

INSTRUMENT No.7 OF 1998

VETERANS' ENTITLEMENTS ACT 1986

Veterans' Children Education Scheme

Section 117

EXPLANATORY NOTE

1.The Minister for Veterans' Affairs has approved the attached instrument under subsection 117 (3) of the *Veterans' Entitlements Act 1986*.

2.The Instrument varies the *Veterans' Children Education Scheme* ('the Scheme') by :

- removing references in the Scheme that refer to the defunct AUSTUDY Scheme and substituting references that refer to the new YOUTH ALLOWANCE;
- empowering the Repatriation Commission to grant rent assistance to homeless students and to double orphans;
- clarifying the Repatriation Commission's power to grant a specific education allowance to double orphans;
- making a number of variations that streamline the Scheme; and by
- making minor drafting-type variations.

3.The variations are described in more detail in the attachment.

ATTACHMENT

- Paragraph 1 contains the preamble to the Instrument.
- Paragraph 2 ensures the variations commence on 1 July 1998 and ensures that on the commencement of the variations, the provision enabling the grant of 'rent assistance', insofar as it relates to 'homeless students' and to 'double orphan students', is to be taken to have commenced on 1 January 1995 so as to remove any doubt that the grant of rent assistance to these classes of students on and after that date was not authorised.
- Paragraph 3 rectifies a typographical error.
- Paragraph 4 inserts a new definition of 'appropriate person' which describes and extends the class of persons to whom education allowances can be paid on behalf of a student in certain circumstances. For example, if a homeless student is considered to be incapable of managing his or her finances then payment of the relevant allowance will not be made directly to the student but will be made to an 'appropriate person'.
- Paragraph 5 introduces new definitions of 'approved' and 'not otherwise approved'. These terms are currently referred to in the Scheme but were not defined, which created confusion. The new variations define the terms.

- Paragraph 6 inserts a new definition of ‘double orphan’ which was made necessary by the introduction in the Scheme of an express power to grant education allowances to double orphans.
- Paragraph 7 introduces a definition of the ‘*Social Security Act 1991*’ in the Scheme and ensures that references to this Act in the Scheme are references to that Act as in force from time to time.
- Paragraph 8 ensures that the Repatriation Commission can only appoint a person to make a claim for an allowance on behalf of a dependant under 16, not only if a parent of the dependant is dead or unwilling to make the claim but also only if a guardian of the dependant is dead or unwilling to make the claim or if a person approved by a parent or a guardian is dead or unwilling to make the claim.
- Paragraph 9 streamlines paragraph 2.4.1 of the Scheme by:
- replacing the reference to ‘the Department of Social Security’ with the more appropriate reference to ‘Centrelink’ with the result that ‘clearances’ confirming that potential beneficiaries under the Scheme are not receiving similar benefits under other Commonwealth Government schemes are to also be provided by Centrelink; and by
 - correcting the outmoded reference to the Department of Employment, Education, Training and Youth Affairs.

Paragraphs 10, 11 and 12 replace references to the AUSTUDY tertiary progress rules/regulations in paragraphs 2.5.3 to 2.5.5 of the Scheme with references to the YOUTH ALLOWANCE tertiary progress rules. This part of the Scheme empowers an Education Board to assess a student's progress in accordance with the progress rules and if the student is failing to make progress the Board may refer the case to the Repatriation Commission which may determine that if the student has failed to make progress in accordance with the progress rules, the student is to cease receiving benefits. The Scheme further provides in this part that if a Board is of the opinion that a tertiary student has failed to meet the progress rules by reason of circumstances beyond his or her control, then the student may continue to receive benefits.

Paragraph 13 incorporates the words “on a full-time basis” in paragraph 2.7.1 of the Scheme as a consequence of paragraph 2.8.1 of the Scheme being revoked (see paragraphs 17 and 18 of the Instrument). Paragraph 2.8.1 of the Scheme was revoked because it duplicated the matters in paragraph 2.7.1 of the Scheme apart from the reference to the requirement for students to be undertaking study ‘on a full-time basis’ in order to be eligible for benefits under the Scheme.

