



Military Rehabilitation and Compensation Act Education and Training Scheme 2004

Instrument 2004 No. M4 as amended

made under the

*Military Rehabilitation and Compensation
Act 2004*

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MRCA Education and Training Scheme

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PART 1 — Introduction

1.1 Commencement

1.1.1 This Scheme commences on gazettal.

1.2 Interpretation

1.2.1 In this Scheme, unless the contrary intention appears:

“ABSTUDY Scheme” means the Australian Government program designed to rectify the educational disadvantages faced by Aboriginal and Torres Strait Islander people by improving educational outcomes to a level commensurate with the Australian population in general.

Note: in 2010 the ABSTUDY Scheme was administered and delivered by Centrelink on behalf of the Department of Education, Employment and Workplace Relations.

“Act” means the *Military Rehabilitation and Compensation Act 2004*.

“appropriate person” in relation to a *student* means:

- (a) a parent, guardian, trustee, or person approved by a parent, guardian or trustee; or
- (b) a person approved by the *Commission* if none of the persons in subparagraph (a) who acted on behalf of the *student* is alive, willing, able, and suitable to act on the *student*’s behalf.

“approved full-time tertiary or technical and further education course” means an approved course of education or study under Part 2.11 of the *Social Security Act 1991*.

Note (1): see paragraph 3.5.1;

Note (2): paragraph 541B(1)(c) and subsection 541B(5) of the *Social Security Act 1991* refer to approved courses.

“approved scholarship course” means a course under section 592M of the *Social Security Act 1991*.

“Board” means a *Board* established under Part 6 - being a *Veterans’ Children Education Board* in existence, under Part 6 of the *Veterans’ Children Education Scheme*, at the time this Determination commences.

“Commission” means the *Military Rehabilitation and Compensation Commission*.

“Commonwealth Accommodation Scholarship” means a scholarship of that name provided for under the Commonwealth Scholarships Guidelines made for the purposes of Part 2-4 of the *Higher Education Support Act 2003*.

“Commonwealth Education Costs Scholarship” means a scholarship of that name provided for under the Commonwealth Scholarships Guidelines made for the purposes of Part 2-4 of the *Higher Education Support Act 2003*.

“course not otherwise approved” means a course that is not an approved course of education or study under Part 2.11 of the *Social Security Act 1991*.

Note (1): see paragraph 7.1.3;

Note (2): paragraph 541B(1)(c) and subsection 541B(5) of the *Social Security Act 1991* refer to approved courses.

“Department” means the Department of Veterans’ Affairs.

“eligible child” means the person described in paragraph 2.1.1.

“fare” means the amount of money a *student* must pay in order to use public or private transport to travel

between the *student's* home and the *student's* place of study.

Note: see paragraph 5.1.1

“member” means a member of a *Board*.

“Military Rehabilitation and Compensation Commission” means the body established under section 361 of the *Military Rehabilitation and Compensation Act 2004*.

“payday” means the interval specified by the *Commission* under section 430 of the *Act*.

“relocation scholarship payment” means the payment of that name in paragraph 7.3.

“Repatriation Commission” means the body continued in existence under section 179 of the *VEA*.

“responsible Departments” means the Commonwealth Departments of State responsible for administering, respectively, the *Student Assistance Act 1973* and the *Social Security Act 1991*.

Note: the Administrative Arrangements Order sets out Commonwealth Departments and the legislation they administer. See: <http://scaleplus.law.gov.au/docs/legtables/aao.htm>

“Secretary” means the employee of the *Department* appointed to the position of Secretary to a *Veterans' Children Education Board*.

“Scheme” means this *Scheme*, as determined by the *Military Rehabilitation and Compensation Commission*, under section 258 of the *Military Rehabilitation and Compensation Act 2004*, and known as the Military Rehabilitation and Compensation Act Education and Training Scheme.

“Social Security Act 1991” means the *Social Security Act 1991* as in force from time to time.

“student” means an *eligible child* in respect of whom assistance is provided under this *Scheme*.

“**student start-up scholarship payment**” means the payment of that name in paragraph 7.2.

“**sub-committee**” means a sub-committee of a *Board*.

“**VEA**” means the *Veterans’ Entitlements Act 1986*.

“**Veterans’ Children Education Board**” means a Veterans’ Children Education Board established under Part 6 of the *Veterans’ Children Education Scheme*

“**Veterans’ Children Education Scheme**” means the Scheme established by the *Repatriation Commission* under section 117 of the *VEA*.

1.2.2 Clean Energy Definitions

In this determination:

ABSTUDY has the same meaning it has in the *Social Security Act 1991*.

Act means the *Military Rehabilitation and Compensation Act 2004*.

change day means the day on which a person has a change in circumstances that results in a change to the type or rate of *clean energy base payment* that the person receives.

clean energy advance, unless a contrary intention appears, means the payment of that name under PART 3A.

clean energy advance daily rate means the rate worked out under paragraph 3A.3.1.

clean energy advance eligibility day means:

- (a) for a person eligible for a *clean energy advance* because of a determination made under paragraph 3A.1.1 — the day that determination is made; or
- (b) for a person eligible for a *clean energy advance* because of a determination made under paragraph 3A.1.2 or 3A.1.3—the day specified in that

determination because of subsection paragraph 3A.1.4.

Note: The day specified in the determination because of paragraph 3A.1.4 is the first day during the *clean energy advance period* for which the person satisfies the eligibility requirements, disregarding any short temporary absence from Australia.

clean energy advance period means:

- (a) for a person eligible under paragraph 3A.1.1 or 3A.1.2 for a *clean energy advance*—the period starting on 1 July 2012 and ending on 30 June 2013; or
- (b) for a person eligible under paragraph 3A.1.3 for a *clean energy advance*—the period starting on 1 July 2013 and ending on 31 December 2013.

clean energy base payment means:

- an *ABSTUDY Living Allowance*; or
- a *clean energy qualifying payment*; or
- a *clean energy underlying payment*; or
- a clean energy underlying payment under the *MRCA*; or
- a clean energy underlying payment under the *VCES*; or
- a clean energy underlying payment under the *VEA*.

Note: the *MRCA*, the *VCES* and the *VEA* contain their own definitions of “clean energy underlying payment”.

clean energy bonus has the same meaning it has in the *Act*.

clean energy payment means a payment under PART 3A.

clean energy qualifying payment has the same meaning it has in the *Social Security Act 1991*.

clean energy supplement means clean energy supplement payable under paragraph 3A.12.1 for a *clean energy underlying payment* at a rate determined under or by reference to the *clean energy underlying payment*.

clean energy underlying payment or ***education allowance*** means an education allowance under one of the following paragraphs in PART 3:

- paragraph 3.3 (allowance for secondary or tertiary student living at home)
- paragraph 3.4 (allowance for secondary student living away from home)
- paragraph 3.5 (allowance for tertiary student living away from home)
- paragraph 3.6 (allowance for homeless student)

Commission means the Military Rehabilitation and Compensation Commission established by section 361 of the *Act*.

Commonwealth scheme means a set of regulatory provisions contained in an instrument made under an Act of the Commonwealth.

disability pension means a pension under Part II or IV of the *VEA* at a rate determined under or by reference to Division 4 of Part II of the *VEA*.

most recent change day means the *change day* that is closest in time to the day the person's *top-up payment* is being calculated.

most recent clean energy advance daily rate means the *clean energy advance daily rate* that would have been used to calculate a person's *clean energy advance* if the person's *clean energy advance eligibility day* was the *most recent change day*.

MRCA means the *Military Rehabilitation and Compensation Act 2004*.

MRCA wholly dependent partner payment means the compensation payable under Division 2 of Part 2 of Chapter 5 of the *MRCA*.

MRCAETS means the *Military Rehabilitation and Compensation Act Education and Training Scheme* made under subsection 258(1) of the *Act*.

multiple entitlement exclusion has the same meaning as in subsection 424H(4) of the *Act*.

new change day, in relation to a person, means a *change day* that occurs after the person has previously been eligible for a *top-up payment* under PART 3A.

new clean energy advance daily rate means the *clean energy advance daily rate* that would have been used to calculate a person's *clean energy advance* if the person was first eligible for a *clean energy advance* on the *change day*.

new clean energy advance period, in relation to a person, means the *clean energy advance period* that applies to the person from the *change day*.

original change day, in relation to a person, means the first *change day* for the person.

original clean energy advance daily rate, in relation to a person, means the *clean energy advance daily rate* that was used to calculate the person's *original payment*.

original payment, in relation to a person, means the *clean energy advance* (advance) originally paid to the person in respect of a *clean energy underlying payment*, for the *clean energy advance period* in respect of that advance.

original payment start day, in relation to a person's *original payment*, means the later of the start of the *clean energy advance period* for the original payment or the person's *clean energy advance eligibility day*.

quarterly clean energy supplement means the payment described in paragraph 3A.15.1.

service pension has the same meaning it has in subsection 5Q(1) of the *VEA*.

