EXPLANATORY STATEMENT

Veterans' Entitlements (Veterans’ Children Education Scheme) Eligible Persons Determination 2017 (Instrument 2017 No. R2)

EMPOWERING PROVISIONS

Subsection 116A(1) of the Veterans’ Entitlements Act 1986 (the Act).

PURPOSE

The attached instrument (2017 No. R2) revokes and re-makes the Veterans' Entitlements (Veterans’ Children Education Scheme) Eligible Child Determination 2006 – Instrument R26/2006 – (the determination) for the purposes of the sunsetting exercise. On 1 April 2017 the determination will “sunset” (expire) unless re-made.

The Department of Veterans’ Affairs (DVA) has reviewed the determination and found it is still required. Accordingly it is being re-made in substantially the same terms.

The purpose of the attached instrument is to determine a class of persons for the purposes of paragraph (e) of the definition of “eligible child of a veteran” in subsection 116(1) of the Act. A person within that class is eligible for benefits under the Veterans’ Children Education Scheme (VCES). Under the VCES eligible children receive a range of financial and other benefits to assist with their primary, secondary or tertiary education.

The instrument determines the following 2 classes of “eligible child of veteran” for the purposes of the definition in subsection 116(1) of the Act:

1. current or former child of a Vietnam veteran where the child or former child has been diagnosed with a depressive disorder, or is, in the opinion of an appropriately qualified professional, vulnerable.

2. current or former child of a Vietnam veteran where the child or former child is making the transition to tertiary study and needs financial assistance to undertake that study (the “Long Tan Class of Person”).

Not all persons within the above classes are entitled to all benefits under the VCES. The particular type of benefit applicable to each class is governed by the VCES. For example, in accordance with restrictions outlined in the VCES, a person who falls within the “Long Tan Class of Person” is only entitled (by virtue of being a member of that class) to the benefit under the VCES known as the “Long Tan Bursary”.

The authority to revoke the earlier determination is found in subsection 33(3) of the Acts Interpretation Act 1901 which provides that where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power 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.
CONSULTATION

Section 17 of the *Legislation Act 2003* requires the rule-maker to be satisfied that any consultation that is considered appropriate and reasonably practicable to undertake, has been undertaken.

No external consultation was undertaken in this instance. This was because the instrument is being re-made in essentially the same terms as its sunsetting predecessor and benefits are not being affected. Moreover, the instrument is beneficial in nature in terms of its impact on clients.

Accordingly, it is considered the requirements of section 17 of the *Legislation Act 2003* have been met.

RETROSPECTIVITY

Nil.

DOCUMENTS INCORPORATED BY REFERENCE

No documents are incorporated-by-reference in the instrument.

REGULATORY IMPACT

Nil.

HUMAN RIGHTS STATEMENT

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

The attached instrument engages the Right to Education contained in article 13 of the International Covenant on Economic, Social and Cultural Rights.

The instrument determines classes of persons for the purposes of paragraph (e) of the definition of “eligible child of a veteran” in subsection 116(1) of the Act. A person within those classes will be eligible for benefits under the VCES.

Remaking this instrument ensures that eligible current or former children of Vietnam veterans who are considered vulnerable will continue to have access to the provision of education and training services under the VCES.

The instrument also continues education benefits for the “Long Tan Class of Person”, those children of Vietnam veterans who are entering tertiary education and are in need of financial assistance.
Conclusion

It is considered that the attached instrument is compatible with human rights, in particular, the Right to Education.

Repatriation Commission
Rule-Maker

FURTHER EXPLANATION OF PROVISIONS

See: Attachment A
Veterans' Entitlements (Veterans' Children Education Scheme) Eligible Persons Determination 2017.

Section 1
This section sets out the name of the instrument - Veterans' Entitlements (Veterans' Children Education Scheme) Eligible Persons Determination 2017.

Section 2
This is the commencement provision. It provides for the instrument to commence on the day after registration.

Section 3
This section revokes the former instrument. The subject matter of the revoked instrument has been incorporated into the attached instrument with necessary updates.

Section 4
This is a savings provision. It ensures that a person who has VCES eligibility under the revoked instrument continues to have that eligibility as if it were derived under the new instrument.

Section 5
This is an interpretation provision.

It defines the terms used in the instrument including the term “appropriately qualified professional” - defined to mean a registered medical practitioner, a registered psychologist, or a social worker who has completed a 4 year recognised degree and has eligibility for membership of the Australian Association of Social Workers.

Section 6
This section sets out the purpose of the instrument which is to determine classes of persons who will be eligible for VCES benefits.

Section 7
The section provides that, for the purposes of subsection 116A(1) of the Act, the classes of persons set out in the Schedule are determined.

Schedule
The Schedule sets out the classes of persons determined for the purposes of subsection 116A(1) of the Act.

Item 1 determines as a class, a child or former child of a Vietnam veteran who is:

- diagnosed by a registered medical practitioner or a registered psychologist as having a depressive disorder; or
- is, in the opinion of an appropriately qualified professional, considered to be vulnerable.

This represents a minor policy change to the revoked instrument which allowed eligibility to be established on the basis of a diagnosis of depressive disorder by a registered medical
practitioner, a registered psychologist, or a social worker with appropriate training and professional membership.

It is generally accepted that social work training (even Mental Health Accredited Social Worker training) does not provide sufficient training for the diagnosis of conditions. Over the last 10 years (while the revoked instrument was in force), in most cases, a diagnosis of depressive disorder was provided by a qualified medical practitioner or psychologist. Students who do not have access to a medical practitioner or psychologist will not be disadvantaged by this change and may continue to be eligible for the Schemes’ benefits on the basis of an opinion of “vulnerability” provided by a social worker.

Item 2 determines as a class, a child or former child of a Vietnam veteran who is making the transition to tertiary study, who is academically able to complete an undergraduate degree (or similar tertiary course of study) and whose family circumstances are such that the person may require additional financial assistance.

Note (1) informs readers of the meaning of “child” and “former child” as used in the items in the Schedule. In accordance with the definition in subsection 5F(1) of the Act, a “child” is someone who is younger than 16 years or, if in full time education, younger than 25 years. A “former child” is, therefore, depending on their education circumstances, a person who is 16 years or older and not in full-time education, or 25 years or older.

Paragraph (e) of the definition of “eligible child of a veteran” in subsection 116(1) of the Act enables a class of “person”, as distinct from a class of “child”, to be determined to be eligible for the VCES thereby avoiding the age restriction normally associated with the definition of “child”. Accordingly, former children of Vietnam veterans, being persons aged 16 years or over (and not in full-time education) or aged 25 years or over, can appropriately be included in a class within this instrument and gain eligibility for the VCES services.

Note (2) informs readers that the class determined in item 2 is known as the “Long Tan Class of Person” and that a person within this class is eligible for the benefits referred to in paragraph 7.3 of the Veterans’ Children Education Scheme (Instrument 2015 No. R43) namely, the Long Tan Bursary (see paragraph 7.3.2 of the Scheme).