

## EXPLANATORY STATEMENT

### **Military Rehabilitation and Compensation Act Education and Training Scheme 2004**

#### **EMPOWERING PROVISION**

Subsection 258(5) of the *Military Rehabilitation and Compensation Act 2004* (the Act).

#### **PURPOSE**

The attached instrument (2015 No. MRCC 43) revokes and re-makes the *Military Rehabilitation and Compensation Act Education and Training Scheme 2004* (MRCAETS or the Scheme) for sunseting purposes. On 1 October 2015 the MRCAETS would have “sunsetting” (expired) unless re-made.

The MRCAETS is a legislative instrument which sets out the circumstances in which education and training may be provided to eligible children of members or former members of the Defence Force. Under the Scheme eligible children are provided with educational assistance comprised chiefly of educational allowances. Provision is also made for special assistance and additional tuition to be provided in appropriate cases.

In accordance with the sunseting principles (agencies to review sunseting legislative instruments to determine if they are still needed and, if they are, whether they are fit-for-purpose) the Department of Veterans’ Affairs (DVA) reviewed the MRCAETS.

DVA decided the Scheme is still required. DVA then considered whether the MRCAETS was “fit-for-purpose” and decided that, essentially, the MRCAETS reasonably implements its objective (to provide education and training to eligible children of members or former members of the Defence Force) but that a number of refinements were necessary.

Accordingly the MRCAETS has been re-made and, apart from the changes set out below, is the same in substance as the former MRCAETS.

It should be noted that subsection 26(1B) of the *Legislative Instruments Act 2003* (as it was known on 1 May 2015) 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.

The following changes have been made to the MRCAETS:

- clarification that a course of education includes an apprenticeship or traineeship.
- upgrading of the education allowance payable to students studying overseas from the “at home allowance” to the higher paying “away from home allowance”.

- specifying the minimum age for a child in order for the child to be considered eligible for a “homeless education allowance” (15 yo). Previously the age at which a child could be considered homeless was difficult to ascertain. Further, adopting the “independence test” for a homeless child in the *Social Security Act 1991* so as to achieve consistency in this area.
- changing the name of “special financial assistance” to “special assistance” so as to make it clear that assistance may be the provision of a physical item such as an electric wheelchair for a student to attend classes with the payment for the item being made to a person other than the student or a person on the student’s behalf e.g. a supplier.
- changing the name of the “clean energy supplement” to “energy supplement” so as to reflect the change in name to the supplement made by the *Social Services and Other Legislation Amendment (2014 Budget Measures No. 6) Act 2014*.
- removing obsolete provisions that indexed the energy supplement (previously known as the “clean energy supplement”) or that referred to the indexing of the energy supplement. The provisions were obsolete because their effect had been removed by the *Social Services and Other Legislation Amendment (2014 Budget Measures No. 6) Act 2014*.
- ensuring that a person does not miss out on an Income Support Bonus (bonus) where the person is granted an education allowance that is backdated to a date before an Income Support Bonus Test Day (test day). In this situation the person is eligible for a back-payment of the bonus for the test day on which the person would have received the bonus if the person had been eligible for an education allowance on that day.

## CONSULTATION

Yes – The Department of Social Services and the Department of Human Services.

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 for the proposal in this case was communication by electronic mail.

## RETROSPECTIVITY

Yes. Paragraphs 2.6.2 and 2.6.3 of the attached instrument are taken to have commenced on 1 January 2014. This action will retrospectively authorise the higher level of education payment that DVA has been paying to students studying overseas.

The retrospective effect of the attached instrument will not infringe subsection 12(2) of the *Legislative Instruments Act 2003* (a legislative instrument is of no effect if it takes effect before registration and disadvantages a person or imposes liabilities on a person other than the Commonwealth) because the retrospective operation of paragraphs 2.6.2 and 2.6.3 of the instrument will not disadvantage any person or impose a liability on a person other than the Commonwealth.

## DOCUMENTS INCORPORATED-BY-REFERENCE

No.