Paragraph 14 ensures that a student may receive benefits under the Scheme only if he or she is undertaking a tertiary course of education or study that would qualify the student for a Youth

Allowance if the student was otherwise eligible for the Youth Allowance.

- Paragraphs 15 and 16 replace the references to courses ‘approved for the payment of AUSTUDY’, in sub-paragraph 2.7.1 (c) of the Scheme and sub-sub paragraph 2.7.1(c)(ii) of the Scheme, with references to courses that would ‘qualify a student for the payment of YOUTH ALLOWANCE’ (approved course) with the result that a tertiary student who is not undertaking an approved course may nevertheless receive benefits under the Scheme if the Commission considers the unapproved course is essential to achieve the students vocational aim and no approved course is suitable or available.
- Paragraph 17 deletes paragraphs 2.8 and 2.8.1 of the Scheme as they duplicate the matters in paragraphs 2.7 and 2.7.1 of the Scheme and are unnecessary.
- Paragraph 18 removes the reference to ‘2.8.2’ in paragraph ‘2.8.2’ of the Scheme and substitutes ‘2.7.2’ to reflect the variations made by paragraph 17 of the Instrument.
- Paragraph 19 prevents ‘double-dipping’ by ensuring that recipients of allowances in a particular category cannot receive allowances in another category unless allowed by the Scheme.
- Paragraph 20 streamlines the former provision by removing anomalous references to the situation of a secondary student ‘boarding’, thereby ensuring that education allowances may be paid to

secondary students living away from home but who are not necessarily boarding with any person.

- Paragraph 21 varies sub-paragraph 3.4.2 (b) of the Scheme (which specifies the person to receive an allowance on behalf of a secondary student living away from home) to reflect the variation made by paragraph 20 of the Instrument to paragraph 3.4.1 of the Scheme, by the addition of the words ‘if any’, to highlight the fact that secondary students living away from home might not necessarily be boarding.
- Paragraph 22 reproduces the former paragraph 3.4.3 of the Scheme in a streamlined form and provides that payment of allowance to secondary students living away from home may be made in part or in full, and a term in advance - to an institution, or a term in advance or fortnightly - to a person, as determined by the Repatriation Commission.
- Paragraph 23 reproduces the former heading of ‘Homeless Student Allowance’ but with the addition of the word ‘Education’ in order to highlight the fact that the allowance homeless students receive under the Scheme is for education.
- Paragraph 24 replaces former paragraph 3.6.2 of the Scheme (level of homeless student allowance determined by reference to AUSTUDY) with new paragraphs 3.6.2 and 3.6.3 which essentially reproduces the former paragraph but ensures that the level of allowance a homeless

student is to receive is to be ascertained by reference to the maximum basic rate payable under the Youth Allowance provisions of the *Social Security Act 1991* to an independent person. This variation was necessary as a consequence of the replacement of the AUSTUDY scheme with the Youth Allowance. The new paragraphs also ensure the allowance may be paid to an ‘appropriate’ person (See paragraph 4 of the Instrument) if the student is financially irresponsible, and not solely to a trustee as was the case under the previous provision. Thus, the class of people to whom an allowance may be paid in these special circumstances has been broadened.

Paragraph 25 introduces a new provision which clarifies the power to grant allowances to double orphans. A definition of ‘double orphan’ was inserted by paragraph 6 of the Instrument. A secondary or tertiary student who is a double orphan is entitled to an allowance for education and training. Payment of the allowance is to be made as follows:

- if the student is a secondary student under 16 years of age — to the person who receives pension on behalf of the child;
- if the student is a secondary student 16 years of age or over — to an appropriate person (defined by paragraph 4 of the Instrument) who may forward the payment to the student;
- if the student is a tertiary student — to the student.

Paragraph 26 replaces the reference to ‘paragraph 2.8.2’ in paragraph 3.7.1 of the Scheme with a reference to paragraph 2.7.2 because of the variations made by paragraphs 17 and 18 of the Instrument.

