

EXPLANATORY STATEMENT

Veterans' Affairs Children Education Schemes (Indigenous Students Assistance Scholarships and Other Matters) Amendment Instrument 2016

(Instrument 2016 No. R51/MRCC51)

EMPOWERING PROVISIONS

Subsection 117(2) of the *Veterans' Entitlements Act 1986* (VEA) and subsection 258(4) of the *Military Rehabilitation and Compensation Act 2004* (MRCA).

PURPOSE

The attached instrument (2016 No. R51/MRCC51) varies, respectively:

- the *Veterans' Children Education Scheme* (VCES) under the VEA;
- the *Military Rehabilitation and Compensation Act Education and Training Scheme 2004* (MRCAETS) under the MRCA

(collectively referred to as “the DVA Education Schemes” or “the Schemes”).

The Schemes are legislative instruments that set out the circumstances in which the Repatriation Commission and the Military Rehabilitation and Compensation Commission (the Commissions) may provide education and training to eligible children of veterans, members or former members of the Defence Force. Under the Schemes, eligible children are provided with educational assistance comprised chiefly of educational allowances and training. Provision is also made for special assistance and additional tuition to be provided in appropriate cases.

The attached instrument updates the Schemes following the recent passage of the *Higher Education Support Legislation Amendment (2016 Measures No. 1) Act 2016* (HESLA) and the *Budget Savings (Omnibus) Act 2016*.

Schedule 1 amendments

The amendments in Schedule 1 of the attached instrument flow from HESLA. HESLA amends the *Higher Education Support Act 2003* to introduce a new Part 2-2A. This new Part establishes a framework, through the Indigenous Student Assistance Grants Guidelines, which enables grants to certain higher education providers to assist Indigenous students (including for providing scholarships). The Guidelines amalgamate Commonwealth scholarships from three existing sources into the new Indigenous Student Success Programme to be administered under the *Higher Education Support Act 2003*.

The HESLA amendments responded to the 2012 Review of Higher Education Access and Outcomes for Aboriginal and Torres Strait Islander People, which recommended reform of Commonwealth scholarships and supplementary support programmes for

indigenous students to ensure funding was flexible, simple to administer and had a greater focus on improving retention and completion rates for Indigenous students.

The DVA Education Schemes enable the Commissions to grant Student Start-up Scholarship Payments and Relocation Scholarship Payments to eligible children (generally, children of veterans) in certain circumstances. The Schemes disqualify the making of those payments in circumstances where the Commissions are satisfied that a student has received, or is likely to receive, certain Commonwealth payments, including the Commonwealth Education Costs Scholarship (in the case of the Student Start-up Scholarship Payment) and the Commonwealth Accommodation Scholarship (in the case of the Relocation Scholarship Payment).

The attached instrument will expand the disqualification provisions in the Schemes to include specified scholarships for Indigenous students introduced under Part 2-2A of *Higher Education Support Act 2003*. These changes to the Schemes bring the scholarships provided for by grants under Part 2-2A of the *Higher Education Support Act 2003* in line with the treatment of scholarships provided for by grants under Part 2-4 of the *Higher Education Support Act 2003*.

The amendments in Schedule 1 to this instrument will commence at the same time as the commencement of Part 1 of Schedule 1 of HESLA.

Schedule 2 amendments

The amendments in Schedule 2 of the attached instrument flow from the *Budget Savings (Omnibus) Act 2016* (Omnibus Act). The Omnibus Act repeals provisions in the *Social Security Act 1991* dealing with the “student start-up scholarships” from 1 July 2017. Provisions in the *Social Security Act 1991* relating to “student start-up loans” were introduced on 1 January 2016.

Schedule 2 of the attached instrument amends both Schemes to replace the reference to section 592H of the *Social Security Act 1991* (in paragraph 7.4.7 of the VCES and paragraph 7.2.7 of the MRCAETS) with a reference to section 1061ZVBD of the *Social Security Act 1991*.

The amended provisions in the DVA Education Schemes set out the amount of the student start-up scholarship and provide that where the amount under the relevant provision of the *Social Security Act 1991*, including that amount as indexed, is higher (the SSA amount), the SSA amount is to apply.

No policy change is effected by this amendment; it merely updates the reference in the DVA Education Schemes to the provision of the *Social Security Act 1991* dealing with payments for student start-up loans.

The Schedule 2 amendments will commence at the same time as the commencement of Schedule 11 of the Omnibus Act. That Schedule commences on 1 July 2017.

