

EXPLANATORY STATEMENT

Select Legislative Instrument 2006 No. 210

Issued by the Authority of the Minister for Veterans' Affairs

Veterans' Entitlements Act 1986

*Veterans' Entitlements (DFISA-like Payment) Amendment
Regulations 2006 (No. 1)*

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

On 20 September 2004, the Act was amended to enable a new payment to be made to eligible people. The new payment was payable under a new Part VIIAB and was called the Defence Force Income Support Allowance (DFISA).

DFISA is payable where a person's social security income support payment (the primary payment) is reduced or not payable because the person (or his or her partner) receives certain service-related disability benefits (an adjusted disability pension). This situation occurs where the means test for the primary payment takes adjusted disability pension into account. Generally speaking, DFISA is a payment made to off-set the reduction in the person's social security payment.

In addition, primary payments other than social security income support payments may also be reduced or extinguished because the person receives an adjusted disability pension and the means test for the relevant primary payment takes adjusted disability pension into account. In these cases, DFISA is not payable under Part VIIAB of the Act but "DFISA-like payments" are payable under regulations made under that Part. The regulations are the *Veterans' Entitlements (DFISA-like Payment) Regulations 2005* (the Principal Regulations).

The purpose of the amendment-regulations (Regulations) is to recognise two new primary payments as payments that attract DFISA-like payments because the means tests for these primary payments may take adjusted disability pensions into account with the result they could be reduced or extinguished. The two new primary payments are:

- the Australian Government Farmers and Small Business Owners (Cyclone Larry) Assistance Package – Income Support Payment; and
- the Australian Government Farmers and Small Business Owners (Cyclone Monica and Cyclone Larry) Assistance Package – Income Support Payment.

These new primary payments were announced by the Prime Minister on 22 March 2006 and 26 May 2006, respectively, as ex-gratia assistance for farmers and small businesses adversely affected by Cyclone Larry or adversely affected by the cumulative effects of Cyclone Monica and Cyclone Larry (Cyclone payments).

The means tests for the Cyclone payments may take into account adjusted disability pension. Accordingly, people otherwise eligible for the payments may not receive them or may receive only part of a payment. The Regulations would enable DFISA-like payments to be paid to such people.

The Cyclone payments are paid in accordance with Guidelines administered by the Department of Families, Community Services and Indigenous Affairs.

Further details of the Regulations are contained in the Attachment.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulations are retrospective. Regulations 1 to 3 are taken to have commenced on 22 March 2006 and regulation 4 and Schedule 2 are taken to have commenced on 29 May 2006. For the purposes of section 12 of the *Legislative Instruments Act 2003* (retrospective legislative instruments) the Regulations do not disadvantage any person nor impose any liabilities on any person (other than the Commonwealth).

The Regulations incorporate documents by reference. For the purposes of the definition of "explanatory statement" in subsection 4(1) of the *Legislative Instruments Act 2003* (documents incorporated in legislative instruments/how such documents can be obtained) the following documents are incorporated-by-reference in the Regulations and may be requested from Centrelink:

- Guidelines for one-off income support programme for farmers and small business owners affected by Cyclone Larry (Queensland) 20 March 2006;
- Guidelines for one-off income support programme for farmers and small business owners affected by the cumulative effects of Cyclone Monica and Cyclone Larry in Cape York (Queensland) March / April 2006.

No consultation was undertaken in respect of the Regulations. For the purposes of the definition of "explanatory statement" in subsection 4(1) of the *Legislative Instruments Act 2003* (reason for no consultation to be given), the Rule-Maker was satisfied that consultation in respect of the Regulations was inappropriate because the Regulations were beneficial and, further, needed to be made as quickly as possible in order to enable payments to be made, the need for which may have been outstanding since 20 March 2006. The Rule-Maker noted that under paragraph 18(2)(b) of the *Legislative Instruments Act 2003* the urgency for making a legislative instrument is given as an example of a situation where consultation in respect of the instrument may be inappropriate.

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ATTACHMENT

Details of the *Veterans' Entitlements (DFISA-like Payment) Amendment Regulations 2006 (No. 1)*

- Regulation 1 sets out the name of the Regulations - *Veterans' Entitlements (DFISA-like Payment) Amendment Regulations 2006 (No. 1)*.
- Regulation 2 specifies that regulations 1 to 3 and Schedule 1 are taken to have commenced on 22 March 2006 and regulation 4 and Schedule 2 are taken to have commenced on 29 May 2006.

