

EXPLANATORY STATEMENT

Veterans' Entitlements Legislative Instruments Omnibus Variation Determination 2022

EMPOWERING PROVISIONS

The Repatriation Commission has made the *Veterans' Entitlements Legislative Instruments Omnibus Variation Determination 2022* (the Determination) to vary:

- the *Veterans' Children Education Scheme* under subsection 117(8) of the *Veterans' Entitlements Act 1986* (the VEA);
- the *Veterans' Vocational Rehabilitation Scheme* under subsection 115B(8) of the VEA;
- the *Veterans' Entitlements (Weekly Payments – Class of Persons) Instrument 2021* under subsections 58A(3C) and 121(5C) of the VEA; and
- the *Veterans' Entitlements (Direct Deductions Arrangements) Instrument 2015* under 122B(5) of the VEA.

This instrument also relies on subsection 33(3) of the *Acts Interpretation Act 1901* (AIA). Subsection 33(3) of the AIA provides that where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

PURPOSE

The attached instrument (Instrument 2022 No. R9) is made under the VEA to make the consequential amendments required following the recent commencement of the amendments made by the *Veterans' Affairs Legislation Amendment (Exempting Disability Payments from Income Testing and Other Measures) Act 2021* (the amending Act).

The primary purpose of the amending Act was to exempt certain payments made under the VEA and the MRCA known collectively as Adjusted Disability Pension (ADP) from the social security income test under the *Social Security Act 1991*.

ADP was payable under the VEA as payments of disability pension under Parts II and IV (specifically general rate disability pensions, extreme disablement adjustment, intermediate rate, special rate, temporary special rate under section 25 and payments made under section 27).

ADP was payable under the MRCA as permanent impairment compensation payments and Special Rate Disability Pension.

Because payments of ADP were not exempt from the social security income test, a payment referred to as the Defence Force Income Support Allowance (DFISA) was created in 2004. It provides for a payment of DFISA to be made where a person, due to their ADP being treated as income for the social security income test, has their social security payment reduced (including to a nil rate).

DFISA is calculated on the basis of the difference between the rate of an income support payment payable under the *Social Security Act 1991*, and what the payment would be if ADP were exempt from the assessment.

As ADP is now exempt from the income test under social security law, the amount of income support payment that a person receives has now increased which makes the DFISA payment redundant.

The amending Act repealed the provisions for determining the amount of DFISA payable and the definitions of DFISA and DFISA Bonus from the VEA and made consequential amendments to removes all references to it from other Commonwealth primary legislation.

The amending Act also made amendments to the VEA to replace references to “disability pension” with references to a pension (not being a dependant’s pension) that was payable under Parts II or IV of the VEA.

The variations and amendments to the various legislative instruments set out in the Schedules to the Determination will replace references to “disability pension” and remove all of the references to “DFISA” and associated payments.

CONSULTATION

In drafting the amendments made by the amending Act to exempt payments of ADP from the social security income test the Department was required to consult very closely with the Department of Social Services for an extensive period.

Further consultation with other Departments was undertaken for the amendments to the primary legislation of other portfolios to remove references to DFISA.

No external consultation was considered necessary for the consequential internal amendments being made by the Determination as the changes are minor in nature.

RETROSPECTIVITY

None.

DOCUMENTS INCORPORATED-BY-REFERENCE

No.

REGULATORY IMPACT

The Office of Best Practice Regulation (OBPR) was contacted and provided with information concerning the scope of the proposed amendments. It is their advice that the “proposal is unlikely to have a more than minor regulatory impact, and therefore the preparation of a Regulation Impact Statement is not required”. (OBPR22-01975).

HUMAN RIGHTS STATEMENT

This Determination 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*.

Overview of the Determination

The purpose of the Determination is amend a number of legislative instruments to make consequential amendments following the commencement of the *Veterans' Affairs Legislation Amendment (Exempting Disability Payments from Income Testing and Other Measures) Act 2021* (the amending Act).

The amending Act exempted, from 1 January 2022, certain payments made under the VEA and the MRCA referred to as Adjusted Disability Pension (ADP) from the social security income test under the *Social Security Act 1991* (SSA).

With payments of ADP previously not being exempt from the social security income test, a payment referred to as the Defence Force Income Support Allowance (DFISA) had been payable under the VEA to those persons in receipt of income support under the SSA .

DFISA had been calculated on the basis of the difference between the rate of an income support payment payable under the SSA, and what the payment would be if ADP were exempt from that assessment.

The amending Act repealed the VEA provisions for determining the amount of DFISA payable and replaced the VEA references to “disability pension” with references to a pension (not being a dependant’s pension) that was payable under Parts II or IV of the VEA.

The Determination amends the legislative instruments set out in the Schedules to the Determination to replace references to “disability pension” and remove all of the references to “DFISA” and associated payments.

Human rights implications

These amendments are likely to engage the following human right:

Right to social security

With the commencement of the amending Act on 1 January 2022, payments of social security under the SSA were increased as a consequence of the exemption of ADP from the social security income test. The amendments to the legislative instruments made by Determination engage the right of everyone to social security as set out in Article 9 of the International Covenant on Economic, Social and Cultural Rights.

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 amendments are beneficial as payments of ADF by the Department of Veterans' Affairs will no longer be taken into account when assessing a person's entitlement or rate of social security under the social security income test.

While that increase would offset the DFISA payment that the person would otherwise have received the administration of the payments of social security is simplified and streamlined.

