

## EXPLANATORY STATEMENT

### **Veterans' Children Education Schemes (COVID-19 Supplement) Amendment Determination 2020**

Instrument 2020 No. R14/MRCC14

#### **EMPOWERING PROVISIONS**

Subsection 117(3) 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 (2020 No. R14/ MRCC14) temporarily increases payments to certain recipients receiving benefits under the *Veterans' Children Education Scheme* (VCES) and the *MRCA Education and Training Scheme* (MRCA ETS). The payments to these recipients will be increased by a new and temporary payment referred to as the "COVID-19 supplement". This will ensure that payments to these recipients remain in step with payments to recipients of Youth Allowance, ABSTUDY and Austudy.

The VCES and MRCA ETS programs 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 VCES and the MRCA ETS instruments enable the Repatriation Commission and the Military Rehabilitation and Compensation Commission to pay education allowances to the eligible children and dependents of current and former Australian Defence Force personnel in order to assist them with their education.

The *Coronavirus Economic Response Package Omnibus Act 2020* (the Omnibus Act) and the legislative instruments subsequently made by the Minister for Families and Social Services which amended the *Social Security Act 1991* (SSA) and other Acts were made as part of the implementation of the Government's economic response to the Coronavirus pandemic. Schedule 11 of the Omnibus Act provides for the pensions and allowances for certain social security recipients to be increased by the amount of the COVID-19 supplement.

Included in the groups of persons receiving an underlying payment under the SSA that will be eligible for additional financial assistance are students in receipt of Youth Allowance.

Persons in receipt of Youth Allowance have their payments increased by the amount of the fortnightly COVID-19 supplement of \$550 which is also payable to recipients of other underlying payments including Austudy, ABSTUDY, parenting payment, Jobseeker payment and Sickness Allowance.

Without a similar payment made in relation to education allowance under the VCES or the MRCA ETS, DVA students will be disadvantaged on the basis they are ineligible for payments of Youth Allowance under the SSA and therefore cannot receive the COVID-19 supplement.

Under the SSA, payments of the underlying payment will be increased by the amount of the COVID-19 supplement during the initial period commencing from 25 March

2020 (the day Schedule 11 of the Omnibus Act commenced) and ending six months later. The first payment of the COVID-19 supplement will be payable after 27 April 2020, with the payment made fortnightly after that.

The amendments to the SSA also enable the Minister for Families and Social Services to extend that initial period and to increase the amount of the COVID-19 supplement to other social security payments. This instrument ensures that if the Minister for Families and Social Services extends the initial period for the payment for Youth Allowance recipients, the amount of the payment to VCES or MRCA ETS recipients will be similarly extended. Similarly, if the Minister for Families and Social Services increases the amount of the COVID-19 supplement payable to Youth Allowance recipients, the amount of the COVID-19 supplement payable to VCES and MRCA ETS recipients will be similarly increased.

The amount of education allowance under the VCES and the MRCA ETS will be increased by the amount of the COVID-19 supplement for students over 16 years of age where they are:

- a secondary/tertiary student living at home;
- a secondary/tertiary student living away from home;
- a homeless student; or
- a double-orphan receiving an education allowance at the double-orphan rate.

Payments to a person under 16 years of age who receives an education allowance under the VCES or the MRCA ETS will also be increased by the amount of the COVID-19 supplement where they are:

- a secondary/tertiary student living away from home;
- a homeless student; or
- a double-orphan receiving an education allowance at the double-orphan rate.

## **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 Military Rehabilitation and Compensation Commission and the Repatriation Commission considered and approved the submission to amend the relevant instruments in April 2020.

The submission was based on the need to ensure that persons in receipt of education allowance under the VCES or the MRCA ETS were not disadvantaged on the basis that such persons are ineligible for payments of Youth Allowance and therefore not eligible for the COVID-19 supplement.

External consultation was undertaken with the Departments of Finance and Social Security.

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

## **HUMAN RIGHTS IMPLICATIONS**

The instrument engages the following human right:

### *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.

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 and minority groups.

Increasing payments under the VCES and the MRCA ETS by the amount of the COVID-19 supplement recognises that students, who may rely on part time employment income as their main source of income, may find it difficult to deal with unemployment, remote learning and unanticipated expenses due to the COVID-19 pandemic.

Not all students under the VCES and the MRCA ETS will be eligible for the COVID-19 supplement as, with the possible exception of double orphans, it will not be paid to primary school students or students under 16 who are living at home. This is consistent with payments to similar students under the social security law. The COVID-19 supplement is a whole-of-government measure and the Government's intention is that it only be made available primarily to adolescents and adults of working age.

In light of the Government's policy parameters for the COVID-19 supplement, increasing payments by the amount of the COVID-19 supplement only for students aged over 16, together with specified students living away from home, homeless students and double orphans would appear to be, in the words of the UN Committee, "reasonable, proportionate and transparent."