SSA means the *Social Security Act 1991*.

top-up payment means the payment of that name calculated under Part 3A.

top-up qualifying condition has the meaning given by paragraph 3A.5.2.

VCES means the *Veterans' Children Education Scheme* made under section 117 of the *VEA*.

VCES payment means an education allowance under the *VCES*.

VEA means the *Veterans' Entitlements Act 1986*.

war widow(er) pension means a pension under Part II or IV of the *VEA* at a rate determined under or by reference to subsection 30(1) of the *VEA*.

1.3 Authority for the Scheme

- 1.3.1 The *Scheme* is established under Part 3 of Chapter 5 of the *Act* and has been prepared in accordance with section 258 of the *Act* by the *Commission* and approved by the Minister.

1.4 Purpose of the Scheme

- 1.4.1 The purpose of this compensatory *Scheme* is to:

- (a) provide financial assistance;
- (b) provide *student* support services; and
- (c) arrange for guidance and counselling,

for *eligible children* to help them achieve their full potential in education or career training.

- 1.4.2 This purpose of the *Scheme* is achieved by co-operation between the *Commission*, the *eligible children* and their parents, guardians or trustees.

1.5 Administration of the Scheme

- 1.5.1 The *Commission*, assisted by a *Board* in each State, is responsible for the administration of the *Scheme*.

PART 2 — Eligibility Conditions

2.1 Eligible child

- 2.1.1** “*eligible child*” is an eligible young person as defined in section 258 of the *Act* - except that an *eligible child* is not an eligible young person to whom section 260 of the *Act* applies.

2.2 Claim for benefits

- 2.2.1** Except where otherwise provided, a claim for a benefit under the *Scheme* shall be in writing and in accordance with the form, if any, approved by the *Repatriation Commission* for a claim for a similar benefit under the *Veterans’ Children Education Scheme*.

Note: a claim is not required for the *student start-up scholarship payment* or the *relocation scholarship payment* in paragraphs 7.2 and 7.3.

2.3 Who may claim

- 2.3.1** A claim for benefits under the *Scheme* may be made:
- (a) by a member or former member, as described in paragraph 258(1)(a) of the *Military Rehabilitation and Compensation Act 2004*, of whom the *eligible child*, in respect of whom the claim is made, is a dependant; or
 - (b) by a dependant of the member or former member referred to in paragraph (a) – being a dependant who has attained the age of 16 years; or
 - (c) with the approval of the member or former member (in paragraph (a)) or dependant (in paragraph (b)) — by another person on behalf of the member, former member or dependant; or

- (d) if the member or former member (in paragraph (a)) or dependant (in paragraph (b)) is unable to make the claim by reason of physical or mental incapacity on behalf of the member or former member — by a person approved by the *Commission*; or
- (e) on behalf of a dependant (in paragraph (b)) who has not attained 16 years of age — by:
 - (i) a parent or guardian of the dependant; or
 - (ii) another person approved by the parent or guardian of the dependant; or
 - (iii) if there is no parent or guardian of the dependant alive, or willing, or able to make application on behalf of the dependant or there is no other person approved by the parent or guardian of the dependant alive, or willing, or able to make application on behalf of the dependant — another person approved by the *Commission*.

2.4 Commencement of assistance under the Scheme

2.4.1 A *student* may be eligible for payment of benefits under the *Scheme* with effect from either:

- (a) the date of commencement of the first formal year of primary schooling; or
- (b) the first *payday* in January of the calendar year in which the claim is made for an *eligible child*; or
- (c) the first *payday* after the *student* meets the eligibility requirements of the *Scheme*,

whichever date is the later, providing that on that date, the *student* has not yet attained 25 years of age, and subject to clearances for the purpose specified in paragraph 2.11.1 with the *responsible Departments* for those *students* aged sixteen years and over.

Note: the Administrative Arrangements Order sets out Commonwealth Departments and the legislation they administer. See:
<http://scaleplus.law.gov.au/docs/legtables/aao.htm>

2.5 Cessation of assistance under the Scheme

2.5.1 If a *Board* is of the opinion that a primary or secondary *student's* progress is not satisfactory it shall refer the matter to the *Commission*.

2.5.2 Where a matter has been referred to the *Commission* under paragraph 2.5.1, it may determine that the *student* cease to receive benefits under the *Scheme*.

2.5.3 Subject to paragraph 2.5.5 below, where a *Board* is of the opinion that a tertiary *student* aged sixteen years or over would have failed to satisfy the progress rules in Part 2.11A of the *Social Security Act 1991* in respect of tertiary *students* (if Part 2.11A had applied to the *student*), it shall refer the matter to the *Commission*.

Note: the "progress rules" are mentioned in section 569H of the *Social Security Act 1991*.

2.5.4 Where a matter has been referred to the *Commission* under 2.5.3, if the *Commission* is of the opinion that the *student* would have failed to satisfy the progress rules in Part 2.11A of the *Social Security Act 1991* in respect of tertiary *students* (if Part 2.11A had applied to the *student*), it may determine that the *student* cease to receive benefits under the *Scheme*.

Note: the "progress rules" are mentioned in section 569H of the *Social Security Act 1991*.

2.5.5 Where the *Board* is of the opinion that a tertiary *student* would have failed to satisfy the progress rules in Part 2.11A of the *Social Security Act 1991* in respect of tertiary *students* (if Part 2.11A had applied to the *student*), the *Board* may approve continuing benefits under the *Scheme*.

Note: the "progress rules" are mentioned in section 569H of the *Social Security Act 1991*.

- 2.5.6** Benefits withdrawn under paragraphs 2.5.2 and 2.5.4 may be restored by the *Commission* if it is satisfied that the *student* has resumed satisfactory progress.

2.6 Place of Study

- 2.6.1** Subject to paragraph 2.6.2 or unless the *Commission* considers the particular circumstances of a *student* to be exceptional, to be eligible for benefits under the *Scheme* a *student* must:

- (a) be undertaking study within Australia; or
- (b) have made application, or have been accepted, to undertake study within Australia.

- 2.6.2** Continuation of allowances may only be approved for up to twelve months for *students* awarded a place within a formal overseas exchange *Scheme* or a scholarship to study overseas.

- 2.6.3** Where allowances are continued under paragraph 2.6.2, benefits are to be limited to the appropriate “at home” education allowance.

Note (1) rent assistance, where the *student* is outside Australia, is also subject to paragraph 5.5.

Note (2) as at 1 April 2003, rent assistance, where the *student* is outside Australia, was, among other things, limited to premises in Australia and for a maximum period of 26 weeks.

2.7 Course coverage

- 2.7.1** A *student* may receive benefits under the *Scheme* if the *student* is undertaking on a full-time basis:

- (a) general primary or secondary education; or
- (b) a tertiary course of education or study that would qualify the *student* for a youth allowance under Part 2.11 of the *Social Security Act 1991*; or

- (c) a course of tertiary study that would not qualify the *student* for a youth allowance under Part 2.11 of the *Social Security Act 1991*, but which:
 - (i) the *Commission* considers essential for achievement of the *student's* vocational aim; and
 - (ii) no other tertiary course that would qualify the *student* for a youth allowance under Part 2.11 of the *Social Security Act 1991* is suitable or available.

Note: paragraph 2.7.2 permits the payment of benefits to *students* for part-time study in special circumstances.

2.7.2 Benefits may be provided to a *student* for part-time study and such a *student* shall be deemed for the purposes of the *Scheme* to be undertaking full-time study, where:

- (a) the *Commission* is satisfied that the amount of study that the *student* must complete in order to finish a course constitutes less than one year full-time study; or
- (b) through geographical isolation, the *student* is unable to take advantage of full-time study facilities; or
- (c) for health, economic or academic reasons, the *student* has shown ability to undertake full-time studies but needs to study part-time temporarily.

2.10 Absences from study for primary and secondary students

2.10.1 Where a primary or secondary *student* ceases to participate in the normal activities of a course for more than fifteen days in any year without reasonable cause, the *Commission* may review the *student's* eligibility for continuing benefits under the *Scheme* and may suspend the payment of allowances.