Paragraph 27 replaces the existing heading to paragraph 3.8 of the Scheme with the heading ‘Indexing and increasing education allowances’ because the new heading more accurately depicts the types of matters encompassed by paragraphs 3.8 1 to 3.8.4 of the Scheme.

Paragraph 28 replaces the words ‘1 January 1994’ in paragraph 3.8.1 of the Scheme with the words ‘1 January 1999’ to ensure that the need to index the allowances described in paragraph 3.8.1 of the Scheme in accordance with the procedure described in paragraph 3.8.2 of the Scheme (ie procedure in the *Social Security Act 1991*) only arises on and after 1 January 1999 because the relevant allowances have been indexed in respect of the year 1998.

Paragraph 29 removes the reference to the requirement in paragraph 3.8.1 of the Scheme that the allowances described in paragraph 3.8.1 of the Scheme are to be indexed by reference to the Consumer Price Index, because it is a superfluous reference in that the relevant allowances will automatically be indexed by reference to the Consumer Price Index under the procedure specified in paragraph 3.8.2 of the Scheme (ie procedure in the *Social Security Act 1991*).

- Paragraph 30 replaces paragraph 3.8.2 of the Scheme with a new paragraph 3.8.2 which provides that the annual education allowance for primary students and the fortnightly education allowance for secondary students under 16 years of age and living at home are to be indexed annually in accordance with the procedure in the *Social Security Act 1991* that is used to index the maximum basic rate of youth allowance. Previously the relevant education allowances were indexed in accordance with procedures in the *Student Assistance Act 1973* but these procedures will be repealed as a consequence of the new provisions in the *Social Security Act 1991* relating to the Youth Allowance.
- Paragraph 31 replaces the reference to ‘boarding away from home’ in paragraph 3.8.3 of the Scheme with ‘living away from home’ to reflect the variations made to paragraph 3.4.1 of the Scheme (by Paragraph 20 of the Instrument) which recognised that secondary students needing to pursue their education ‘away from home’ need not necessarily be ‘boarding’ with a person.
- Paragraph 32 reproduces the former paragraph 3.8.4 of the Scheme except that education allowances for students aged 16 years and over are to equate to the maximum basic rate of Youth Allowance payable under the Youth Allowance provisions of the *Social Security Act 1991*. Previously the relevant education allowances were to equate to the maximum rates payable under the AUSTUDY Scheme but the AUSTUDY

Scheme will be repealed by the new Youth Allowance provisions hence the need to align paragraph 3.8.4 of the Scheme with the Youth Allowance provisions.

- Paragraph 33 varies the procedure in paragraph 5.1.1 of the Scheme that permits the Repatriation Commission to reimburse a tertiary student's fares between his or her home and place of study, by ensuring that the rate of reimbursement and conditions of reimbursement are determined by reference to the relevant 'fares instrument' made under the Social Security Act 1991. Previously the rate of reimbursement and conditions of reimbursement were determined by reference to the AUSTUDY regulations but these regulations will be repealed when the AUSTUDY scheme is replaced by the Youth Allowance provisions of the *Social Security Act 1991* - hence the need to vary paragraph 5.1.1 of the Scheme.
- Paragraph 34 introduces new paragraphs 5.5 and 5.5.1 in the Scheme which will enable a 'homeless student' or a 'double orphan student' to receive rent assistance.
- Paragraph 35 replaces the word 'determinations' in paragraph 8.2 of the Scheme (which is concerned with the review of 'determinations') with 'decisions' because the matters that may be reviewed under paragraph 8.2 of the Scheme are more appropriately regarded as 'decisions'.

Paragraph 36 ensures the variations made to the Scheme by Instrument No.7 of 1998 apply to:

- students receiving benefits under the Scheme before 1 July 1998; and to
- all decisions made on or after 1 July 1998 whether or not any application or proceedings relating to the decision commenced before, on or after that date.