Conclusion

The amendments to the legislative instruments made by the Determination do not limit human rights because the total income support entitlements of the eligible persons are not affected by the amendments.

Rule-Maker:

The Repatriation Commission

FURTHER EXPLANATION OF NEW PROVISIONS

See: [Attachment A](#)

Attachment A

Section [1]

This section sets out the name of the instrument, the *Veterans' Entitlements Legislative Instruments Omnibus Variation Determination 2022*.

Section [2]

This section provides that the instrument commences on the day after it is registered.

Section [3]

This section provides that each legislative instrument as specified in a Schedule is amended or varied in accordance with the applicable items in the Schedule.

Schedule 1

This Schedule amends the *Veterans' Children Education Scheme* (the VCES).

The VCES enables the Repatriation 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 VCES is available to eligible primary, secondary and tertiary students to help them achieve their full potential in education or career training.

Item 1 repeals the paragraph 1.2.2 definition of “disability pension” which had defined the term for the purposes of the reference in paragraph 3A.10.1(e).

Item 2 omits the reference to “disability pension” in paragraph 3A.10.1(1)(e). Paragraph 3A.10.1 is a multiple entitlement exclusion provision which is applicable for the purposes of the Clean Energy Advance payments made under Part 3A of the VCES.

Paragraph 3A.10.1 provides that a person will not be eligible for a “clean energy advance” under the VCES if they have already been paid a “clean energy advance” under one of the Acts or legislative instruments listed in subsection (1).

Included in that list is paragraph (e) which refers to payments made under the VEA “other than a clean energy advance in relation to disability pension”.

The reference to “disability pension” in paragraph (e) is replaced with a reference to a “pension payable under Part II or IV of the VEA at a rate determined under or by reference to Division 4 of Part II of the VEA”.

Schedule 2

This Schedule amends the *Veterans' Vocational Rehabilitation Scheme* (the VVRS).

The objectives of the VVRS are to assist veterans to find, or continue in, suitable paid employment, with particular emphasis on:

- facilitating the transition from service in the ADF to suitable paid employment;
- assisting those veterans whose jobs are in jeopardy to retain suitable paid employment; and
- providing an income safety net for certain veterans in receipt of compensation pensions payable under sections 23 or 24 of the VEA or payments of invalidity service pension, who wish to engage in suitable paid employment.

Items 1 and 2 amend the Outlines for Chapters 2 and 3 of the VVRS to replace the references to “disability pension” with references to “a pension by way of compensation”.

The Outline to Chapter 2 had referred to vocational rehabilitation programs being provided for veterans who are in receipt of:

- disability pension at the special rate or the intermediate rate; or
- the invalidity service pension.

The Outline to Chapter 3 had referred to vocational rehabilitation programs being provided for veterans who are not in receipt of:

- disability pension at the special rate or the intermediate rate; or
- the invalidity service pension.

The term “disability pension” is no longer used in Part II of the VEA following the amendments made by the *Veterans' Affairs Legislation Amendment (Exempting Disability Payments from Income Testing and Other Measures) Act 2021*.

Schedule 3

This Schedule amends the *Veterans' Entitlements (Weekly Payments – Class of Persons) Instrument 2021* (the Weekly Payments Instrument).

The Weekly Payments Instrument is made by the Repatriation Commission and specifies a class of persons who may be provided with weekly payments of the pension or allowance which is usually payable on a fortnightly basis.

The class of persons are those who are financially vulnerable or significantly disadvantaged people.

Item 1 amends section 4 to omit the definitions of “DFISA” and “DFISA-like payment” as the payments are no longer payable under the VEA.

Items 2 and 3 amend the subsection 6(2) listing of the VEA payments for which weekly instalments may be payable.

Paragraphs (d) and (e) which refer to payments of “DFISA” and “DFISA-like payment” are omitted as the payments are no longer made under the VEA.

The reference in paragraph (f) to “disability pension” is replaced with a reference to a “a pension payable under Part II or IV of the Act at a rate determined under or by reference to Division 4 of Part II” of the VEA.

The term “disability pension” is no longer used in Part II of the VEA following the amendments made by the *Veterans' Affairs Legislation Amendment (Exempting Disability Payments from Income Testing and Other Measures) Act 2021*.

Schedule 4

This Schedule amends the *Veterans' Entitlements (Direct Deductions Arrangements) Instrument 2015* (the Direct Deductions Instrument).

The Direct Deductions Instrument enables the Repatriation Commission to help veterans and others to manage their financial affairs by enabling, at the person's request, deductions from the pension or allowance payable to them to make payments for the items listed in the Direct Deductions Instrument such as rent on their behalf.

Item 1 repeals the definitions of “disability pension” and “DFISA” from paragraph 1.5.

Item 2 inserts a new definition in paragraph 1.5. A “disability compensation payment” is defined as meaning either or both of the following:

- a pension payable under Part II or IV of the VEA (other than a pension payable under section 30 of the VEA to a dependant of a deceased veteran); or
- “saved” pensions payable under subsections 4(6) or (8B) of the *Veterans' Entitlements (Transitional Provisions and Consequential Amendments) Act 1986* other than pensions payable in respect of a child.

Items 3 and 4 amend the list in Part 2 of the classes of pensions, allowances and pecuniary benefits for which a direct deduction can be made.

Paragraphs (a), (j) and (k) referring to “disability pension”, “DFISA” and DFISA-like payments (payable under the regulations made under section 118NJ of the VEA) are repealed and replaced with new paragraph (a) referring to a “disability compensation payment”.