- 2.10.2** Where the *Board* is satisfied that absences referred to in paragraph 2.10.1 are due to sickness or to reasons beyond the *student's* control, such absences may be disregarded.
- 2.10.3** Where the *Board* is satisfied that absences referred to in paragraph 2.10.1 are without reasonable cause and the *student's* progress has been affected, the case may be referred to the *Commission* and the *Commission* may determine that the education allowance and/or other benefits shall be suspended.
- 2.10.4** The *Commission* may determine that benefits withdrawn under paragraph 2.10.3 be restored if it is satisfied that the *student* has resumed satisfactory progress.

2.11 Effect of other assistance on eligibility

- 2.11.1** Subject to paragraph 2.11.2, a *student* is not to be paid a benefit under the *Scheme* if, apart from under the *Scheme*, the student receives a financial benefit from the Commonwealth in the nature of educational assistance or income support.
- 2.11.2** A *student* who receives a financial benefit from the Commonwealth in the nature of educational assistance or income support (other than a benefit under the *Scheme*) may be paid a benefit under the *Scheme* if the educational assistance or income support:
- (a) is provided (whether directly or indirectly) by the *Department* or the *Commission*; or
 - (b) is provided under a *Commonwealth Accommodation Scholarship* - except where the benefit under the *Scheme* is a *relocation scholarship payment*; or
 - (c) is provided under a *Commonwealth Education Costs Scholarship* - except where the benefit under the *Scheme* is a *student start-up scholarship payment*.

2.12 Allowances mutually exclusive

- 2.12.1** If a *student* receives an education allowance under the *Scheme*, that *student* is, in the absence of a contrary intention, ineligible to receive any other education allowance under the *Scheme*.

PART 3 — Education Allowances

3.1 Purpose of education allowances

- 3.1.1** The education allowances under the *Scheme* are paid as compensation and are designed to provide financial assistance towards the cost of an *eligible child's* education.

3.2 Allowances for Primary education

- 3.2.1** *Students* who are enrolled in primary education are eligible for an annual education allowance.
- 3.2.2** The annual education allowance referred to in paragraph 3.2.1 shall be paid in full in respect of any initial part year.
- 3.2.3** Payment of the allowance will be made to the person who is entitled to be paid family tax benefit under *A New Tax System (Family Assistance) (Administration) Act 1999* (entitled person) and if there is no entitled person - to a person approved by the *Commission* to receive the payment on the student's behalf.

3.3 Allowances for Secondary and Tertiary students living at home

- 3.3.1** An education allowance shall be payable fortnightly in advance, in respect of a *student* living at home and undertaking education as approved by the *Commission*.
- 3.3.2** Payment under paragraph 3.3.1 for secondary *students* under the age of sixteen will be made to the person who

is entitled to be paid family tax benefit under *A New Tax System (Family Assistance) (Administration) Act 1999* (entitled person) and if there is no entitled person - to a person approved by the *Commission* to receive the payment on the student's behalf.

3.3.3 Payment under paragraph 3.3.1 for secondary *students* aged sixteen years and over will be made to the person who is entitled to be paid family tax benefit under *A New Tax System (Family Assistance) (Administration) Act 1999* (entitled person), who will then have the option of directing payment to the *student* or spouse, and if there is no entitled person - to a person approved by the *Commission* to receive the payment on the student's behalf.

3.3.4 Payment will be made directly to tertiary *students*.

3.4 Living away from home allowance for secondary students

3.4.1 Living away from home rates of education allowance may be paid in respect of a *student* undertaking full time secondary education if the *Commission* is satisfied that additional expenses are incurred as a result of the *student* living away from home, and

- (a) educational facilities are not readily accessible from the *student's* place of residence; or
- (b) the *student* is enrolled in a special course approved for the payment of allowance under the Commonwealth Assistance for Isolated Children *Scheme*; or

Note: the Assistance for Isolated Children *Scheme* is a non-statutory *Scheme* administered by that Department of the **responsible Departments** that administers the *Student Assistance Act 1973*.

- (c) the *student* is physically or intellectually handicapped; or
- (d) the *student* requires specialised remedial tuition; or

- (e) the *student* is a member of an itinerant family; or
- (f) the academic needs of that *student* are not met by local secondary facilities; or
- (g) home conditions are detrimental to the *student's* educational progress.

3.4.2 Payment under paragraph 3.4.1 for secondary *students* living away from home will be made to:

- (a) the person who is entitled to be paid the family tax benefit under *A New Tax System (Family Assistance) (Administration) Act 1999*; or
- (b) to the institution or person, if any, providing *Board* to the *student*; or
- (c) if the payment methods in paragraphs (a) and (b) are inappropriate or non-existent – a person approved by the *Commission* to receive the payment on behalf of the *student*.

3.4.3 Payment under sub-paragraph 3.4.2 may be made either in part or in full, and:

- (a) may be made to an institution a term in advance; or
- (b) may be made to a person either a term in advance or fortnightly, as determined by the *Commission*.

3.4.4 A person in receipt of education allowance under sub-paragraph 3.4.2(a) may direct payment of the allowance to the *student* or to a parent, guardian or trustee of the *student*.

3.4.5 If only part of the payment is made to the institution or person providing *Board*, the other part shall be paid to the person described at subparagraph 3.4.2(a) or, if relevant, to the person to whom they have directed payment and if there is no person for the purposes of subparagraph 3.4.2(a), the part-payment shall be paid to a person approved by the *Commission* to receive the payment on the *student's* behalf.

3.5 Living away from home allowance for Tertiary students

3.5.1 Living away from home rates of education allowance may be paid to a *student* undertaking an approved full-time tertiary or technical and further education course, where the *Commission* is satisfied that additional expenses are incurred as a result of the *student* living away from home; and

- (a) educational facilities are not readily accessible from the *student's* place of residence; or
- (b) it is a compulsory requirement for the *student* undertaking an approved course to reside at a hall of residence; or
- (c) home conditions provide an inadequate study environment.

3.5.2 Allowances paid under paragraph 3.5.1 shall be payable to the *student*.

3.6 Homeless student education allowance

3.6.1 A *student* may, upon reaching minimum school leaving age as determined by the authorities of the State in which that *student* resides, be granted Homeless *Student* status where the *Commission* is satisfied that the *student* is not receiving or likely to receive continuous support either direct or indirect, in cash or in kind, from parents or any other person other than as provided for in this *Scheme*; and

- (a) there is no family home; or
- (b) the parents will not allow the *student* to reside in the family home; or
- (c) it would be unreasonable to expect the *student* to live with the parents because of domestic violence, or comparable circumstances.

- 3.6.2** If a *student* has been granted homeless *student* status under paragraph 3.6.1, education allowance is to be paid at a rate equivalent to the maximum basic rate payable under point 1067G-B3 of the *Social Security Act 1991* in respect of a person who is independent.
- 3.6.3** Fortnightly payment of the allowance under paragraph 3.6.2 is to be made to the *student*, or to an appropriate person if the *Commission* considers it unlikely that the *student* would be capable of managing his or her own finances.

Note: 'appropriate person' is defined in paragraph 1.2.1.

3.7 Part-time *students*

- 3.7.1** Where a *student*, referred to in paragraph 2.7.2, has been approved for benefits while undertaking part-time study, that *student* shall receive the appropriate full-time rate of education allowances.

3.8 Indexing and increasing education allowances

- 3.8.1** The amount of allowance for:

- (a) primary students is \$242.50 (paid annually);
- (b) secondary students who are under sixteen years and living at home is \$49.80 (paid fortnightly);
- (c) secondary students who are under sixteen years and living away from home is \$338.03 (paid fortnightly);

and is to be indexed annually in accordance with paragraph 3.8.2.

- 3.8.2** The allowances specified in paragraph 3.8.1 are to be indexed annually in accordance with the procedure set out in section 1191(1)(table item 3A) of the *Social Security Act 1991* for the indexation of benefits under that Act except that the reference to 'YA MBR' in item 3A of the CPI Indexation Table in subsection 1191(1)

is, for the purpose of the indexation of the relevant allowances under the *Scheme*, taken to be a reference to the relevant allowance specified in sub-paragraph 3.8.1(a), (b) or (c).

- 3.8.4** The fortnightly education allowances payable in respect of all *students* aged sixteen years and over shall be increased annually to a rate equivalent to the maximum basic rate of youth allowance payable under Part 3.5 of the *Social Security Act 1991*.

PART 3A CLEAN ENERGY PAYMENTS

Division 1 - Clean energy advance

Eligibility for days 14 May 2012 to 30 June 2012

3A.1.1 The *Commission* may determine that a person is eligible for a *clean energy advance* if, on a day during the period starting on 14 May 2012 and ending on 30 June 2012:

- (a) the person receives a *clean energy underlying payment*; and
- (b) the person's rate of payment is greater than nil; and
- (c) the person is in Australia.

