 7.3.10, a person would incur a debt to the Commonwealth where:

- he or she receives a student start up scholarship or relocation scholarship payment because he or she proposes to undertake an approved scholarship course and does not start to undertake the course (unless this failure to undertake the course is due to exceptional circumstances beyond the person’s control); or

- he or she receives a student start up scholarship or relocation scholarship payment because he or she proposes to undertake an approved scholarship course and, although the person starts to undertake the course, is no longer undertaking it 35
days after the course commences (unless this failure to be undertaking the course is due to exceptional circumstances beyond the person’s control); or

- he or she receives a student start up scholarship or relocation scholarship payment because he or she is undertaking an approved scholarship course, but is no longer undertaking it 35 days after qualifying for the payment (unless this failure to be undertaking the course is due to exceptional circumstances beyond the person’s control).

New paragraph 7.3.8 clarifies:

- that a person does not have to be in the same approved scholarship course at the end of the 35 day period described in paragraph 7.3.8 for which they qualified for the scholarship payment in order to retain it (instead they simply have to be in an approved scholarship course at the end of the 35 day period); and
- that a person must be in full-time study (in an approved scholarship course) at the end of the 35 day period in order to retain the scholarship payment.

3. enables the order of the provisions of the MRCAETS to be rearranged to accommodate the variations made by the attached instrument.