### **Conclusion**

The *Veterans' Children Education Schemes (COVID-19 Supplement) Amendment Determination 2020* is compatible with human rights because it enhances the right to education and the conditions it imposes on the increase of payments by the amount of the COVID-19 supplement are reasonable in the circumstances.

Darren Chester  
Minister for Veterans' Affairs  
Rule-Maker

**RETROSPECTIVITY**

The instrument commences on the day on which Schedule 11 of the *Coronavirus Economic Response Package Omnibus Act 2020* commenced being 25 March 2020.

The retrospective commencement aligns with the commencement of the *Coronavirus Economic Response Package Omnibus Act 2020* as this is required for the purpose of commencing the initial period of six months which determines the cessation date for the payments.

Under the provisions of the instrument no payments of the COVID-19 supplement will be payable during the period of retrospectivity as they will commence from 27 April 2020 which is after the date of commencement for the legislative instrument.

**DOCUMENTS INCORPORATED-BY-REFERENCE**

No.

**FURTHER EXPLANATION**

Attachment A.

## **Attachment A**

### **Sections 1 to 4**

Section 1 describes the name of the instrument as the *Veterans' Children Education Schemes (COVID-19 Supplement) Amendment Determination 2020*.

Section 2 provides that the instrument commences, on the day on which Schedule 11 of the *Coronavirus Response Package Omnibus Act 2020* commenced (25 March 2020).

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 refers to the amendments to the VCES and the MRCA ETS 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 1.2.1 to insert new definitions of 'COVID-19 supplement', 'extension period' and 'initial period'.

The 'COVID-19 supplement' is the increase in payment of that name payable under new Part 3C of the Scheme.

The 'initial period' is the same as the initial period for the payment of the increased amount of the Youth Allowance called the COVID-19 supplement. This period runs for six months from 25 March 2020 (the day Schedule 11 to the *Coronavirus Economic Response Package Omnibus Act 2020* commenced).

The 'extension period' is any extension of the initial period that the Minister for Families and Social Services determines for the payment of the COVID-19 supplement for Youth Allowance recipients, by way of legislative instrument made under subsection 557(3) of the *Social Security Act 1991*.

**Item 2** inserts a new part into the VCES – 'Part 3C – COVID-19 supplement'.

New section 3C.1 refers to eligibility for the COVID-19 supplement.

Paragraph 3C.1.1 provides that the fortnightly payment of the education allowance of a person will be increased by the amount of the COVID-19 supplement from 27 April 2020 if the person is:

- (a) aged 16 years or more and the education allowance is payable to the person under paragraphs 3.3 (for secondary and tertiary students living at home), 3.4 (secondary students living away from home), 3.5 (tertiary students living away from home), 3.6 (the homeless student education allowance) or 3.6A (double orphan education allowance) of the VCES; or
- (b) is 15 years of age or less and the education allowance is payable to the person under paragraphs 3.4, 3.5, 3.6 or 3.6A of the VCES.

New section 3C.2 sets out the period (the initial period) for which the COVID-19 supplement will be payable as an increase in the fortnightly education allowance.

While paragraph 3C.2.1(a) provides that the COVID-19 supplement payment period will be an 'initial period' of six months which begins on the day on which Schedule 11 of the *Coronavirus Economic Response Package Omnibus Act 2020* began (25 March 2020), the increase in the fortnightly education allowance by the amount of the COVID-19 supplement will commence from the first education allowance payday on or after the 27 April 2020.

Paragraph 3C.2.1(b) provides the initial period may be extended if the Minister for Families and Social Services makes a legislative instrument under subsection 557(3) of the *Social Security Allowance 1991* (the SSA) for that purpose for the payment of COVID-19 supplement to recipients of Youth Allowance.

New section 3C.3 provides that the amount of a person's COVID-19 supplement is \$550 unless paragraph 3C.3.1(b) applies.

Paragraph 3C.3.1(b) provides the amount of the COVID-19 supplement may be varied by the Minister for Families and Social Services if a legislative instrument is made under subsection 557(5) of the SSA for that purpose for the payment of COVID-19 supplement to recipients of Youth Allowance.

New paragraph 3C.3.2 provides that in the event of the initial period being extended the amount of the COVID-19 supplement that is payable during the extended period is the amount determined by the Minister for Families and Social Services in a legislative instrument made under subsection 557(7) of the SSA for the purposes of Youth Allowance.

New section 3C.4 provides for the payment of the COVID-19 supplement. It provides that if a person is eligible for the COVID-19 supplement on or after 27 April 2020, the Repatriation Commission must direct that the COVID-19 supplement be paid for the person:

- on the first fortnightly payday that the Repatriation Commission considers to be the earliest day on which it is reasonably practicable for the supplement to be paid; and
- in such manner as the Repatriation Commission considers appropriate.