Eligibility for days 1 July 2012 to 30 June 2013

3A.1.2 The *Commission* may determine that a person is eligible for a *clean energy advance* if, on a day during the period starting on 1 July 2012 and ending on 30 June 2013:

- (a) the person receives a *clean energy underlying payment*; and
- (b) the person's rate of payment is greater than nil; and

- (c) the person is in Australia.

Eligibility for days 1 July 2013 to 31 December 2013

3A.1.3 The *Commission* may determine that a person is eligible for a *clean energy advance* if, on a day during the period starting on 1 July 2013 and ending on 31 December 2013:

- (a) the person receives a *clean energy underlying payment*; and
- (b) the person's rate of payment is greater than nil; and
- (c) the person is in Australia.

First day of eligibility under paragraph 3A.1.2 or 3A.1.3

3A.1.4 A determination under paragraph 3A.1.2 or 3A.1.3 must specify the first day during the period set out in that paragraph for which the person:

- (a) satisfies paragraphs (a) and (b) of that paragraph; and
- (b) is in Australia, disregarding any temporary absence from Australia for a continuous period not exceeding 13 weeks.

Limits on eligibility for multiple advances

3A.1.5 A person is eligible for, at most, two clean energy advances under paragraphs 3A.1.1, 3A.1.2 and 3A.1.3:

- (a) one under either paragraph 3A.1.1 or 3A.1.2; and
- (b) one under paragraph 3A.1.3.

3A.1.6 A person's eligibility for a *clean energy advance* is subject to paragraph 3A.10.1 (multiple entitlement exclusion).

Note: Top-up payments of *clean energy advance* may be payable under paragraph 3A.5.1 if the person's circumstances change during the person's *clean energy advance period*.

3A.1.7 A claim is not required for a *clean energy advance*.

Amount of a clean energy advance

3A.2.1 On the day (the decision day) that the *Commission* determines that a person is eligible for a *clean energy advance* for a *clean energy underlying payment*, the *Commission* must work out the amount of the advance.

Note: The advance will be paid in a lump sum as soon as is reasonably practicable: see paragraph 3A.6.1.

3A.2.2 The amount of the advance is the result of the following formula rounded up to the nearest multiple of \$10:

$$\text{Clean energy advance daily rate} \times \text{Number of advance days}$$

where:

clean energy advance daily rate is worked out under paragraph 3A.3.1.

number of advance days is worked out under paragraph 3A.4.1.

Clean energy advance daily rate

3A.3.1 The clean energy advance daily rate for a person's *clean energy underlying payment* is worked out by:

- (a) working out 1.7% of the rate for the *clean energy underlying payment*, worked out:

- (i) for the first day of the person's *clean energy advance period*; and
 - (ii) for someone in circumstances the same as the person's on the *clean energy advance eligibility day*; and
- (b) rounding the result of paragraph (a) up or down to the nearest multiple of 10 cents (rounding up if that result is not a multiple of 10 cents but is a multiple of 5 cents); and
- (c) adding 20 cents to the result of paragraph (b); and
- (d) dividing the result of paragraph (c) by 14.

Number of advance days

3A.4.1 The person's number of advance days is the number of days in the person's *clean energy advance period* that are on or after:

- (a) if the person is eligible for the *clean energy advance* before 1 July 2012 —1 July 2012; or
- (b) otherwise—the *advance eligibility day*.

Top-up payments of clean energy advance

3A.5.1 If:

- (a) the Commonwealth pays a *clean energy advance* (***the original payment***) to a person; and
- (b) the person's circumstances change on a day (***the change day***) and the person satisfies any ***top-up qualifying condition*** in relation to that change of circumstances as set out in paragraph 3A.5.2; and
- (c) either

- (i) the change of circumstances means that a higher *clean energy advance daily rate* would be used to calculate the original payment if the person's *clean energy advance eligibility day* were the *change day*; or
- (ii) except for the provisions of a *multiple entitlement exclusion* the person would be eligible for a *clean energy bonus* under the *Act*, another Act or a *Commonwealth scheme*;

the person is eligible for a top-up payment calculated in accordance with paragraph 3A.5.4 – 3A.5.7.

3A.5.2 For the purposes of paragraph 3A.5.1 a person satisfies a *top-up qualifying condition* if:

- (a) the person was paid an *original payment* and as a result of the change in circumstances the person receives an *education allowance* at a higher rate in relation to the *change day* and the change of circumstances occurs before 1 January 2014; or
- (b) the person was paid an *original payment* and as a result of the change in circumstances the person no longer receives an *education allowance* but receives, before 20 March 2013:
 - (i) *service pension*; or
 - (ii) *war widow(er) pension*; or
 - (iii) a payment listed in subsection 914(4) of the *Social Security Act 1991*; or
 - (iv) MRCA wholly dependent partner payment; or
- (c) the person was paid an *original payment* and as a result of the change in circumstances the

person no longer receives an *education allowance* but receives, before 1 January 2014:

- (i) a payment listed in subsection 914A(5) of the *Social Security Act 1991*; or
- (ii) a *VCES* payment; or
- (iii) *ABSTUDY*.

3A.5.3 Despite any other provision of the *MRCAETS* if a person received an original payment under 3A.1.3 of the *MRCAETS* and as a result of a change in circumstances the person starts to receive one of the payments listed in subsection 914(4) of the *Social Security Act 1991*, war widow(er) pension or service pension under the *VEA* or a *MRCA wholly dependent partner payment*, in relation to the *change day*, the person will not be eligible for a *top-up payment*.

Method of working out the top-up payment for a person

3A.5.4 If the person has not previously been eligible for a *top-up payment* in relation to that *clean energy advance period*, the amount of *top-up payment* is to be calculated in accordance with the Method Statement 1 at the end of paragraph 3A.5.5.

Top-up payment for first change of circumstances

3A.5.5 For the purposes of paragraph 3A.5.4 the *top-up payment* is to be worked out as follows:

Method Statement 1

Step 1: Multiply the original clean energy advance daily rate by the number of days from the original payment start day until the day before the change day.

Step 2: Multiply the new clean energy advance daily rate by the number of days remaining in the new clean energy advance period from the change day.

Step 3: Work out the sum of the amounts in steps 1 and 2.

Step 4: Round the result from Step 3 up to the nearest \$10.

Step 5: Deduct the original payment from the result of Step 4. If the result is greater than zero the result becomes the top-up payment that is payable to the person.

Top-up payment for subsequent change of circumstances

3A.5.6 If a person has previously been paid a top-up payment calculated in accordance with paragraph 3A.5.4 and the person has a further change in circumstances any additional *top-up payment* is to be calculated in accordance with paragraph 3A.5.7.

3A.5.7 For the purposes of paragraph 3A.5.6, the method for calculating any further *top-up payment* is as follows:

Method Statement 2

- Step 1: Multiply the original clean energy advance daily rate by the number of days from the original payment start day until the day before the first change day.
- Step 2: Calculate the number of days from the first change day until the day before the second change day and multiply by the second clean energy advance daily rate. Repeat this step as needed for subsequent changes, excluding the most recent change day, multiplying the number of days between change days by the clean energy advance daily rate that applies as a result of the particular change in circumstances.
- Step 3: Calculate the number of days from the most recent change day until the end of the new clean energy advance period and multiply by the most recent clean energy advance daily rate.
- Step 4: Add up the amounts obtained in Steps 1, 2 and 3.
- Step 5: Round the result from Step 4 up to the nearest \$10.
- Step 6: Calculate the sum of the original payment and any previous top-up payments paid to the person under this Part.
- Step 7: Deduct the result of Step 6 from result of step 5. If the result is greater than zero this becomes the top-up payment that is payable to the person.

Payment of clean energy advance

3A.6.1 An amount of clean energy advance for which a person is eligible is payable in a single lump sum on the day

that the *Commission* considers to be the earliest day on which it is reasonably practicable for the amount to be paid.

3A.6.2 However, the clean energy advance is not payable if the *Commission* is aware that the person has died.

Debts relating to clean energy advances

3A.7.1 This paragraph applies if:

- (a) a person has been paid a *clean energy advance* for a *clean energy underlying payment*; and
- (b) after the advance was paid, one of the following events happens to a determination that directly or indirectly affected the payability or amount of the *clean energy advance* paid to the person:
 - (i) the determination is changed, revoked or set aside;
 - (ii) the determination is superseded by another determination; and
- (c) the event happened wholly or partly because the person knowingly made a false or misleading statement or knowingly provided false information; and
- (d) had the event happened on or before the day the advance was paid:
 - (i) the advance would not have been paid; or
 - (ii) the advance would have been reduced.

