##### EXPLANATORY STATEMENT

**Veterans’ Children Education Schemes (Education Boards) Amendment Determination 2022**

Instrument 2022 No. R34/MRCC34

**EMPOWERING PROVISIONS**

Subsection 117(8) of the *Veterans’ Entitlements Act 1986* (the VEA) and subsection 258(5) of the *Military Rehabilitation and Compensation Act 2004* (the MRCA).

**PURPOSE**

The instrument (2022 No. R34/ MRCC34) amends the *Veterans’ Children Education Scheme* (VCES) and the *Military Rehabilitation and Compensation Act Education and Training Scheme* (MRCA ETS) (the Education Schemes) to transfer the responsibilities of the Education Boards (the Boards) to the Repatriation Commission and the Military Rehabilitation and Compensation Commission (the Commissions) as a consequence of the decision of the Commissions to abolish the Boards.

The Education Schemes are provided through legislative instruments made under the *Veterans’ Entitlements Act 1986* (the VEA) and the *Military Rehabilitation and Compensation Act 2004* (the MRCA) respectively.

The Education Schemes enable the Repatriation Commission and the Military Rehabilitation and Compensation Commission (MRCC) to support eligible children and dependents of veterans who are severely injured or died as a result of their service. Assistance under the Education Schemes is available to eligible primary, secondary and tertiary students.

**CONSULTATION**

Section 17 of the *Legislation Act 2003* requires a rule-maker to be satisfied, before making a legislative instrument that any consultation the rule-maker considered appropriate and reasonably practicable, has been undertaken.

The policies surrounding Education Schemes are the responsibility of the Family Policy Section of the Policy Development Branch of the Veteran and Family Policy Division.

The Family Policy Section undertook a review of the Education Boards in July 2021 which formed the basis for the submission to the Commissions to remove the Education Boards function which was considered and approved on 22 September 2021.

The review arose as a consequence of the concerns received from some state Education Boards about their ability to fulfil their legislated functions, and the resultant potential for adverse outcomes for eligible children in the Education Schemes. The Boards were consulted around these matters ahead of the decision of the Commissions.

The proposed legislative instrument will implement the Commissions’ decisions by removing all references to the Boards from the Education Schemes and transferring the responsibilities from the Education Boards to the Commissions.

Accordingly, it is considered the requirements of section 17 of the *Legislation Act 2003* have been met.

**MERITS REVIEW**

Part 8 of the Education Schemes provides that the Commissions may determine:

 (a) eligibility;

 (b) levels of benefits; and

 (c) claims for benefits.

Paragraph 8.1.2 provides for the Commissions to delegate any of their powers under the Education Schemes to employees of the Department of Veterans’ Affairs.

Merits review of decisions to decline an application are provided under paragraph 8.2 of the Education Schemes. Paragraph 8.2.1 is applicable when an application for a benefit has been declined and requires reasons for that decision to be provided, in writing, to the applicant.

In the circumstances where a student or a student’s parent, guardian or trustee is dissatisfied with a decision of the Commissions, the student, parent, guardian or trustee may make an application to the responsible Commission for a review of the decision.

The responsible Commission is required, within 3 months of the 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 responsible Commission has delegated its power (not being the person who made the decision).

Paragraph 8.2.5 provides that once the review of the decision is completed, the responsible 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.

The Commission must make a written record of the decision it makes after reviewing a decision with the record to 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.

Paragraph 8.2.7 requires the Commission to give to the applicant a copy of the written record.

Paragraph 8.2.8 provides that an 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.

**REGULATORY IMPACT**

The proposed amendments are minor amendments to the Education Schemes which removes the state Boards and consequential amendments to remove references to the Boards. The Office of Best Practice Regulation (OBPR) has confirmed that there is no regulatory impact and the preparation of a Regulation Impact Statement is not required. (OBPR21-01187).

**RETROSPECTIVITY**

None.

# DOCUMENTS INCORPORATED-BY-REFERENCE

No.

**FURTHER EXPLANATION**

Attachment A.

**Attachment A**

Section 1 describes the name of the instrument as the *Veterans’ Children Education Schemes (Education Boards) Amendment Determination 2022.*

Section 2 provides that the instrument commences on the day after it is registered.

Section 3 provides that the legislative authority for the Determination is subsection 117(8) of the *Veterans’ Entitlements Act 1986* (the VEA) and subsection 258(4) of the *Military Rehabilitation and Compensation Act 2004* (the MRCA).