Paragraph 3C.4.2 specifies that the COVID-19 supplement is to be paid to the person who receives the education allowance for the person eligible for the COVID-19 supplement.

The note to paragraph 3C.4.2 notifies the reader that in some cases the person receiving the COVID-19 supplement on behalf of the person eligible for the bonus could be the eligible person's parent, a person approved by the Repatriation Commission or the eligible person.

Paragraph 3C.4.3 provides an exception to paragraph 3C.4.2. If the education allowance is payable to an institution or a person providing board then the supplement is payable to the person to whom the education allowance would be payable if payment of the education allowance to an institution or person providing board was not an option.

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

**Item 1** amends paragraph 1.2.1 to insert new definitions of ‘COVID-19 supplement’, ‘extension period’ and ‘initial period’.

The ‘COVID-19 supplement’ is the increase in payment of that name payable under new Part 3C of the Scheme.

The ‘initial period’ is the same as the initial period for the payment of the increased amount of the Youth Allowance called the COVID-19 supplement. This period runs for six months from 25 March 2020 (the day Schedule 11 to the *Coronavirus Economic Response Package Omnibus Act 2020* commenced).

The ‘extension period’ is any extension of the initial period that the Minister for Families and Social Services determines for the payment of the COVID-19 supplement for Youth Allowance recipients, by way of legislative instrument made under subsection 557(3) of the *Social Security Act 1991*.

**Item 2** inserts a new part into the MRCA ETS – ‘Part 3C – COVID-19 supplement’.

New section 3C.1 refers to eligibility for the COVID-19 supplement.

Paragraph 3C.1.1 provides that the fortnightly payment of the education allowance of a person will be increased by the amount of the COVID-19 supplement from 27 April 2020 if the person is:

- (a) aged 16 years or more and the education allowance is payable to the person under paragraphs 3.3 (for secondary and tertiary students living at home), 3.4 (secondary students living away from home), 3.5 (tertiary students living away from home), 3.6 (the homeless student education allowance) of the MRCA ETS; or
- (b) is 15 years of age or less and the education allowance is payable to the person under paragraphs 3.4, 3.5 or 3.6 of the MRCA ETS.

New section 3C.2 sets out the period (the initial period) for which the COVID-19 supplement will be payable as an increase in the fortnightly education allowance.

While paragraph 3C.2.1(a) provides that the COVID-19 supplement payment period will be an ‘initial period’ of six months which begins on the day on which Schedule 11 of the *Coronavirus Economic Response Package Omnibus Act 2020* began (25 March 2020), the increase in the fortnightly education allowance by the amount of the COVID-19 supplement will commence from the first education allowance payday on or after the 27 April 2020.

Paragraph 3C.2.1(b) provides the initial period may be extended if the Minister for Families and Social Services makes a legislative instrument under subsection 557(3) of the *Social Security Allowance 1991* (the SSA) for that purpose for the payment of COVID-19 supplement to recipients of Youth Allowance.

New section 3C.3 provides that the amount of a person’s COVID-19 supplement is \$550 unless paragraph 3C.3.1(b) applies.

Paragraph 3C.3.1(b) provides the amount of the COVID-19 supplement may be varied by the Minister for Families and Social Services if a legislative instrument is made under subsection



557(5) of the SSA for that purpose for the payment of COVID-19 supplement to recipients of Youth Allowance.

New paragraph 3C.3.2 provides that in the event of the initial period being extended the amount of the COVID-19 supplement that is payable during the extended period is the amount determined by the Minister for Families and Social Services in a legislative instrument made under subsection 557(7) of the SSA for the purposes of Youth Allowance.

New section 3C.4 provides for the payment of the COVID-19 supplement. It provides that if a person is eligible for the COVID-19 supplement on or after 27 April 2020, the Military Rehabilitation and Compensation Commission (the MRCC) must direct that the COVID-19 supplement be paid for the person:

- on the first fortnightly payday that the MRCC considers to be the earliest day on which it is reasonably practicable for the supplement to be paid; and
- in such manner as the MRCC considers appropriate.

Paragraph 3C.4.2 specifies that the COVID-19 supplement is to be paid to the person who receives the education allowance for the person eligible for the COVID-19 supplement.

The note to paragraph 3C.4.2 notifies the reader that in some cases the person receiving the COVID-19 supplement on behalf of the person eligible for the bonus could be the eligible person's parent, a person approved by the MRCC or the eligible person.

Paragraph 3C.4.3 provides an exception to paragraph 3C.4.2. If the education allowance is payable to an institution or a person providing board then the supplement is payable to the person to whom the education allowance would be payable if payment of the education allowance to an institution or person providing board was not an option.