Note 1: Examples of determinations directly affecting the payability or amount of the *clean energy advance* include:

- (a) a determination relating to the person's eligibility for the *clean energy underlying payment* to which the advance related; and
- (b) the determination of the person's eligibility for the *clean energy advance*.

Note 2: An example of a determination indirectly affecting the amount of the advance is a determination relating to a change in circumstances that results in the person becoming eligible for a further payment of the advance under paragraph 3A.5.1 (top up of clean energy advance).

Creation and amount of debt

3A.8.1 The *clean energy advance* is a debt due to the Commonwealth by the person in paragraph 3A.7.1 if paragraph 3A.7.1(d)(i) applies.

3A.8.2 The amount by which the *clean energy advance* paid to the person in paragraph 3A.7.1 would have been reduced is a debt due to the Commonwealth by the person if paragraph 3A.7.1 (d)(ii) applies.

Relationship with sections of Act

3A.9.1 The provisions of the *Act* under which debts arise do not apply in relation to clean energy advances to which paragraph 3A.7.1 applies.

Multiple entitlement exclusion – Clean Energy Advance

3A.10.1 Despite any provision of the *MRCAETS* a person is not eligible for a *clean energy advance* under the *MRCAETS*:

- (1) if the person has previously been paid, or is eligible or qualified for, a clean energy advance under:
 - (a) *ABSTUDY*; or
 - (b) the *MRCA*, in relation to a *MRCA wholly dependent partner payment*; or
 - (c) the *Social Security Act 1991*; or
 - (d) the *VCES* (in relation to the same period); or
 - (e) the *VEA*, except for a clean energy advance in relation to *disability pension*; or

- (2) if the person has previously been paid a clean energy advance under the *MRCAETS* (in relation to the same period).

3A.10.2 A person to whom paragraph 3A.10.1 applies may still be eligible for a *top-up payment*.

Division 2 Clean energy supplement and quarterly clean energy supplement

Clean energy supplement

3A.11.1 This paragraph applies to a person for a day if:

- (a) the person receives for the day a *clean energy underlying payment*; and
- (b) the person's rate of the payment is greater than nil; and
- (c) the person is residing in Australia on the day; and
- (d) on the day the person either:
 - (i) is in Australia; or
 - (ii) is temporarily absent from Australia and has been so for a continuous period not exceeding 13 weeks.

Note: paragraph 3A.15.2 (election to take quarterly clean energy supplement) may affect whether a person meets the conditions in paragraphs (a) and (b) of paragraph 3A.11.1.

Clean energy supplement payable

3A.12.1 Subject to paragraph 3A.14.1 (multiple entitlement exclusion), if paragraph 3A.11.1 applies to a person, the Commonwealth is liable to pay the person for the day *clean energy supplement* for the person's *clean energy underlying payment*.

Note 1: The supplement is a payment separate from the *clean energy underlying payment*.

Note 2: paragraph 3A.14.1 (multiple entitlement exclusion) may affect the person's entitlement to the clean energy supplement.

Rate of clean energy supplement

3A.13.1 The rate of *clean energy supplement* for a *clean energy underlying payment* is, subject to 3A.18.1, the rate worked out by:

- (a) working out 1.7% of the *clean energy underlying payment* on 1 January 2014 (taking account of any indexation on that day); and
- (b) rounding the result of paragraph (a) up or down to the nearest multiple of 10 cents (rounding up if that result is not a multiple of 10 cents but is a multiple of 5 cents).

Note: the rate in paragraph 3A.13.1 is indexed 12 monthly in line with CPI increases (see: paragraph 3A.18.1).

3A.13.2 A clean energy supplement is to be added to the rate of *clean energy underlying payment* of a person mentioned in paragraph 3A.11.1.

3A.13.3 Paragraph 3A.13.2 does not apply if quarterly clean energy supplement is payable to a person to whom paragraph 3A.12.1 applies.

Multiple entitlement exclusion – Clean Energy Supplement

3A.14.1 Despite any provision of the *MRCAETS*, a person is not eligible to have a *clean energy supplement* for an *education allowance* used to calculate the person's rate of *education allowance* on a day if the person is also in receipt of a payment:

- (a) under the *VEA* – being a *war widow(er) pension*; or
- (b) under the *MRCA* – being a *MRCA wholly dependent partner payment*;

where the pension or payment under the *VEA* or *MRCA* respectively, includes a component of *clean energy supplement* covering the same instalment period for the person's *education allowance*.

Quarterly payment of clean energy supplement

3A.15.1 A *quarterly clean energy supplement* is payable to a person for each day for which an election by the person under paragraph 3A.15.2 is in force in relation to a *clean energy underlying payment* the person is receiving.

Note: paragraph 3A.14.1 (multiple entitlement exclusion) may affect the person's eligibility for quarterly clean energy supplement.

3A.15.2 If paragraph 3A.12.1 applies to a person, the person may, in a manner or way approved by the *Commission*, make an election to receive the person's clean energy supplement as a quarterly payment.

3A.15.3 An election ceases to be in force if the person ceases to receive a *clean energy underlying payment*.

3A.15.4 The person may, in a manner or way approved by the *Commission*, revoke an election. A revocation takes effect as soon as practicable after it happens.

Rate of quarterly clean energy supplement

3A.16.1 A person's daily rate of *quarterly clean energy supplement*, for a particular day, is 1/14 of the amount that, apart from paragraph 3A.15.1, would be the person's *clean energy supplement* for that day.

Payment of quarterly clean energy supplement

3A.17.1 A *quarterly clean energy supplement* is to be paid by instalments.

3A.17.2 An instalment of *quarterly clean energy supplement* is to be paid to a person as soon as is reasonably practicable on or after the first supplement test day (the current test day) that follows a day for which *quarterly clean energy supplement* is payable to the person.

3A.17.3 The amount of the instalment is worked out by:

- (a) working out the amount of the person's *quarterly clean energy supplement* for each day during the test period for which *quarterly clean energy supplement* is payable to the person; and
- (b) adding up the amounts resulting from paragraph (a).

3A.17.4 In paragraphs 3A.17.2 and 3A.17.3:

supplement test day means:

- (a) 20 March; or
- (b) 20 June; or
- (c) 20 September; or
- (d) 20 December.

test period means the period:

- (a) starting on the most recent supplement test day before the current test day; and
- (b) ending on the day immediately before the current test day.

3A.17.5 A claim is not required for quarterly *clean energy supplement*.

Indexation of clean energy supplement

3A.18.1 The rate of *clean energy supplement* is indexed as if it was the "Clean energy (under pension age) rate 3" mentioned in item 1AG of the table in section 1190 of the SSA and indexed under Part 3.16 of Chapter 3 of the SSA.

Note: deeming the rate of *clean energy supplement* to be the Clean energy (under pension age) rate 3 means it will be taken to be the rate in item 1G of the CPI Indexation Table in subsection 1191(1) of the SSA and will be covered by, in addition to section 1190 of the SSA, sections 1191-1194 of the SSA.

Division 3 Adjustments relating to clean energy underlying payments

Special rules for indexation of clean energy underlying payments on or after 1 January 2014

3A.19.1 The rate of a *clean energy underlying payment* is to be adjusted in accordance with section 1206GG of the SSA as if, under section 1206GG, YA MBR is the rate for the *clean energy underlying payment*.

3A.19.2 In applying section 1206GG of the SSA, sections 1191-1194 of the SSA are also to be applied as if the amount YA MBR in item 3A of the CPI Indexation Table in section 1191 is a *clean energy underlying payment*.

3A.19.3 In applying section 1206GG of the SSA:

YA MBR means the rate for the *clean energy underlying payment*.

indexation factor means the factor worked out under section 1193 of the SSA.

indexation day means the indexation day(s) in item 3A of the CPI Indexation Table in section 1191 of the SSA.

PART 4 — Guidance, Counselling and Country Visits

4.1.1 The *Commission* may arrange for a *student* to be given, or directed to, guidance and counselling for matters affecting that *student's* continuing progress in a course of study.

4.1.2 Guidance and counselling of beneficiaries of the *Scheme* and their families shall be:

- (a) in the case of a *student* under 18 years of age — at the request of:
 - (i) the *student*; or
 - (ii) the *student's* parent, guardian or trustee; or

(iii) the principal of the school, college or institution at which the *student* is enrolled;

(b) in any other case, at the request of the *student*; or

(c) in all cases at the discretion of the *Commission*.