Section 4 provides for the amendments to the Education Schemes being made by the items set out in the Schedule to the Determination.

**Schedule**

***Variations to the Veterans’ Children Education Scheme (Instrument 2015 No. R43)***

**Item 1** amends paragraph 3(b) (Saving and Transitional Provisions) to omit the paragraph and Notes (1) and (2).

Paragraph 3(b) had provided for the continuance of the Education Boards established under the revoked *Veterans’ Children Education Scheme* (Instrument 1992 No. 11).

Notes (1) and (2) had referred to the transition of the existing Education Boards and that “a Secretary of a Veterans’ Children Education Board is an employee of the *Department*”.

**Item 2** inserts new paragraph (e) into section 3 (Saving and Transitional provisions).

New paragraph 3(e) is a savings provision applicable in the event that the Repatriation Commission has under paragraph 7.1.2 (to be repealed by **Item 15**) determined that funds that had been left in its trust for the benefit of eligible students were being administered by an Education Board.

Following the commencement of the *Veterans’ Children Education Schemes (Education Boards) Amendment Determination 2021*, any such funds will be administered by the Repatriation Commission.

**Item 3** amends paragraph 1.2.1 to omit the redundant definitions of “Board”, “member”, “MRCA Children’s Board”, “Secretary” and “sub-committee”.

**Item 4** amends paragraph 1.4 (Purpose of the Scheme) by repealing paragraph 1.4.3 which referred to an ancillary purpose of the VCES as enabling the Education Boards established under the VCES to operate as the “MRCA Children’s Board” for the purposes of the MRCA ETS.

**Item 5** is a minor amendment to paragraph 1.5.1 (Administration of the Scheme) to omit the reference to the assistance provided by the state Education Boards.

**Item 6** repeals paragraphs 2.5.1 to 2.5.6 (Cessation of Assistance under the Scheme) which had included references to the role of the Education Boards in dealing with students whose academic progress was unsatisfactory and substitutes new paragraphs 2.5.1 to 2.5.3.

New paragraph 2.5.1 provides that the Repatriation Commission may if is of the opinion that a primary or secondary student’s progress is not satisfactory, determine that the student cease to receive benefits under the VCES.

New paragraph 2.5.2 provides that if the Repatriation Commission is of the opinion that a tertiary student aged sixteen years or over would have failed to satisfy the progress rules that apply to recipients of Austudy under Part 2.11A of the *Social Security Act 1991* (if those rules had applied to the student), it may make a determination that the student cease to receive benefits under the VCES.

The Note to paragraph 2.5.2 refers to the “progress rules” for Part 2.11A of the *Social Security Act 1991* being set out in section 569H of the *Social Security Act 1991*.

New paragraph 2.5.3 provides that any benefits provided under the VCES that have been withdrawn under paragraphs 2.5.1 and 2.5.2 may be restored by the Repatriation Commission if it is satisfied that the student has resumed satisfactory academic progress.

**Items 7 and 8** amend paragraph 2.10.2 and paragraph 2.10.3. The provisions of paragraph 2.10 are applicable to absences from study for primary and secondary students.

Paragraph 2.10.1 is applicable in the circumstances 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. In those cases the Repatriation Commission may review the student’s eligibility for continuing benefits under the VCES and may suspend the payment of allowances.

The reference to an Education Board in paragraph 2.10.2 disregarding a student’s absence under paragraph 2.10.1 because it is satisfied that a student’s absence is “due to sickness or to reasons beyond the student’s control” is replaced by a reference to the Repatriation Commission.

Paragraph 2.10.3 had referred to the Education Board being satisfied that a student’s absence was without reasonable cause and the subsequent referral to the Repatriation Commission to make a determination to withdraw the benefits payable under the VCES.

Paragraph 2.10.3 is amended to refer to the Repatriation Commission being satisfied that a student’s absence was without reasonable cause and the Repatriation Commission making a determination to withdraw the benefits payable under the VCES.

Paragraph 2.10.4 is retained as it provides for the Repatriation Commission to restore the payment of a student’s benefits that had been withdrawn under paragraph 2.10.3 if it is satisfied that the “student has resumed satisfactory progress”.

