

## EXPLANATORY STATEMENT

### Veterans' Children Education Schemes Amendment (Increase in Education Allowance) Determination 2023

#### EMPOWERING PROVISIONS

Section 117 of the *Veterans' Entitlements Act 1986* (the VEA) and section 258 of the *Military Rehabilitation and Compensation Act 2004* (the MRCA)

#### PURPOSE

The *Veterans' Children Education Schemes Amendment (Increase in Education Allowance) Determination 2023* (the instrument) increases payments to certain recipients receiving benefits under the *Veterans' Children Education Scheme* (VCES) and the *MRCA Education and Training Scheme* (MRCAETS) (the Education Schemes).

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 to pay education allowances and other assistance and benefits to the eligible children and dependents of severely injured veterans and veterans who have 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 recent *Social Services and Other Legislation Amendment (Strengthening the Safety Net) Act 2023* (the Amendment Act) implements the income support measures that make up part of the government's \$14.6 billion cost-of-living plan provided for in the 2023-24 Budget to provide broad based support to millions of Australians in different settings and circumstances. The Amendment Act amends the *Social Security Act 1991* (SSA) and the *Veterans' Entitlement Act 1986* to implement specified income support measures. As part of the income measures under the Amendment Act, the rate of working-age and student payments will increase by \$40 per fortnight, including the JobSeeker payment, youth allowance, parenting payment partnered, Austudy, ABSTUDY and other related payments. The Amendment Act received Royal Assent on 10 August 2023 and commences on that date.

These amendments to the SSA will automatically flow through to increase the amount of education allowance payable to students aged 16 years or more under the Education Schemes and to the double orphan education allowance.

This instrument ensures that other rates of education allowance received by other students under the Education Schemes whose rate is not directly linked to the SSA will also receive the \$40 per fortnight rate increase, as was intended. These are rates for secondary students under 16 years who live away from home, and secondary students under 16 years who are also double orphans.

## CONSULTATION

No consultation was conducted as the amendments made to the Education Schemes mirror the budget measure implemented in the Amendment Act and ensure that other students covered by the Education Schemes, although not a significant number, are provided with the \$40 increase in education allowance consistent with the corresponding increase in the youth allowance under the SSA.

## DETAILS/OPERATION

The Instrument is compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full statement of compatibility is set out in **Attachment B**.

The Instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.

## 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 made by delegates of the Commissions to decline an application are provided under paragraph 8.2 of the Education Schemes

## FURTHER EXPLANATION OF PROVISIONS

Details of the amendments made by Instrument including commencement details are set out in **Attachment A**.

## Attachment A

### **Details of the Veterans' Children Education Schemes Amendment (Increase in Education Allowance) Determination 2023**

#### **Part 1 - Preliminary**

##### **Section 1 - Name**

This section provides that the name of the Instrument is the *Veterans' Children Education Schemes Amendment (Increase in Education Allowance) Determination 2023* (the ***Instrument***).

##### **Section 2 - Commencement**

This section sets out the date on which the Instrument commences operation. Section 2 provides that the Instrument commences on 20 September 2023.

##### **Section 3 - Authority**

This section provides that the legislative authority for the Instrument are section 117 of the *Veterans' Entitlement Act 1986 (VEA)* and section 258 of the *Military Rehabilitation and Compensation Act 2004 (MRCA)*. Subsection 3(2) provides that the variations set out in the instruments in Schedules 1 and 2 to this instrument are approved by the Minister under subsections 117(9) of the VEA and 258(5) of the MRCA, respectively.

##### **Section 4 – Schedule**

This section provides that each instrument that is specified in a Schedule to this instrument is amended as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms. In essence, section 4 provides that the instruments set out in Schedule 1 (the *Veterans' Children Education Scheme* and in Schedule 2 (the *Military Rehabilitation and Compensation Act Education and Training Scheme 2004*) are amended as set out in the applicable items in the Schedules.

## Schedule 1—Amendments

### *Veterans' Children Education Scheme (Principal Instrument)*

These amendments amend the Principal Instrument.

#### **Item 1 – Paragraph 1.2.1, definition of *responsible departments*, Note**

This item repeals the current Note, and substitutes it with a new Note that updates the reference to the website of the Federal Register of Legislation where a copy of the Administrative Arrangements Order setting out the list of Commonwealth Departments and the legislation they administer could be viewed.

#### **Item 2 - Paragraph 2.4.1, Note**

This item repeals the current Note, and substitutes it with a new Note that updates the reference to the website of the Federal Register of Legislation where a copy of the Administrative Arrangements Order setting out the list of Commonwealth Departments and the legislation they administer could be viewed.

#### **Item 3 – Sub-paragraph 2.6.2(b)**

Item 3 substitutes the reference to paragraph 3.8.4, with paragraph 3.8.3. This is a consequential technical amendment due to the omission of paragraph 3.8.4 in the new paragraph 3.8 (refer to Item 4.)

#### **Item 4 - Paragraph 3.8.**

This item repeals current paragraph 3.8. and substitutes it with a new paragraph 3.8.

New paragraph 3.8.1 sets out the amount of education allowance for the following:

- (a) primary students that are paid annually;
- (b) *secondary students* who are under sixteen years and living at home, paid fortnightly;
- (c) *secondary students* who are under sixteen years and living away from home paid fortnightly; and
- (d) *secondary students* who are under sixteen years and who are also double orphans paid fortnightly.