4.1.3 Where a significant proportion of the State's beneficiaries live outside the capital city, country visits should be made to ensure that as far as possible these beneficiaries have contact with the *Scheme*.

PART 5 — Other Assistance

5.1 Fares allowance

5.1.1 Where the *Commission* has approved payment to a *student* of an education allowance under paragraph 3.5.1, it may accept financial liability for a *fare* (or part thereof) paid, or to be paid, by the *student* for a journey between the *student's* home and place of study.

Note: a fare may be the cost of using private transport.

5.1.2 In making a decision under paragraph 5.1.1 in respect of whether to accept liability for a *fare*, the *Commission* is to take into account Part 2.26 of the *Social Security Act 1991* as it relates to the circumstances in which fares allowance under that Act is payable and as it relates to the level of fares allowance payable in those circumstances.

Note: under Part 2.26 of the *Social Security Act 1991* (SSA) a determination may be made amending levels of fares allowance in the Act (Henry VIII clause). The SSA as amended by any such determination would constitute the SSA "in force from time to time" (see definition of SSA) and therefore the *Commission* could lawfully consider those new levels of fares allowance as introduced by the determination.

5.2 Additional Tuition

- 5.2.1** Where an education authority has established that a discrepancy exists between the *student's* intellectual potential and the *student's* actual academic achievement, the *Board* or the *Commission* may arrange for provision of Additional Tuition in respect of that *student*.
- 5.2.2** The *Commission* may approve payment for Additional Tuition arranged under paragraph 5.2.1.
- 5.2.3** Request for Additional Tuition must be accompanied by an appropriate assessment, from a suitably qualified education authority, as to the value of the proposed tuition or the continuing need for such assistance.

5.3 Special Financial Assistance

- 5.3.1** Where a *Board* or the *Commission* considers that exceptional circumstances, beyond the control of the *student*, have hindered or will hinder a *student's* progress:
- (a) the *Board* may recommend payment of Special Financial Assistance in respect of that *student* ; or
 - (b) the *Commission* may approve payment of Special Financial Assistance in respect of that *student*.
- 5.3.2** The *Commission* may approve payment of Special Financial Assistance recommended by the *Board* under paragraph 5.3.1.

5.4 Rates for Additional Tuition and Special Financial Assistance

- 5.4.1** The *Commission* shall determine from time to time the maximum value of Additional Tuition and Special Financial Assistance which may be provided to a *student* in any year.

5.5 Rent assistance

5.5.1 Subject to paragraph 5.5.2, a *student* who has been granted a Homeless *Student* Education Allowance or an education allowance at a ‘living away from home’ rate is entitled to the payment of rent assistance.

5.5.2 Rent assistance payable under the *Scheme*, whether to a *student* in or outside Australia, is only payable in the same circumstances that rent assistance would have been payable to the *student* under the *Social Security Act 1991* if the *student* had not been a *student* receiving benefits under the *Scheme* but had been a person receiving youth allowance under that Act.

Note 1 – as at 1 April 2003, rent assistance must, among other things, be only for premises in Australia and the maximum period that rent assistance is payable, while a *student* is outside Australia, is 26 weeks.

Note 2 – in order to receive rent assistance for premises in Australia, while studying outside Australia, a *student* must also satisfy paragraph 2.6.

Note 3 – if the rent assistance provisions of the *Social Security Act 1991* are amended then those amended provisions apply to rent assistance under the *Scheme* (see the definition of *Social Security Act 1991* in paragraph 1.2.).

PART 6 — Military Rehabilitation and Compensation Act Education and Training Boards

Note: in this Part “Commission” means the Military Rehabilitation and Compensation Commission and “Repatriation Commission” means the body continued in existence under section 179 of the *VEA*.

6.1 Establishment

6.1.1 Each *Veterans’ Children Education Board*, established in the capital city of each State under the *Veterans’ Children Education Scheme*, is established as a *Board* for the purposes of this *Scheme*, and each *Board* is called the MRCA Education and Training Board.

6.2 Membership

- 6.2.1 The membership of a *Board* in a State is to consist of the same members as constitute *the Veterans' Children Education Board* in that State.
- 6.2.2 Members of *Boards* shall serve in an honorary capacity but the *Commission* may reimburse them for expenses incurred in connection with the *Scheme* during their term of appointment.
- 6.2.3 A member of a *Board* who incurs a legal liability in the performance of his or her duties as a member of the *Board* is in the same legal position as an employee of the *Department*.

6.3 Appointment

- 6.3.1 Subject to paragraph 6.3.2, a member of a *Veterans' Children Education Board* in a State, as referred to in paragraph 6.2.1, is taken to be appointed to the *Board* in that State established by this *Scheme* when he or she is appointed to the *Veterans' Children Education Board* in that State by the Repatriation Commission and he or she shall be a member of the *Board* established by this *Scheme* in that State for the same period (including any period of re-appointment) that he or she is a member of the *Veterans' Children Education Board* in that State.
- 6.3.2 A member of a *Veterans' Children Education Board* in a State is only taken to be a member of a *Board* in that State established by this *Scheme* if the member has notified the *Commission* in writing (which notice may be in electronic form) of his or her acceptance of the membership of that *Board*.

6.4 Termination of appointment

- 6.4.1 If a member of a *Veterans' Children Education Board* in a State ceases to be a member of that Board then the person also ceases to be a member of the *Board* in that State established by this *Scheme* on the same day and at

the same time on that day that he or she ceased to be a member of the *Veterans' Children Education Board*

6.5 Functions of Boards

6.5.1 A *Board* may perform such functions in connection with the operation of the *Scheme* as are conferred on them under the *Scheme*.

6.5.2 The functions referred to in paragraph 6.5.1 include:

- (a) providing and arranging expert guidance to assist *students* in the planning of their studies;
- (b) assisting in supervising the education of primary and secondary *students* and in monitoring their progress;
- (c) referring *students* and their families to community welfare, education, guidance and counselling services where appropriate;
- (d) making recommendations to the *Commission* on matters relating to the education of the *students*; and
- (e) dealing with all matters in connection with *students'* education or career training that are referred to them by the *Commission*.

6.6 Exercise of functions by a sub-committee

6.6.1 A sub-committee of a *Board* may consist of one or more members and may exercise such functions as the *Board* determines.

6.7 Chairperson

6.7.1 At the first meeting in each calendar year the members of each *Board* shall elect one of their members to be the Chairperson and another to be the Deputy Chairperson, of the relevant *Board*.

6.8 Meetings

- 6.8.1 *Boards* shall meet at least four times in each calendar year.
- 6.8.2 In the absence of the Chairperson from any meeting of a *Board*, the Deputy Chairperson shall preside, and in the absence of the Deputy Chairperson, the members present at the meeting shall elect one of their members to preside at the meeting.
- 6.8.3 Three members of a *Board* shall form a quorum.

6.9 Statistical Return

- 6.9.1 As soon as practicable after 30 June each year each *Board* shall submit a statistical return for inclusion in the *Commission's* annual report. A *Board* in a State may combine its statistical return (return) with a return of the *Veterans' Children Education Board* in that State.

PART 7 — Scholarships

- 7.1.1 A *Board* may create scholarships from trust funds to be administered at the direction of the *Commission* and may determine the duration and value of such scholarships.
- 7.1.2 A person must be an *eligible child* who is or has been an eligible student assisted under the *Scheme* in order to qualify for the grant of a scholarship.
- 7.1.3 A scholarship under paragraph 7.1.1 of this *Scheme* may be awarded in a course not otherwise approved for the purpose of this *Scheme*.

7.2. Student Start-up Scholarship Payment

Claim not required

7.2.1 A claim is not required for a *student start-up scholarship payment*.

Grant of scholarship

7.2.2 The *Commission* may grant a *student start-up scholarship payment* to an *eligible child* who is qualified for one.

Circumstances in which Person is Qualified for Student Start-up Scholarship Payment

7.2.3 An *eligible child* is qualified for a *student start-up scholarship payment* if at a time (the qualification time):

- (a) the person is eligible for an education allowance for a tertiary student under the *Scheme*, the allowance is payable to the person and the person is receiving it; and
- (b) the person is receiving the education allowance because the person is undertaking an *approved scholarship course*; and
- (c) the *Commission* is satisfied that in the period of 35 days starting immediately after the qualification time, the person proposes to start to undertake the course or to continue to undertake the course; and
- (d) the *Commission* is satisfied that the person is not likely to receive the amount or value of a *Commonwealth Education Costs*

Scholarship in the period of 6 months starting immediately after the qualification time.

