



Veterans' Entitlements (DFISA-like Payment) Regulation 2015

Select Legislative Instrument No. 40, 2015

I, the Honourable Alex Chernov AC QC, Administrator of the Government of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulation.

Dated 26 March 2015

Alex Chernov
Administrator

By His Excellency's Command

Michael Ronaldson
Minister for Veterans' Affairs

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Part 1—Preliminary

1 Name

This is the *Veterans' Entitlements (DFISA-like Payment) Regulation 2015*.

2 Commencement

This instrument commences on the day after it is registered.

3 Authority

This instrument is made under the *Veterans' Entitlements Act 1986*.

4 Purpose

- (1) For subsection 118NJ(1) of the Act, this instrument provides for the payment of DFISA-like payments.
- (2) For subsection 118NJ(2) of the Act, this instrument provides for the payment of other payments and the provision of non-financial benefits.

5 Definitions

Note: A number of expressions used in this instrument are defined in the Act, including *Commission*.

In this instrument:

ABSTUDY Living Allowance means Living Allowance payable under the ABSTUDY Scheme.

ABSTUDY Scheme means the scheme known as ABSTUDY.

Act means the *Veterans' Entitlements Act 1986*.

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adjusted disability pension has the meaning given by section 118NA of the Act.

associated non-financial benefit means a benefit that is to be provided to a person under section 11.

associated payment means a payment payable to a person under section 9.

commencement day means the day this instrument commences.

Commonwealth scheme has the meaning given by subsection 118NJ(3) of the Act.

daily provisional payment rate, for a person, means the amount worked out under step 1 of section 57.1.2.6 of the Overall Living Allowance Rate Calculator, converted to a daily rate by dividing the rate by 14.

DFISA-like payment means a payment payable to a person under section 6.

eligible person means a person to whom DFISA-like payment or an associated payment is payable, or an associated non-financial benefit is provided, under this instrument.

excluded amount has the meaning given by section 118NA of the Act.

income test means the applicable income test referred to in the Overall Living Allowance Rate Calculator.

Overall Living Allowance Rate Calculator means the Rate Calculator, as in force on the commencement day, used under the ABSTUDY Scheme to work out the rate of ABSTUDY Living Allowance (plus Rent Assistance, Remote Area Allowance and Pharmaceutical Allowance).

Note: The ABSTUDY Policy Manual could in 2015 be viewed on the Department's website (<http://www.dss.gov.au>).

partner has the same meaning as in subsection 4(1) of the *Social Security Act 1991*.

Pharmaceutical Allowance means Pharmaceutical Allowance payable under the ABSTUDY Scheme.

primary payment means ABSTUDY Living Allowance.

rate includes a nil rate.

Remote Area Allowance means Remote Area Allowance payable under the ABSTUDY Scheme.

Rent Assistance means Rent Assistance payable under the ABSTUDY Scheme.

rent reduction amount, in relation to a person to whom a DFISA-like payment is payable, means the amount (if any) calculated under section 57.1 of the Overall Living Allowance Rate Calculator to be the appropriate:

- (a) income reduction (step 1 of section 57.1.2.2); and
- (b) if applicable—reduction for partner income (step 1 of section 57.1.2.4);

but applying the calculation on the basis that adjusted disability pension payable is, for the purposes of the Calculator, the person's and, if applicable, the person's partner's, only ordinary income.

secondary non-financial benefit means a benefit (other than a payment) under a Commonwealth scheme that is provided to a person on a day because a primary payment is payable to the person on that day.

secondary payment means a payment (other than a primary payment) under a Commonwealth scheme that is payable to a person on a day because a primary payment is payable to the person on that day.

Part 2—DFISA-like payments

6 Eligibility for DFISA-like payment

- (1) DFISA-like payment is payable on a day that is on or after the commencement day to a person to whom subsection 118NJ(1) of the Act applies.
- (2) However, DFISA-like payment is not payable to the person on that day if:
 - (a) the rate of DFISA-like payment would be nil; or
 - (b) subsection 13(4) applies to the person on that day; or
 - (c) before that day:
 - (i) the person had elected not to be covered by this instrument; and
 - (ii) the election had not been withdrawn.
- (3) An election, or a withdrawal of an election, under paragraph (2)(c):
 - (a) is effective only if made by document lodged at an office of the Department in Australia in accordance with section 5T of the Act; and
 - (b) is taken to have been made on a day determined under that section.