Further details of the attached instrument are set out in [Attachment A](#).

CONSULTATION

Yes. The Department of the Prime Minister and Cabinet was consulted in relation to the amendments in Schedule 1 to the attached instrument. The Department of Social Services was consulted in relation to the amendments in both Schedules 1 and 2 to the attached instrument.

The nature of the consultation included email correspondence and telephone conversations with policy and legal officers from the two Departments.

RETROSPECTIVITY

None.

DOCUMENTS INCORPORATED BY REFERENCE

The new definitions of “disqualifying accommodation scholarship” and “disqualifying education costs scholarship” reference certain legislative instruments made by the Secretary of the Department of Social Services. Those legislative instruments, insofar as they are incorporated by reference into the Schemes, will apply as in force from time to time. They will be publicly accessible on the Federal Register of Legislation.

REGULATORY IMPACT

None.

HUMAN RIGHTS STATEMENT

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

The attached legislative instrument engages applicable rights or freedoms, namely the Right to Education - contained in Article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Right to Social Security in Article 9 of the ICESCR.

Relevantly, Article 13(2)(c) of the ICESCR recognises that for the full realisation of the right to education, ‘higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means’

The right to social security is contained in Article 9 of the ICESCR, which recognises ‘the right of everyone to social security, including social insurance’. This could also include support for students to access tertiary education.

The amendments in Schedule 1 to the attached instrument flow from the *Higher Education Support Legislation Amendment (2016 Measures No. 1) Act 2016* (HESLA) which amended the *Higher Education Support Act 2003* to enable grants to certain higher education providers to assist Indigenous students including by providing scholarships.

The attached instrument amends the DVA Education Schemes to update the disqualification (or multiple entitlement exclusion) provisions to include certain specified scholarships for Indigenous students under Part 2-2A of the *Higher*

Education Support Act 2003. This is consistent with existing disqualification provisions in the Schemes in relation to a person in receipt of scholarships provided for under Part 2-4 of the *Higher Education Support Act 2003*.

The disqualification provisions prevent “double-dipping” and ensure that a student receives certain equivalent higher education payments or scholarships from one source only, whether it be under the *Higher Education Support Act 2003*, *Social Security Act 1991* or a DVA Education Scheme.

The overall effect of the amendments is to strengthen and support the integrity of the DVA Education Schemes. In this way, the instrument can be said to promote the right to education and the right to social security.

Conclusion

The attached legislative instrument is compatible with human rights.

Dan Tehan
Minister for Veterans' Affairs

Rule-Maker

FURTHER EXPLANATION OF PROVISIONS

See: [Attachment A](#)

Attachment A

Veterans' Affairs Children Education Schemes (Indigenous Students Assistance Scholarships and Other Matters) Amendment Instrument 2016

Section 1

This section sets out the name of the instrument - *Veterans' Affairs Children Education Schemes (Indigenous Students Assistance Scholarships and Other Matters) Amendment Instrument 2016*.

Section 2

This is the commencement provision. It provides for:

- Schedule 1 to commence on the commencement of Part 1 of Schedule 1 of the *Higher Education Support Legislation Amendment (2016 Measures No. 1) Act 2016*;
- Schedule 2 to commence on 1 July 2017; and
- all other provisions to commence on the day after registration.

Section 3

This section sets out the primary legislation that authorises the making of the instrument, namely:

- subsection 117(2) of the *Veterans' Entitlements Act 1986* in respect of the variations to the *Veterans' Children Education Scheme*, and
- subsection 258(4) of the *Military Rehabilitation and Compensation Act 2004* in respect of the variations to the *Military Rehabilitation and Compensation Act Education and Training Scheme 2004*.

Section 4

This section provides for the variations to the Schemes outlined in the Schedules to have effect.

Schedule 1

Part 1 - Variations to the Veterans' Children Education Scheme (the VCES or the Scheme)

Item 1

This item inserts new definitions of "disqualifying accommodation scholarship" and "disqualifying education costs scholarship" into the interpretation provision of the VCES.

“Disqualifying accommodation scholarship” is defined to mean:

a scholarship:

- provided for under Part 2-2A of the *Higher Education Support Act 2003* (Indigenous student assistance grants); and
- specified under subsection 23(24) of the *Social Security Act 1991* for the purposes of subparagraph (a)(ii) of the definition of disqualifying accommodation scholarship in subsection 23(1) of that Act; or

a Commonwealth Accommodation Scholarship.