Circumstances in which Person is Not Qualified for Student Start-up Scholarship Payment

7.2.4 A person is not qualified for a *student start-up scholarship payment* if one or more of the following circumstances apply to the person in the period of 6 months (or shorter period determined by the *Commission*) ending immediately before the person's qualification time:

- (a) the person has qualified for a *student start-up scholarship payment* under the *Scheme*; or
- (b) the person has qualified for a payment under the *ABSTUDY Scheme* known as an "ABSTUDY student start-up scholarship payment"; or
- (c) the person has qualified for a payment known as a "student start-up scholarship payment" under Part 2.11B of the *Social Security Act 1991*; or
- (d) the person has qualified for a payment known as a "student start-up scholarship payment" under the scheme made under the *Veterans' Entitlements Act 1986* known as the *Veterans' Children Education Scheme*; or
- (e) the person has received the amount or value of a *Commonwealth Education Costs Scholarship* or the person was entitled to the amount or value of such a scholarship but has not received the full

entitlement only because the scholarship was suspended.

Commission may determine period less than 6 months

7.2.5 For 7.2.4, the *Commission* may determine a period in relation to a person that is at least 2 months but less than 6 months if the *Commission* considers that the determination would enable the person to qualify for a *student start-up scholarship payment* on or near the day on which the *approved scholarship course* concerned started or starts.

7.2.6 For 7.2.5, the *Commission* must not make a determination if the effect of the determination would be to enable the person to receive more than 2 *student start-up scholarship payments* in a Calendar year.

Note: The *Acts Interpretation Act 1901* defines Calendar year (s.22)

Amount of student start-up scholarship payment

7.2.7 The amount of a student start-up scholarship payment for which a person is qualified on or after 1 January 2012 is \$1,025 or the amount equal to the amount, including as indexed, under section 592H of the *Social Security Act 1991* (in force from time to time), whichever is higher.

7.3 Relocation Scholarship Payment

Claim not required

7.3.1 A claim is not required for a *relocation scholarship payment*.

Grant of scholarship

7.3.2 The *Commission* may grant a *relocation scholarship payment* to an *eligible child* who is qualified for one.

Circumstances in which Person is Qualified for Relocation Scholarship Payment

7.3.3 An *eligible child* is qualified for a *relocation scholarship payment* if at a time (the qualification time):

- (a) the person is eligible for an education allowance (living away from home) or homeless allowance, for a tertiary student under the *Scheme*, the allowance is payable to the person and the person is receiving it; and
- (b) the person is receiving the education allowance (living away from home) or homeless allowance because the person is undertaking an *approved scholarship course*; and
- (c) the *Commission* is satisfied that in the period of 35 days starting immediately after the qualification time, the person proposes to start to undertake the course or to continue to undertake the course; and
- (d) the *Commission* is satisfied that the person is not likely to receive the amount or value of a *Commonwealth Accommodation Scholarship* in the period of 12 months starting immediately after the qualification time.

*Circumstances in which Person is Not
Qualified for a Relocation Scholarship
Payment*

7.3.4 A person is not qualified for a *relocation scholarship payment* if one or more of the following circumstances apply to the person in the period of 12 months (or shorter period determined by the *Commission*) ending immediately before the person's qualification time:

- (a) the person has qualified for a *relocation scholarship payment*; or
- (b) the person has qualified for a payment under the *ABSTUDY Scheme* known as an "ABSTUDY relocation scholarship payment"; or
- (c) the person has qualified for a payment known as a "relocation scholarship payment" under Part 2.11B of the *Social Security Act 1991*; or
- (d) the person has qualified for a payment known as a "relocation scholarship payment" under the scheme made under the *Veterans' Entitlements Act 1986* known as the *Veterans' Children Education Scheme*; or
- (e) the person has received the amount or value of a *Commonwealth Accommodation Scholarship* or the person was entitled to the amount or value of such a scholarship but has not received the full entitlement only because the scholarship was suspended.

Commission may determine period less than 12 months

7.3.5 For 7.3.4, the *Commission* may determine a period in relation to a person that is at least 3 months but less than 12 months if the *Commission* considers that the determination would enable the person to qualify for a *relocation scholarship payment* on or near 1 January in a year.

7.3.6 For 7.3.5, the *Commission* must not make a determination if the effect of the determination would be to enable the person to receive more than 2 *relocation scholarship payments* in a period of 2 successive Calendar years.

Note: The *Acts Interpretation Act 1901* defines Calendar year (s.22)

Amount of relocation scholarship payment

7.3.7

(1) The amount of a *relocation scholarship payment* to a person is \$4,000 (or the amount equal to the amount, including as indexed, under subsection 592L(1) of the *Social Security Act 1991* (in force from time to time), whichever is higher) if the person has not received a student relocation payment (see subparagraph (5)) before.

(2) Subsection (1) does not apply if:

(a) the person has, at any time before the Calendar year containing the qualification time, undertaken full-time study in a course that, had the person undertaken it at the qualification time, would have

been an *approved scholarship course* at that time; and

Note: The *Acts Interpretation Act 1901* defines Calendar year (s.22)

- (b) at a time that was both while the person was undertaking that study and more than 6 months before the qualification time, the person either:
 - (i) was in receipt of a homeless student education allowance under the *Scheme*; or
 - (ii) did not receive a homeless student education allowance under the *Scheme* but received, under the *Scheme*, a living away from home allowance for a tertiary student.
- (3) The amount of a *relocation scholarship payment* to a person is \$1000 (or the amount equal to the amount, including as indexed, under subsection 592L(3) of the *Social Security Act 1991* (in force from time to time), whichever is higher) if neither subsection (1) nor subsection (4) applies.
- (4) The amount of a *relocation scholarship payment* to a person is \$2,000 (or the amount equal to the amount, including as indexed, under subsection 592L(4) of the *Social Security Act 1991* (in force from time to time), whichever is higher) if:

- (a) in 1 or more Calendar years (the *prior years*) that precede the Calendar year containing the qualification time, the person undertook full-time study in a course that, had the person undertaken it at the qualification time, would have been an *approved scholarship course* at that time; and

Note: The *Acts Interpretation Act 1901* defines Calendar year (s.22)

- (b) in 1 or 2 (but no more) of the prior years:
 - (i) the person was, while undertaking such study, in receipt of a homeless student education allowance under the *Scheme*; or
 - (ii) the person, while undertaking such study, did not receive a homeless student education allowance under the *Scheme* but received, under the *Scheme*, a living away from home allowance for a tertiary student; or
 - (iii) the person received a student relocation payment (see subparagraph (5)).

(5) A student relocation payment means any of the following:

- (a) a *relocation scholarship payment*;

- (b) a payment under the ABSTUDY Scheme known as an “ABSTUDY relocation scholarship payment”;
- (c) a payment known as a *relocation scholarship payment* under Part 2.11B of the *Social Security Act 1991*;
- (d) a payment known as a “relocation scholarship payment” under the scheme made under the *Veterans’ Entitlements Act 1986* known as the *Veterans’ Children Education Scheme*;
- (e) the amount or value of a *Commonwealth Accommodation Scholarship*.

Debts in respect of scholarship payments

Person does not start to undertake course

7.3.8

(1) If a person:

- (a) has received a *student start-up scholarship payment* or a *relocation scholarship payment* because the person is proposing to undertake an *approved scholarship course*; and
- (b) does not start to undertake full-time study in an *approved scholarship course*;

then:

- (c) the amount of the payment is a debt due to the Commonwealth; and
- (d) the debt is taken to have arisen when the person receives the payment.

However, this subparagraph does not apply if, in the *Commission's* opinion, the person does not start to undertake full-time study in an *approved scholarship course* because of exceptional circumstances beyond the person's control.

Person not continuing to undertake a course

(2) If a person:

- (a) has received a *student start-up scholarship payment* or a *relocation scholarship payment* because the person is proposing to undertake an *approved scholarship course* (the ***qualifying course***); and
- (b) starts to undertake an *approved scholarship course*; and
- (c) is not undertaking full-time study in an *approved scholarship course* at the end of 35 days after the qualifying course commences;

then:

- (d) the amount of the payment is a debt due to the Commonwealth; and
- (e) the debt is taken to have arisen when the person received the payment.

(3) If a person:

- (a) has received a *student start-up scholarship payment* or a *relocation scholarship payment* because the person is undertaking an *approved scholarship course*; and
 - (b) is not undertaking full-time study in an *approved scholarship course* at the end of 35 days after qualifying for the payment;
- then:
- (c) the amount of the payment is a debt due to the Commonwealth; and
 - (d) the debt is taken to have arisen when the person received the payment.
- (4) Subparagraphs (2) and (3) do not apply if, in the Commission's opinion, the person is not undertaking full-time study in an *approved scholarship course* because of exceptional circumstances beyond the person's control.