**Items 9 to 11** amend Part 4 which refers to the Repatriation Commission arranging for the provision of guidance and counselling services to students and their families in regard to maters which may be affecting a student’s continuing progress in a course of study.

The heading “Guidance, Counselling and Country Visits” is repealed and substituted with the heading “Guidance and Counselling” to reflect the amendments to paragraph 4.1.1 and that there will no longer be country visits.

Paragraph 4.1.1 is amended to provide that the Repatriation Commission may refer students and their families to community welfare, education, guidance and counselling services in such circumstances as it is considered appropriate.

Paragraph 4.1.3 is repealed and new paragraphs 4.1.3 and 4.1.4 are substituted.

New paragraph 4.1.3 requires the Repatriation Commission to monitor the progress of students and to seek expert advice from relevant education and health experts in order to understand the needs of the student.

New paragraph 4.1.4 requires the Repatriation Commission to monitor the operation and performance of the VCES to ensure that it has a positive impact on students.

**Item 12** amends paragraph 5.2.1 which is applicable in the circumstances where a discrepancy exists between the student’s intellectual potential and the student’s actual academic achievement.

The reference to the Education Boards is omitted with the responsibility to arrange for the provision of additional tuition for the student being retained by the Repatriation Commission.

**Item 13** repeals paragraphs 5.3.1 and 5.3.2 and substitutes new paragraph 5.3.1.

The repealed paragraphs 5.3.1 and 5.3.2 had provided for payments of Special Assistance (as determined by the Repatriation Commission under paragraph 5.4) where the Education Board or the Repatriation Commission had considered that exceptional circumstances that are beyond the control of the student, have hindered or would hinder a student’s progress.

In those cases, the Education Board could recommend payment of Special Assistance by the Repatriation Commission or the Repatriation Commission could approve payment of Special Assistance in respect of that student.

New paragraph 5.3.1 provides that where the Repatriation Commission considers that exceptional circumstances that are beyond the control of the student, have hindered or will hinder a student’s progress the Repatriation Commission may approve payment of Special Assistance in respect of that student.

**Item 14** omits Part 6 (Veterans’ Children Education Boards) which provides for the establishment, membership, appointments to and functions and operations of the Education Boards.

**Item 15 to 17** amend paragraphs 7.1, 7.2 and 7.3. Part 7 refers to bequests to the Education Boards and the trusts, scholarships and the operation of the Long Tan Bursary.

Paragraphs 7.1.1 and 7.1.2 are repealed and substituted. Paragraphs 7.1.1 and 7.1.2 had provided that funds bequeathed in trust to an Education Board were deemed to have been bequeathed to the Repatriation Commission which could in turn determine that such funds could be administered by an Education Board.

New paragraph 7.1.1 provides that any funds that are bequeathed in trust for the benefit of eligible students under the VCES, are deemed to have been bequeathed in trust to the Repatriation Commission.

Paragraph 7.2.1 is repealed and substituted. New paragraph 7.2.1 provides that the Repatriation Commission (in place of the Education Boards under the repealed paragraph) may create scholarships from trust funds and may determine the duration and value of such scholarships.

Paragraph 7.3.5 which had provided that a Long Tan Bursary may be directly administered by the Repatriation Commission or by an Education Board under the direction of the Repatriation Commission is amended to remove the reference to the administration by the Education Board and to include a reference to an organisation contracted by the Commission.

The inclusion of the reference to a contracted organisation acknowledges the longstanding arrangement with AVCAT (the Australian Veterans’ Children Assistance Trust) to administer the Long Tan Bursary.

**Item 18** omits paragraph 8.1.3 which had provided that the Repatriation Commission with the discretion, by instrument in writing, to confer any of its powers contained in section 118 of the VEA to the Education Boards.

Section 118 of the VEA provides the Repatriation Commission may provide benefits for, and in respect of, eligible children or eligible grandchildren of Vietnam veterans under and in accordance with the VCES.

**Item 19** amends paragraph 8.2.2 to omit the reference to an Education Board. Paragraph 8.2.2 is applicable where a student or a student’s parent, guardian or trustee is dissatisfied with a decision of the Repatriation Commission or of an Education Board.

The student, parent, guardian or trustee may make an application to the Repatriation Commission for a review of the decision.

Paragraph 8.2.4 provides that the Repatriation Commission or a delegate (not being the delegate that made the original decision) may review a decision to decline an application for a benefit.

