##### EXPLANATORY STATEMENT

**Veterans’ Children Education Schemes (Updated Allowances) Amendment Determination 2021**

Instrument 2021 No. R12/MRCC12

**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 (2021 No. R12/ MRCC12) 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 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.

On 23 February 2021, the Government announced a measure to increase the base rates of certain payments, such as JobSeeker Payment and Youth Allowance under the *Social Security Act 1991* (SSA), by $50 per fortnight with effect from 1 April 2021. As part of that measure, rates of DVA’s education allowance that are linked to Youth Allowance are also to increase by $50 per fortnight.

The *Social Security Legislation Amendment (Strengthening Income Support) Act 2021*, which received Royal Assent on 22 March 2021, amended the SSA to increase the rates of Youth Allowance and other working age payments by $50 per fortnight from 1 April 2021.

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 homeless student education allowance and the rate for double orphans.

This instrument ensures that other rates of education allowance will also receive the $50 per fortnight rate increase, as was intended. These are rates for secondary students under 16 years who live away from home who currently receive an indexed payment of $388.30 per fortnight (plus energy supplement of $5.90 per fortnight).

Consequential amendments have also been made to the rates of education allowance payable to primary students and secondary students who live at home to reflect the current indexed 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 policies surrounding Education Schemes are the responsibility of the Policy Implementation, Evaluation and Families Section of the Policy Development Branch of the Veterans’ and Families Policy Division.

The proposal to increase the rate of education allowance has been referred to the

Ex-Service Organisation Round Table (ESORT).

The ESORT is a forum intended to enhance the capacity of the Repatriation Commission and Military Rehabilitation and Compensation Commission (the MRCC) by addressing issues of strategic importance to the ex-service and defence communities and assist in setting directions for the medium to long term.

External consultation was undertaken with the Department of Social Services.

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

**REGULATORY IMPACT**

The proposed amendments concern the implementation of a measure that relates to the impacts of the COVID-19 pandemic. As such an exemption from the Regulation Impact Statement requirements was granted by the Prime Minister as there were urgent and unforeseen events (OBPR 26371 refers).

# 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 (Updated Allowances) Amendment Determination 2021.*

Section 2 provides that the instrument commences on 1 April 2021.

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 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 3.8.1(a) to replace the annual amount of education allowance for a “primary student” of “$242.50” with “$280.40”, being the indexed rate applicable on 1 April 2021.

**Item 2** amends paragraph 3.8.1(b) to replace the fortnightly amount of education allowance for a “secondary student” under 16 years of age living at home of “$49.80” with “$57.20”, being the indexed rate (without energy supplement) applicable on 1 April 2021.

**Item 3** amends paragraph 3.8.1(c) to replace the fortnightly amount of education allowance for a “secondary student” under 16 years of age who is living away from home of “$338.03” with “$438.30”, being the indexed rate of $388.30 (without energy supplement) plus the $50 per fortnight increase payable from 1 April 2021.

**Item 4** inserts the additional Notes 2 and 3 to the existing Note to paragraph 3.8.1.

Note 2 updates the amounts payable under paragraphs 3.8.1(a) and (b) to show the indexed rates of the allowances as at 1 April 2021 and the increased rate for the allowance payable under paragraph 3.8.1(c) from 1 April 2021.

Note 3 refers to the education allowances payable under paragraphs 3.8.1(a), (b) and (c) as being adjusted for indexation on a 12 month basis under paragraph 3.8.2.

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

**Item 5** amends paragraph 3.8.1(a) to replace the annual amount of education allowance for a “primary student” of “$242.50” with “$280.40”, being the indexed rate applicable on 1 April 2021.

**Item 6** amends paragraph 3.8.1(b) to replace the fortnightly amount of education allowance for a “secondary student” under 16 years of age living at home of “$49.80” with “$57.20”, being the indexed rate (without energy supplement) applicable on 1 April 2021.

**Item 7** amends paragraph 3.8.1(c) to replace the fortnightly amount of education allowance for a “secondary student” under 16 years of age who is living away from home of “$338.03” with “$438.30”, being the indexed rate of $388.30 (without energy supplement) plus the $50 per fortnight increase payable from 1 April 2021.

**Item 8** inserts the additional Notes 2 and 3 to the existing Note to paragraph 3.8.1.

Note 2 updates the amounts payable under paragraphs 3.8.1(a) and (b) to show the indexed rates of the allowances as at 1 April 2021 and the increased rate for the allowance payable under paragraph 3.8.1(c) from 1 April 2021.

Note 3 refers to the education allowances payable under paragraphs 3.8.1(a), (b) and (c) as being adjusted for indexation on a 12 month basis under paragraph 3.8.2.

**Statement of Compatibility with Human Rights**

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

***Veterans’ Children Education Schemes (Updated Allowances) Amendment Determination 2021***

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 purpose of the instrument is to amend the *Veterans’ Children Education Scheme* and the *MRCA Education and Training Scheme* (the Education Schemes) to increase payments of education allowance by $50 per fortnight for students under 16 years of age who are living away from home. This will reflect the increased amounts payable to certain other students from 1 April 2021, following an increase in rates of Youth Allowance proposed under the *Social Services Legislation Amendment (Strengthening Income Support) Act 2021*.

Increasing the payments under the Education Schemes for secondary students under 16 years of age who are living away from home by $50 per fortnight ensures that the payments will remain aligned other payments under the Education Schemes and with the proposed increase in working age social security payments under the *Social Security Act 1991*.

**Conclusion**

The *Veterans’ Children Education Schemes (Updated Allowances) Amendment Determination 2021* is compatible with human rights because it enhances the right to education for children.

**Repatriation Commission**

**Rule-Maker**