7 Rate of DFISA-like payment

The rate of DFISA-like payment that is payable to an eligible person on a day is worked out as follows:

Method statement

Step 1. Work out the daily provisional payment rate of ABSTUDY Living Allowance that:

- (a) is payable to the person on the day; or

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- (b) would, apart from the other steps in this method statement, be payable to the person on the day.

Step 2. Work out what would have been the daily provisional payment rate of ABSTUDY Living Allowance applying to the person on that day if both of the following assumptions were made:

- (a) the adjusted disability pension payable to the eligible person, or to the person's partner, is an excluded amount;

Note: This means that, in calculating this notional rate, the adjusted disability pension will not be treated as income.

- (b) if an amount of Rent Assistance was included in the calculation of the daily provisional payment rate—that amount is reduced (but not to less than nil) by the rent reduction amount.

Step 3. Subtract the rate in step 1 from the rate in step 2. The result is the rate of DFISA-like payment payable to the person on the day.

8 Payment of DFISA-like payment in arrears and by instalments

Section 121 of the Act applies to a payment of DFISA-like payment as if:

- (a) DFISA-like payment were a pension for the purposes of that section; and
- (b) the reference to DFISA in subsection 121(6A) were a reference to DFISA-like payment.

Part 3—Secondary benefits

9 Eligibility for associated payments

An associated payment is payable to a person on a day that is on or after the commencement day if:

- (a) a primary payment is not payable to the person on that day, but only because adjusted disability pension is payable to the person, or the person's partner, on that day; and
- (b) a secondary payment is not payable to the person on that day, but only because the primary payment is not payable to the person on that day; and
- (c) DFISA-like payment is payable to the person on that day.

10 Rate of associated payment

The rate of associated payment that is payable to an eligible person on a day is the rate of the secondary payment mentioned in paragraph 9(b) that would have been payable to the person on that day if the primary payment mentioned in paragraph 9(a) had been payable to the person on that day.

11 Eligibility for associated non-financial benefits

An associated non-financial benefit is to be provided to a person on a day that is on or after the commencement day if:

- (a) a primary payment is not payable to the person on that day, but only because adjusted disability pension is payable to the person, or the person's partner, on that day; and
- (b) a secondary non-financial benefit is not provided to the person on that day, but only because the primary payment is not payable to the person on that day; and
- (c) DFISA-like payment is payable to the person on that day.

12 Provision of associated non-financial benefit

The associated non-financial benefit that is to be provided to an eligible person on a day is the secondary non-financial benefit mentioned in paragraph 11(b) that would have been provided to the person on that day if the primary payment mentioned in paragraph 11(a) had been payable to the person on that day.

Note: An example of an associated non-financial benefit is a health care card.

Part 4—General

13 Payment into bank account

- (1) This section applies if the Commission has determined, under subsection 122(4) of the Act, that DFISA-like payment or an associated payment is to be paid into an account with a bank.
- (2) The Commission may direct that the whole or a part of an instalment of DFISA-like payment, or the whole or part of an amount of associated payment, is to be paid, at such intervals as it directs, to the credit of an account nominated from time to time by an eligible person, and payment is to be made accordingly.
- (3) An account nominated by an eligible person for the purposes of subsection (2) must be an account maintained by that person, either alone, or jointly or in common with another person, with a bank.
- (4) If the eligible person has not nominated an account for the purposes of subsection (2) by the end of the period of 28 days (or such longer period determined by the Commission) starting on the day on which the Commission requested the person to do so, DFISA-like payment ceases to be payable to the person.
- (5) If the eligible person nominates an account for the purposes of subsection (2) after the end of the 28 day or other period, subsection (4) ceases to apply to the person on the day the person does so.

14 Deductions from DFISA-like payment or associated payment because of notice from the Commissioner of Taxation

The Commission must, in accordance with Subdivision 260-A of Schedule 1 to the *Taxation Administration Act 1953*, for the purpose of enabling the collection of an amount that is, or may become, payable by a recipient of DFISA-like payment or an associated payment, direct that:

- (a) deductions are to be made from instalments of DFISA-like payment, or from an amount of associated payment, payable to the recipient; and
- (b) the amount deducted is to be paid to the Commissioner of Taxation.

15 Compliance with requirements of relevant Commonwealth program

- (1) This section applies to a person to whom DFISA-like payment is payable on a day if:
 - (a) the rate of the primary payment on that day is nil; or
 - (b) the primary payment is not payable to the person on that day.
- (2) The person must comply with any requirements under the Commonwealth scheme that provides for the primary payment, as if the person were receiving an instalment of the primary payment.