EXPLANATORY STATEMENT

Select Legislative Instrument No. 40, 2015
Issued by the Authority of the Minister for Veterans' Affairs

_Veterans’ Entitlements Act 1986_

_Veterans’ Entitlements (DFISA-like Payment) Regulation 2015_

Section 216 of the _Veterans’ Entitlements Act 1986_ provides, in part, that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters which are by the Act required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The purpose of the _Veterans’ Entitlements (DFISA-like Payment) Regulation 2015_ (the new Regulation) is to revise the _Veterans’ Entitlements (DFISA-like Payment) Regulations 2005_ (the former regulations). The former regulations were listed for automatic repeal on 1 April 2015 under the “sunsetting provisions” of the _Legislative Instruments Act 2003_.

The new Regulation provides for an income support payment (DFISA-like payment) to be paid when a person’s primary payment is reduced or not payable due to the inclusion of an adjusted disability pension from the Department of Veterans’ Affairs (DVA) in the means test. The DFISA-like payment represents the difference in amounts between what the person received and, generally speaking, what the person would have received if the person’s adjusted disability pension had not been assessed as income.

DVA reviewed the former regulations for sunsetting purposes and determined they are still required albeit covering substantially less payments as most of the primary payments are no longer paid. The ABSTUDY living allowance is the only primary payment remaining in the new Regulation.

Additionally, the new regulation will ensure that people who are eligible for the ABSTUDY living allowance also retain eligibility for any secondary benefits that may not be payable or granted due to the inclusion of an adjusted disability pension in the means test.

Subsection 26(1B) of the _Legislative Instruments Act 2003_ provides that the requirement for an explanatory statement to explain the purpose and operation of an instrument may be met by an explanation that the instrument replaces a specified earlier legislative instrument or a specified provision of an earlier legislative instrument and is the same in substance as the specified instrument or provision.

A significant amount of redundant material, primarily relating to primary payments that no longer need to be included in the new Regulation, has been excised from the
new Regulation. The remaining material remains virtually the same in substance as that in the former regulations.

Details of the new Regulation are set out in the Attachment.

Consultation

Yes - the Department of Agriculture was consulted to confirm certain relevant payments formerly made by that Agency, and referred to in the former regulations, are no longer paid.

Noting that paragraph 26(1A)(d) of the Legislative Instruments Act 2003 requires an Explanatory Statement for a legislative instrument to contain a description of the nature of any consultation, the nature of the consultation in the present case was communication by telephone and electronic mail.

Retrospectivity

None.

Documents Incorporated-by-Reference

No.

Human Rights Statement


The attached legislative instrument does engage an applicable right or freedom. It relates to the Right to Social Security contained in article 9 of the International Covenant on Economic Social and Cultural Rights.

The Right to Social Security is engaged and promoted by the attached instrument in that it enables a compensation payment (DFISA-like payment) to be made to people who miss out in whole or in part on the ABSTUDY Living Allowance (an income support payment) because the person receives an adjusted disability pension from the Department of Veterans’ Affairs and that pension is assessed as income in the means test for the ABSTUDY Living Allowance.

The DFISA-like payment represents the difference in amounts between what the person received by way of an ABSTUDY Living Allowance (if anything) and, generally speaking, what the person would have received if the person’s adjusted disability pension had not been assessed as income.

Conclusion

The attached legislative instrument is considered to be compatible with the human right to social security because it enables a section of the Community to be provided with an income support payment.

Rule-Maker
The Minister for Veterans’ Affairs
ATTACHMENT

Details of the Veterans’ Entitlements (DFISA-like Payment) Regulation 2015

Section 1 – Name of Regulation

This section provides that the title of the Regulation is the Veterans’ Entitlements (DFISA-like Payment) Regulation 2015.

Section 2 – Commencement

This section provides the Regulation commences on the day after it is registered.

Section 3 – Authority

This section provides that the Veterans’ Entitlements (DFISA-like Payment) Regulation 2015 is made under the Veterans’ Entitlements Act 1986.

Section 4 - Purpose

This section sets out the purpose of the Regulation.

Section 5 - Definitions

This section defines the terms used in the Regulation.

References to payments that are no longer being paid have been removed.

Section 6 – Eligibility for DFISA –like payment

This section sets out the eligibility criteria for a DFISA-like payment to a person on the commencement of the Regulation.

Section 7 – Rate of DFISA-like payment

This section describes the means for working out the rate of DFISA-like payment that is payable to an eligible person.

Section 8 – Payment of DFISA-like payment in arrears and by instalments

This section enables a DFISA-like payment to be paid in arrears and by instalments and specifies the payday that the instalment is to be paid.

Section 9 – Eligibility for associated payments
This section deals with eligibility for associated payments. Associated payments are payable to a person to whom DFISA-like payments are payable but whose primary payment is not payable because of adjusted disability pension.

**Section 10 – Rate of associated payment**

This section sets out the rate of associated payment that is payable to an eligible person and states that the associated non-financial benefit for an eligible person is the secondary non-financial benefit that would have been provided to the person but for the primary payment not being payable to the person because adjusted disability pension was payable to the person.

**Section 11 – Eligibility for associated non-financial benefits**

This section sets out the eligibility criteria for provision of associated non-financial benefits.

**Section 12 – Provision of associated non-financial benefit**

This section states that the associated non-financial benefit for a person eligible for such a benefit on the day is the secondary non-financial benefit that would have been provided to the person but for the primary payment not being payable to the person because adjusted disability pension was payable to the person.

**Section 13 – Payment into bank account**

This section sets out the procedures for paying DFISA-like payments or associated payments into a bank account.

**Section 14 – Deductions from DFISA-like payment or associated payment because of notice from the Commissioner of Taxation**

This section deals with the situation where the Commissioner of Taxation issues a notice to deduct tax from a person’s DFISA-like payment or associated payment. In this situation the Repatriation Commission must, in accordance with Subdivision 260-A in Schedule 1 to the *Taxation Administration Act 1953*, direct the relevant officials in DVA to make the appropriate deductions from instalments of DFISA-like payment, or from an amount of associated payment, payable to the beneficiary concerned and pay the amount deducted to the Commissioner of Taxation.

Subdivision 260-A in Schedule 1 to the *Taxation Administration Act 1953* enables the Commissioner of Taxation to, among other things, give notice to an entity (eg the Repatriation Commission) by whom money is due or accruing to the debtor (eg recipient of DFISA-like payment or an associated payment) to pay to the Commissioner of Taxation the amount specified in the notice.

**Section 15 – Compliance with requirements of relevant Commonwealth program**
This section imposes obligations on those recipients of DFISA-like payment who do not receive any amount of a relevant primary payment.

This section is necessary because people who receive primary payments are often required to comply with obligations, for example, to provide certain reports.