***Variations to the Military Rehabilitation and Compensation Act Education and Training Scheme 2004 (Instrument 2015 No. MRCC43)***

**Item 20** amends paragraph 3(b) (Saving and Transitional Provisions) to omit paragraph 3(b) and Notes (1) and (2).

Paragraph 3(b) had provided for the continuance of the Education and Training Boards established under the revoked *Military Rehabilitation and Compensation Act Education and Training Scheme 2004* (Instrument 2004 No. M4).

Notes (1) and (2) had referred to the transition of the existing Education and Training Boards and that “a Secretary of a MRCA Education and Training Board is an employee of the Department”.

**Item 21** amends paragraph 1.2.1 to omit the definitions of “Board”, “member”, “Secretary”, “sub-committee” and “Veterans’ Children Education Board”.

**Item 22** is a minor amendment to paragraph 1.5.1 (Administration of the Scheme) to omit the reference to the assistance provided by the state Education and Training Boards.

**Item 23** repeals paragraphs 2.5.1 to 2.5.6 (Cessation of Assistance under the Scheme) which had included references to the role of the Education and Training Boards in dealing with students whose academic progress was unsatisfactory and substitutes new paragraphs 2.5.1 to 2.5.3.

New paragraph 2.5.1 provides that the MRCC may if is of the opinion that a primary or secondary student’s progress is not satisfactory, determine that the student cease to receive benefits under the MRCA ETS.

New paragraph 2.5.2 provides that if the MRCC is of the opinion that a tertiary student aged sixteen years or over would have failed to satisfy the progress rules that apply to recipients of Austudy under Part 2.11A of the *Social Security Act 1991* (if those rules had applied to the student), it may make a determination that the student cease to receive benefits under the MRCA ETS.

The Note to paragraph 2.5.2 refers to the “progress rules” for Part 2.11A of the *Social Security Act 1991* being set out in section 569H of the *Social Security Act 1991*.

New paragraph 2.5.3 provides that any benefits provided under the MRCA ETS that have been withdrawn under paragraphs 2.5.1 and 2.5.2 may be restored by the MRCC if it is satisfied that the student has resumed satisfactory academic progress.

**Items 24 and 25** amend paragraphs 2.10.2 and 2.10.3. The provisions of paragraph 2.10 are applicable to absences from study for primary and secondary students.

Paragraph 2.10.1 is applicable in the circumstances 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. In those cases the MRCC may review the student’s eligibility for continuing benefits under the MRCA ETS and may suspend the payment of allowances.

The reference to an Education Board in paragraph 2.10.2 disregarding a student’s absence under paragraph 2.10.1 because it is satisfied that a student’s absence is “due to sickness or to reasons beyond the student’s control” is replaced by a reference to the MRCC.

Paragraph 2.10.3 had referred to the Education Board being satisfied that a student’s absence was without reasonable cause and the subsequent referral to the MRCC to make a determination to withdraw the benefits payable under the MRCA ETS.

Paragraph 2.10.3 is amended to refer to the MRCC being satisfied that a student’s absence was without reasonable cause and the MRCC making a determination to withdraw the benefits payable under the MRCA ETS.

Paragraph 2.10.4 is retained as it provides for the MRCC to restore the payment of a student’s benefits that had been withdrawn under paragraph 2.10.3 if it is satisfied that the “student has resumed satisfactory progress”.

**Items 26 and 27** are minor technical amendments to paragraphs 3.4.2(b) and 3.4.5 to replace misleading references to “Board” (which may imply a “State Education Board”) with the correct references to “board” as a form of accommodation.

**Items 28 to 30** amend Part 4 which refers to the MRCC arranging for the provision of guidance and counselling services to students and their families in regard to maters which may be affecting a student’s continuing progress in a course of study.

The heading “Guidance, Counselling and Country Visits” is repealed and substituted with the heading “Guidance and Counselling” to reflect the amendments to paragraph 4.1.1 and that there will no longer be country visits.

Paragraph 4.1.1 is amended to provide that the MRCC Commission may refer students and their families to community welfare, education, guidance and counselling services in such circumstances as it is considered appropriate.

Paragraph 4.1.3 is repealed and new paragraphs 4.1.3 and 4.1.4 are substituted.

New paragraph 4.1.3 requires the MRCC to monitor the progress of students and to seek expert advice from relevant education and health experts in order to understand the needs of the student.