Paragraph 3.8.1 sets out the education allowances for students who are under sixteen years of age. The education allowances set out in sub-paragraphs 3.8.1(a) and (b) takes into consideration the indexation rate as at 1 January 2023 and that are payable on 20 September 2023. Note that these amounts are the ones applicable from 1 January 2023. Sub-paragraph 3.8.1(c) and (d) provides the current fortnightly rate of education allowance payable to secondary students who are under sixteen years and living away from home, and secondary students who are under sixteen years and who are also double orphans, as payable on 20 September 2023. The updated amount for sub-paragraph (c) is \$521.30 paid fortnightly, and for sub-paragraph (d) is \$377.20, both of which include the indexation rate on 1 January 2023 and the additional increase of \$40 per fortnight to mirror the same increase made available to other students under the amendment to the Social Security Act 1991 by the *Social Services and Other Legislation Amendment (Strengthening the Safety Net) Act 2023*. The amounts set out in paragraphs 3.8.1(a), (b), (c) and (d) are indexed annually as provided for under paragraph 3.8.2.

Paragraph 3.8.2 provides that the allowances specified in paragraphs 3.8.1 are to be indexed annually in accordance with the procedure set out in section 1191(1)(table

item 3A) of the *Social Security Act 1991* for the indexation of benefits under that Act. However, the reference to ‘YA MBR’ in column 2 of item 3A of the CPI Indexation Table in subsection 1191(1) is, for the purpose of the indexation of the relevant allowances under the Scheme, taken to be a reference to the relevant allowance specified in sub-paragraph 3.8.1(a), (b), (c) or (d).

Paragraph 3.8.3 provides that the fortnightly education allowances payable in respect of all students aged sixteen years and over shall be increased annually to a rate equivalent to the maximum basic rate of youth allowance payable under Part 3.5 of the *Social Security Act 1991*.

## Schedule 2—Amendments

### *Military Rehabilitation and Compensation Act 2004 (Principal Instrument)*

These amendments amend the Principal Instrument.

#### **Item 1 – Paragraph 1.2.1, definition of *responsible departments*, Note**

This item repeals the current Note, and substitutes it with a new Note that updates the reference to the website of the Federal Register of Legislation where a copy of the Administrative Arrangements Order setting out the list of Commonwealth Departments and the legislation they administer could be viewed.

#### **Item 2 - Paragraph 2.4.1, Note**

This item repeals the current Note, and substitutes it with a new Note that updates the reference to the website of the Federal Register of Legislation where a copy of the Administrative Arrangements Order setting out the list of Commonwealth Departments and the legislation they administer could be viewed.

#### **Item 3 - Paragraph 3.8.1**

Paragraph 3.8.1 sets out the amount of education allowance for the following:

- (a) primary students that are paid annually;
- (b) *secondary students* who are under sixteen years and living at home, paid fortnightly;
- (c) *secondary students* who are under sixteen years and living away from home, paid fortnightly; and

This item updates the current fortnightly rate of education allowance payable to secondary students who are under sixteen years and living away from home (sub-paragraph 3.8.1(c)). The updated amount is \$521.30 paid fortnightly which includes the indexation rate on 1 January 2023 and the additional increase of \$40 per fortnight to mirror the same increase made available to other students under the amendment to the *Social Security Act 1991* by the *Social Services and Other Legislation Amendment (Strengthening the Safety Net) Act 2023*.

Education allowance for primary students (sub-paragraph 3.8.1(a)) and secondary students who are under sixteen years and living from home (sub-paragraph 3.8.1(b)) are also updated and now include the indexation rate applying on 1 January 2023.

Note 2 makes it clear that the amount set out in sub-paragraphs 3.8.1(a), (b) and (c) is the amount payable as at 20 September 2023 and Note 3 makes it clear that the amounts set out in paragraphs 3.8.1(a), (b) and (c) are adjusted twelve monthly every 1 January as provided for under paragraph 3.8.3.

## Statement of Compatibility with Human Rights

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

### **Veterans' Children Education Schemes Amendment (Increase in Education Allowance) Determination 2023 (the Instrument)**

The 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 Instrument engages and promotes the right to social security under article 9, and the right to health under article 12(1) of the *International Covenant on Economic Social and Cultural Rights* (ICESCR).

#### *Right to social security*

The right to social security is contained in article 9 of the ICESCR. The right to social security requires that a system be established under domestic law, and that public authorities must take responsibility for the effective administration of the system. The social security scheme must provide 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 *Veterans' Children Education Scheme* (VCES) and the *MRCA Education and Training Scheme* (MRCAETS) (the Education Schemes) enable the Repatriation Commission and the Military Rehabilitation and Compensation Commission to pay education allowances and other assistance and benefits to the eligible children and dependents of severely injured veterans and veterans who have 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 Instrument promotes the right to social security by providing increased education allowances to specified students consistent with the income support measures that make up part of the government's \$14.6 billion cost-of-living plan provided for in the 2023-24 Budget to provide broad based support to millions of Australians in different settings and circumstances.

#### *Overview*

This instrument ensures that other rates of education allowance received by other students under the Education Schemes and which are not directly linked to the *Social Security Act 1991* will also receive the \$40 per fortnight rate increase, as was intended. These are rates for secondary students under 16 years who live away from home, and double orphans.

#### *Conclusion*

The attached Instrument is compatible with human rights because it promotes the right to social security.

Minister for Veterans' Affairs

Rule-Maker