PART 8 — Determination of Assistance

8.1 Determinations

8.1.1 The *Commission* may, under the *Scheme*, determine:

- (a) eligibility;
- (b) levels of benefits; and
- (c) claims for benefits.

8.1.2 The *Commission* may delegate any of its powers under the *Scheme* to an employee of the *Department*.

8.2 Review of decisions

- 8.2.1** Where an application for benefit has been declined, reasons for that decision shall be provided, in writing, to the applicant.
- 8.2.2** Where a *student* or a *student's* parent, guardian or trustee is dissatisfied with a decision of the *Commission* or of a *Board*, that *student*, parent, guardian or trustee may make an application to the *Commission* for a review of the decision (applicant).
- 8.2.3** The application for review must be made within 3 months of the *student*, parent, guardian or trustee receiving a copy of that decision.
- 8.2.4** The *Commission* must, within 3 months after receipt of the application or within such longer period as is agreed in writing by the applicant, review the decision, or cause the decision to be reviewed by a person to whom the *Commission* has delegated its power under this paragraph (not being the person who made the decision).
- 8.2.5** On the completion of its review of a decision, the *Commission* shall:
- (a) if it is satisfied that the decision is unsatisfactory, set aside the decision and substitute for that decision such decision as the *Commission* considers to be appropriate; or
 - (b) if it is not so satisfied, affirm the decision.
- 8.2.6** The *Commission* must make a written record of the decision it makes after reviewing a decision. The record must include a statement that:
- (a) sets out the *Commission's* findings on relevant questions of fact; and
 - (b) refers to the evidence or other material on which those findings are based; and

(c) provides reasons for the *Commission's* decision.

8.2.7 As soon as practicable after the *Commission* reviews a decision, it must give to the applicant a copy of the written record it made under paragraph 8.2.6 and the copy may be in electronic form.

8.2.8 Application under *the Administrative Appeals Tribunal Act 1975* may be made to the Administrative Appeals Tribunal for a review of a decision of the *Commission* under paragraph 8.2.5.

PART 9 — Revocation and Application

9.1 Revocation

9.1.1 The *Veterans' Children Education Scheme* taken to have been determined as the *Scheme* under section 258 of the *Act* due to the application of section 20 of the *Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Act 2004* is revoked upon the commencement of this *Scheme*.

9.2 Application

9.2.1 A determination by the *Repatriation Commission* of an allowance or other benefit in respect of an *eligible child* under the *Veterans' Children Education Scheme* is taken to have been determined by the *Commission* under this *Scheme*.

PART 10. Transitional Arrangements

10.1 Consent of Members

10.1.1 A member of a *Veterans' Children Education Board* in a State, as at the commencement of this Determination, is only taken to be a member of a *Board* established by this *Scheme* in that State if the member has advised the

Commission of the member's consent to also be a member of the *Board* in that State established by this *Scheme*.

- 10.1.2** For the purposes of paragraph 10.1.1, a member is taken to have advised the *Commission* of his or her consent if the member so advises the *Secretary* of the *Veterans' Children Education Board* in the State.
- 10.1.3** For the purposes of paragraphs 10.1.1 and 10.1.2, advice is to be in writing and may be by electronic means.
- 10.1.4** The *Secretary* is to forward advice he or she receives under paragraph 10.1.2 to the *Commission* and for this purpose may reduce any advice electronically received to physical form.

PART 11 — Terms of members

- 11.1** If a person is a member of a Veterans' Children Education Board (the *VCEB*) in a State immediately before the commencement of this Determination then, despite any other provision of this Determination and subject to paragraph 10.1.1, the person is taken for the purposes of paragraph 6.2.1 to have been appointed to the *Board* in that State for the period beginning on the commencement of this Determination and ending on the day specified in the instrument appointing him or her to the *VCEB* as the day on which the person's appointment ends.

PART 12 — Board Secretary

- 12.1** A Secretary of a *Veterans' Children Education Board* in a State, as at the commencement of this Determination, is taken to be a Secretary of the *Board* in that State established by this *Scheme*.

Note: a Secretary of a *Veterans' Children Education Board* is an employee of the *Department*.

Notes to the *Military Rehabilitation and Compensation Act Education and Training Scheme 2004*

Note 1

The *Military Rehabilitation and Compensation Act Education and Training Scheme 2004* (in force under the *Military Rehabilitation and Compensation Act 2004*) as shown in this compilation comprises Legislative Instruments 2004 No. M4 (see F2005B01136) amended as indicated in the Tables below.

Table of Legislative Instruments

Year and number	Date of FRLI registration	Date of commencement	Application, saving or transitional provisions
2004 No. M4	22 April 2005 (see F2005B01136)	25 August 2004	
2005 No. M4	4 April 2005 (see F2005L00805)	5 April 2005	
2010 No. M25	20 April 2010 (see F2010L00840)	1 April 2010	
2011 No. M54	8 December 2011 (see 2011L02588)	1 January 2012	Para.[3] (see: Table A)
2012 No. M6	3 May 2012 (see F2012L00985)	14 May 2012	

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Contents	am. 2005 No.M4;
Para.1.2.1	am. 2005 No.M4; am. 2010 No.M25;
Para. 1.2.2	ad. 2012 No. M6;
Para. 2.2.1	am. 2010 No.M25;
Para. 2.11.2	rs. 2010 No.M25;
Para. 3.8.1	rs. 2012 No. M6;
Para. 3.8.2	am. 2012 No. M6;
Para. 3.8.3	rep. 2012 No. M6;
PART 3A	ad. 2012 No. M6;
Para. 5.5.1	am. 2005 No.M4;
Para. 7.1.3	am 2005 No.M4;
Para. 7.2	am. 2005 No.M4 (7.2. renumbered);
Para. 7.2.1	am. 2005 No.M4 (7.2.1 renumbered);
Para. 7.2.2	am. 2005 No.M4 (7.2.2 renumbered);
Para. 7.2.3	am. 2005 No.M4 (7.2.3 renumbered);
Para.7.2	ad. 2010 No.M25;
Para. 7.2.7	rs. 2011 No. M54;
Para.7.3	ad. 2010 No.M25
Para. 7.3.7	rs. 2011 No. M54;
Para. 7.3.8	rs. 2011 No. M54;
Para. 7.3.9	rep. 2011 No. M54;
Para. 7.3.10	rep. 2011 No. M54;
PART 9	am. 2005 No.M4;
Para.10	am. 2005 No.M4;
Para.10.1.2	am. 2005 No.M4;
Para. 10.1.3	am. 2005 No.M4;
Para. 10.1.4	am. 2005 No.M4;
Para.10.2	am. 2005 No.M4;
Para.10.3	am. 2005 No.M4;
Para.10.4	am. 2005 No.M4;
Para.10.5	am. 2005 No.M4;
Para.11	am. 2005 No.M4;

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Para.11.1	am. 2005 No.M4;
Para.12	am. 2005 No.M4;

Table A Application, saving or transitional provisions

Legislative Instrument No. M54/2011

[3] Application

- (1) If, on or after 1 January 2012, under the *Military Rehabilitation and Compensation Act Education and Training Scheme* as varied by this instrument, a person would receive an amount of relocation scholarship payment or student start-up scholarship payment that was less than the amount of relocation scholarship payment or student start-up scholarship payment the person would have received under the *Military Rehabilitation and Compensation Act Education and Training Scheme* immediately before it was varied by this instrument on 1 January 2012, and this instrument is not registered before 1 January 2012, the amount of relocation scholarship payment or student start-up scholarship payment payable to the person is the amount that would have been payable under the *Military Rehabilitation and Compensation Act Education and Training Scheme* had it not been varied by this instrument and such an amount is payable until the time this instrument is registered whereupon the *Military Rehabilitation and Compensation Act Education and Training Scheme*, as varied by this instrument, applies to the person.
- (2) Subject to (1), paragraph 7.3.7 of the *Military Rehabilitation and Compensation Act Education and Training Scheme*, as inserted by this instrument, applies to amounts of relocation scholarship payments for which the qualification times are on or after 1 January 2012.

- (3) In determining whether paragraph 7.3.7(1) applies, take account of payments and value received before, on or after 1 January 2012.
- (4) In determining whether paragraph 7.3.7(4) applies, take account of prior years occurring before or after 1 January 2012.

Paragraph 7.3.8

- (5) Paragraph 7.3.8 of the *Military Rehabilitation and Compensation Act Education and Training Scheme*, as inserted by this instrument, applies to payments received on or after 1 January 2012.