## HUMAN RIGHTS STATEMENT

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

The attached legislative instrument engages human rights and is compatible with those rights. The rights in question are:

- the Right to Social Security contained in article 9 of the International Covenant on Economic Social and Cultural Rights; and
- the right to Education contained in article 13 of the International Covenant on Economic, Social and Cultural Rights.

The new measures introduced by the attached instrument are all positive. The measures:

- make it clear apprentices and trainees are students for the purposes of receiving education allowances;
- provide more money for students studying overseas;
- adopt a more comprehensive test of “homelessness” for the purpose of providing an education allowance for a homeless student; and
- make it clear that students may be provided special assistance comprised of physical items such as wheelchairs for attending classes, albeit the actual payment for the wheelchair has been made to a third party (the supplier).
- ensure that a person does not miss out on an Income Support Bonus (bonus) where the person is granted an education allowance that is backdated to a date before an Income Support Bonus Test Day (test day)(for more details see the explanation for sections 3B.1.2 (c) and 3B.1.2(d) below).

The remaining measures relate to matters already in the Schemes and are technical legal amendments.

## Conclusion

It is considered that the attached legislative instrument is compatible with the human rights in question and that no unreasonable requirements are imposed for the provision of the new benefits in question.

Michael Ronaldson  
Minister for Veterans’ Affairs  
Rule-Maker

## **FURTHER EXPLANATION OF NEW PROVISIONS**

See: [Attachment A](#)

## Attachment A

Note: only new or revised provisions are explained.

### Section 1

This section sets out the name of the instrument – the *Military Rehabilitation and Compensation Act Education and Training Scheme 2004*.

### Section 2

This section is a commencement provision.

### Sections 3 and 4

These sections are saving and transitional provisions designed to ensure a seamless transition for clients, education boards and their members etc, covered by the former MRCAETS to the re-made one.

### Sections 1.2 and 1.2.2

These sections are definitions sections. New or revised defined terms are:

- approved full-time tertiary or technical and further education course
- course of tertiary study
- full time
- new apprentice
- secondary education
- secondary student
- secondary or tertiary student
- tertiary education
- tertiary student
- energy supplement

### Section 1.4.1(b)

The reference to “special financial assistance” has been replaced with “special assistance”.

### Section 2.2.1

This section has been re-arranged.

### Section 2.6.2

This section has been revised so that secondary or tertiary students studying overseas may be paid the “away from home rate” for secondary and tertiary students respectively.

### Section 2.6.3

This section has been revised to make it clear that in order for a student to be paid an education allowance overseas the overseas course must be part of a full time course the student has undertaken in Australia. Further, the overseas education allowance will only be paid for the duration of the student’s course in Australia.

### Section 2.7.1

This section has been revised to ensure certain terms match the relevant terms as they are defined.

### Section 3.6.1

This section has been revised to set the minimum age at which a child can be considered “homeless” (15).

**Section 3.6.1A**

This is a new section and has the effect of applying the test under the *Social Security Act 1991* for determining if a child is independent to a child under the Scheme.

**Part 3A - Division 2**

This Division has been revised to refer to “energy supplement” rather than “clean energy supplement”.

**Section 3A.13.1(a)**

This section has been revised by the removal of the reference to the indexation of the energy supplement because the energy supplement (previously known as the clean energy supplement) is no longer indexed.

**Section 3A.18.1**

This section was removed because the energy supplement, previously known as the “clean energy supplement” is no longer indexed.

**Sections 3B.1.2(c) and 3B.1.2(d)**

These are new provisions and their purpose is to ensure that a person mentioned in the provisions does not miss out on an Income Support Bonus (bonus) where the person is granted an education allowance that is backdated to a date before an Income Support Bonus Test Day (test day). In this situation the person is eligible for a back-payment of the bonus for the test day on which the person would have received the bonus if the person had been eligible for an education allowance on that day.

**Sections 5.3 and 5.4**

These sections have been revised to refer to “special assistance” instead of “financial assistance”.