The regulations retrospectively commence on these dates because the two primary payments that may have been withheld or reduced, and as a result of which payments may be payable under the Regulations, were payable, respectively, on and from 22 March 2006 and 29 May 2006. The Regulations must therefore operate from those dates in order to ensure a relevant person has eligibility on and from those dates for a payment under the Principal Regulations (as amended by the Regulations).

Because the two primary payments in question were payable on and from different dates, the Regulations provide for them in different schedules. Accordingly Schedule 1 deals with the "Cyclone Larry" primary payment, and Schedule 2 deals with the "Cyclone Monica and Cyclone Larry" primary payment.

- Regulations 3-4 provide that Schedules 1 and 2 amend the Principal Regulations.

Schedule 1 - Amendments (commence 22 March 2006)

- Item [1] defines, for the purposes of the Regulations, the primary payment that is payable to farmers and small business owners affected by Cyclone Larry. The payment is known as the Australian Government Farmers and Small Business Owners (Cyclone Larry) Assistance Package – Income Support Payment (hereinafter referred to as the "Cyclone Larry payment"). The payment is payable under guidelines, in force on 22 March 2006, administered by the Department of Families, Community Services and Indigenous Affairs .
- Item [2] amends the definition of "primary payment" to include the Cyclone Larry payment.
- Item [3] provides that the rate of DFISA-like payment payable under the Principal Regulations in respect of the Cyclone Larry payment is

worked out using Method Statement 2 set out in Part 2 of Schedule 1 to the Principal Regulations.

Item [4] amends the explanatory note in Part 2 of Schedule 1 to the Principal Regulations by adding a reference to the Cyclone Larry payment so as to make it clear that the rate of the DFISA-like payment payable under the Principal Regulations in respect of the Cyclone Larry payment is worked out under Method Statement 2 of Schedule 1 to the Principal Regulations and not Method Statement 1 of Schedule 1 to the Principal Regulations.

Item [5] defines, for the purposes of the reference to “daily provisional payment rate” in Method Statement 2 of Schedule 1 to the Principal Regulations, the “daily provisional payment rate” for the Cyclone Larry payment as the provisional fortnightly payment rate mentioned in Benefit Rate Calculator B used under the *Social Security Act 1991* to work out the Cyclone Larry payment, converted to a daily rate by dividing the rate by 14.

The Australian Government Citrus Canker Assistance Package – Income Support Payment was already prescribed by paragraph (b).

Schedule 2 - Amendments (commence 29 May 2006)

Item [1] defines, for the purposes of the Regulations, the primary payment that is payable to farmers and small business owners affected by the cumulative effects of Cyclone Monica and Cyclone Larry. The payment is known as the Australian Government Farmers and Small Business Owners (Cyclone Monica and Cyclone Larry) Assistance Package – Income Support Payment (hereinafter referred to as the “Cyclone Monica and Larry payment”). The payment is payable under guidelines, in force on 29 May 2006, administered by the Department of Families, Community Services and Indigenous Affairs.

Item [2] amends the definition of “primary payment” to include the Cyclone Monica and Larry payment.

Item [3] provides that the rate of DFISA-like payment payable under the Principal Regulations in respect of the Cyclone Monica and Larry payment is worked out using Method Statement 2 set out in Part 2 of Schedule 1 to the Principal Regulations.

Item [4] includes in the explanatory note in Part 2 of Schedule 1 to the Principal Regulations a reference to the Cyclone Monica and Larry payment so as to make it clear that the rate of the DFISA-like payment payable under the Principal Regulations in respect of the Cyclone Monica and Larry payment is worked out under Method Statement 2 of Schedule 1 to the Principal Regulations and not Method Statement 1 of Schedule 1 to the Principal Regulations.

- Item [5] was a drafting change to allow the Cyclone Monica and Larry payment to be included in the definition of “daily provisional payment rate” in Part 2 of Schedule 1 to the Principal Regulations.
- Item [6] defines, for the purposes of the reference to “daily provisional payment rate” in Method Statement 2 of Schedule 1 to the Principal Regulations, the “daily provisional payment rate” for the Cyclone Monica and Larry payment as the provisional fortnightly payment rate mentioned in Benefit Rate Calculator B used under the *Social Security Act 1991* to work out the Cyclone Monica and Larry payment, converted to a daily rate by dividing the rate by 14.