New paragraph 4.1.4 requires the MRCC to monitor the operation and performance of the MRCA ETS to ensure that it has a positive impact on students.

**Item 31** amends paragraph 5.2.1 which is applicable in the circumstances where a discrepancy exists between the student’s intellectual potential and the student’s actual academic achievement.

The reference to the Education and Training Boards is omitted with the responsibility to arrange for the provision of additional tuition for the student being retained by the MRCC.

**Item 32** repeals paragraphs 5.3.1 and 5.3.2 and substitutes new paragraph 5.3.1.

The repealed paragraphs 5.3.1 and 5.3.2 had provided for payments of Special Assistance (as determined by the MRCC under paragraph 5.4) where the Education and Training Board or the MRCC consider that exceptional circumstances that are beyond the control of the student, have hindered or will hinder a student’s progress.

In those cases, the Education and Training Board could recommend payment of Special Assistance by the MRCC or the MRCC could approve payment of Special Assistance in respect of that student.

New paragraph 5.3.1 provides that where the MRCC considers that exceptional circumstances that are beyond the control of the student, have hindered or will hinder a student’s progress the MRCC may approve payment of Special Assistance in respect of that student.

**Item 33** omits Part 6 (Military Rehabilitation and Compensation Act Education and Training Boards) which provides for the establishment, membership, appointments to and functions and operations of the Education and Training Boards.

**Item 34** amends paragraph 7.1. Part 7 refers to scholarships.

Paragraph 7.1.1 is repealed and substituted. Paragraph 7.1.1 had provided that funds bequeathed in trust to the MRCC could be used by the Education and Training Boards to create scholarships administered by the Education and Training Boards at the direction of the MRCC.

New paragraph 7.1.1 provides that the MRCC may create scholarships from trust funds and may determine the duration and value of such scholarships.

**Item 35** amends paragraph 8.2.2 to omit the reference to an Education and Training Board. Paragraph 8.2.2 is applicable where a student or a student’s parent, guardian or trustee is dissatisfied with a decision of the MRCC or of an Education and Training Board.

The student, parent, guardian or trustee may make an application to the MRCC for a review of the decision.

Paragraph 8.2.4 provides that the MRCC or a delegate (not being the delegate that made the original decision) may review a decision to decline an application for a benefit.

**Statement of Compatibility with Human Rights**

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

***Veterans’ Children Education Schemes (Education Boards) Amendment Determination 2022***

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

The attached legislative instrument engages positively with the Right to Social Security.

*Right to social security*

The right to social security requires that a country must, within its maximum available resources, ensure access to a social security scheme that provides a minimum essential level of benefits to all individuals and families that will enable them to acquire at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education.

The right to social security is contained in article 9 of the [International Covenant on Economic, Social and Cultural Rights](http://www.info.dfat.gov.au/Info/Treaties/treaties.nsf/AllDocIDs/CFB1E23A1297FFE8CA256B4C000C26B4).

The UN Committee has stated that qualifying conditions for benefits under a social security system must be reasonable, proportionate and transparent.

The Committee has also stated that special attention should be given to groups who may face difficulties in exercising the right to social security. Those groups include women, the unemployed, sick or injured workers, people with disabilities, older persons, children and adult dependents andminority groups.

**Overview of the Legislative Instrument**

The Veterans’ Children Education Scheme (VCES) and the MRCA Education and Training Scheme (MRCAETS) (the Education Schemes) are provided through legislative instruments made under the *Veterans’ Entitlements Act 1986* and the *Military Rehabilitation and Compensation Act 2004* respectively.

The Education Schemes enable the Repatriation Commission and the Military Rehabilitation and Compensation Commission (the Commissions) to support eligible children and dependents of veterans who have been severely injured or died as a result of their service. Assistance under the Education Schemes is available to eligible primary, secondary and tertiary students to help them achieve their full potential in education or career training.

The purpose of the instrument is to amend the Education Schemes to transfer the responsibilities of the Education and Training Boards (the Boards) to the Commissions. The transfer is a consequence of the decision of the Commissions to abolish the Education and Training Boards with effect from 31 December 2022.

**Conclusion**

The *Veterans’ Children Education Schemes (Education Boards) Amendment Determination 2022* is compatible with human rights because it does not limit or preclude the provision of assistance under the Schemes to eligible students.

Minister for Veterans’ Affairs