Subsection 23(24) of the *Social Security Act 1991* enables the Secretary of the Department of Social Services to specify, by way of legislative instrument, a scholarship under Part 2-2A of the *Higher Education Support Act 2003* for the purposes of the definition of disqualifying accommodation scholarship in the *Social Security Act 1991*.

“Disqualifying education costs scholarship” is defined to mean:

a scholarship:

- provided for under Part 2-2A of the *Higher Education Support Act 2003* (Indigenous student assistance grants); and
- specified under subsection 23(24) of the *Social Security Act 1991* for the purposes of subparagraph (a)(ii) of the definition of disqualifying education costs scholarship in subsection 23(1) of that Act; or

a Commonwealth Education Costs Scholarship.

Subsection 23(24) of the *Social Security Act 1991* enables the Secretary of the Department of Social Services to specify, by way of legislative instrument, a scholarship under Part 2-2A of the *Higher Education Support Act 2003* for the purposes of the definition of disqualifying education costs scholarship in the *Social Security Act 1991*.

Items 2, 6 and 7 replace references to “Commonwealth Accommodation Scholarship” with references to “disqualifying accommodation scholarship” in paragraphs 2.11.2(b), 7.5.3(d) and 7.5.4(e) of the VCES.

Paragraphs 7.5.3(d) and 7.5.4(e) of the VCES are the disqualification (or multiple entitlement exclusion) provisions of the VCES for the Relocation Scholarship Payment.

Items 3, 4 and 5 replace references to “Commonwealth Education Costs Scholarship” with references to “disqualifying education costs scholarship” in paragraphs in 2.11.2(c), 7.4.3(d) and 7.4.4(e) of the VCES.

Paragraphs 7.4.3(d) and 7.4.4(e) of the VCES are the disqualification (or multiple entitlement exclusion) provisions of the VCES for the Student Start-up Scholarship Payment.

Part 2 - Variations to the Military Rehabilitation and Compensation Act Education and Training Scheme (the MRCAETS or the Scheme)

Item 1

This item inserts new definitions of “disqualifying accommodation scholarship” and “disqualifying education costs scholarship” into the interpretation provision of the MRCAETS.

These definitions are in the same terms as those inserted into the interpretation provision of the VCES - *see* item 1 of Part 1 above.

Items 2, 6 and 7 replace references to “Commonwealth Accommodation Scholarship” with references to “disqualifying accommodation scholarship” in paragraphs 2.11.2(b), 7.3.3(d) and 7.3.4(e) of the MRCAETS.

Paragraphs 7.3.3(d) and 7.3.4(e) of the MRCAETS are the disqualification (or multiple entitlement exclusion) provisions of the MRCAETS for the Relocation Scholarship Payment.

Items 3, 4 and 5 replace references to “Commonwealth Education Costs Scholarship” with references to “disqualifying education costs scholarship” in paragraphs in 2.11.2(c), 7.2.3(d) and 7.2.4(e) of the MRCAETS.

Paragraphs 7.2.3(d) and 7.2.4(e) of the MRCAETS are the disqualification (or multiple entitlement exclusion) provisions of MRCAETS for the Student Start-up Scholarship Payment.

Schedule 2

Part 1 - Variations to the Veterans’ Children Education Scheme (the VCES or the Scheme)

Item 1

This item updates para 7.4.7 of the VCES to substitute the reference to section 592H of the *Social Security Act 1991* with a reference to section 1061ZVBD of that Act.

No policy change is effected by this amendment; it merely updates the section reference in the *Social Security Act 1991* to the section setting out the payment amount for student start-up loans (section 1061ZVBD).

The six-monthly payment for the student start-up scholarship under the Scheme will remain the same, that is, \$1,025 indexed on 1 January each year in line with CPI increases in accordance with the increase for student start-up loans under section 1061ZVBD of the *Social Security Act 1991*.

Part 2 - Variations to the Military Rehabilitation and Compensation Act Education and Training Scheme 2004 (the MRCAETS or the Scheme)

Item 1

This item updates para 7.2.7 of the MRCAETS to substitute the reference to section 592H of the *Social Security Act 1991* with a reference to section 1061ZVBD of that Act.

No policy change is effected by this amendment; it merely updates the section reference in the *Social Security Act 1991* to the section setting out the payment amount for student start-up loans (section 1061ZVBD).

The six-monthly payment for the student start-up scholarship under the Scheme will remain the same, that is, \$1,025 indexed on 1 January each year in line with CPI increases in accordance with the increase for student start-up loans under section 1061ZVBD of the *Social Security Act 1991*.