

EXPLANATORY STATEMENT

Veterans' Entitlements (DFISA-like Payment) Repeal Regulations 2023

PURPOSE

The *Veterans' Entitlements (DFISA-like Payment) Repeal Regulations 2023* (Regulations) repeal the *Veterans' Entitlements (DFISA-like Payment) Regulation 2015* (2015 Regulations).

This repeal follows commencement of the Veterans' Affairs Legislation Amendment (Exempting Disability Payments from Income Testing and Other Measures) Act 2021 (Exempting Act). The Exempting Act exempted payments referred to as 'adjusted disability pension' from the income test under the *Social Security Act 1991* (SSA), effectively ending the Defence Force Income Support Allowance (DFISA) on 1 January 2022. It repealed the provisions for determining the amount of DFISA payable and the definitions related to DFISA from the *Veteran's Entitlements Act 1986* (VEA). The repeal of the provisions under the VEA did not automatically revoke the 2015 Regulations, which is why the proposed Regulations are required.

The Exempting Act also made consequential amendments, removing all references to payments of DFISA from the primary legislation of the portfolios of other Ministers.

The Exempting Act formed part of the then Government's response to the 2019 *Independent Review into the TPI Payment* by Mr David Tune AO PSM.

The Exempting Act was developed as a result of an evaluation of the Total Permanent Incapacity (TPI) Payment carried out by Mr David Tune AO PSM on request by the then Prime Minister on 2 April 2019. The Evaluation Report recommended for DFISA to be abolished and adjusted disability pension (including the TPI payment and permanent impairment payment under the *Military Rehabilitation and Compensation Act 2004*), to be defined as exempt income under the *Social Security Act 1991*.

On commencement of the Exempting Act, all references and payments relating to DFISA have been repealed in all Veterans' Portfolio primary legislation. References or details of DFISA have subsequently been repealed in legislative instruments under the Veterans' Portfolio legislation. The *Veterans' Entitlements (DFISA-like Payment) Regulation 2015* is the only remaining legislative instrument under the Veterans' Portfolio in which the reference or details of the DFISA have not been repealed.

BACKGROUND

DFISA was introduced in 2004 through amendments to the VEA. It sought to address the longstanding inequity caused by payments of disability pension under the VEA being counted as income in assessing the amount of income support payable under the SSA. DFISA was a payment for veterans payable on the difference between the income support a person received under the SSA and the income support the person would have received if 'adjusted disability pension' had been excluded income for the purposes of the SSA. The term 'adjusted disability pension' included any disability pension payable under the VEA and permanent

impairment payments under the *Military Rehabilitation and Compensation Act 2004* (MRCA).

When DFISA was introduced, it could not be paid to beneficiaries of Commonwealth income support payments under schemes or legislation other than the SSA. This was because these other income support payments were based on, but not necessarily identical to, the calculation of the SSA payments. To ensure a person receiving those payments was not disadvantaged, the DFISA amendments also included a provision to enable these beneficiaries to be compensated by payments made pursuant to regulations made under section 118NJ of the VEA.

The *Veterans' Entitlements (DFISA-like Payment) Regulations 2005* (2005 Regulations) were subsequently made under section 118NJ of the VEA to provide a 'DFISA-like' payment to eligible persons for income support payments (primary payment) under certain Commonwealth programs (e.g. ABSTUDY Scheme), but who missed out on those benefits. This was because they or their partner received adjusted disability pension and these benefits were included as income in the means test for the primary payment. The 2005 Regulations, which were due to sunset on 1 April 2015, were subsequently repealed and remade by the 2015 Regulations.

On 2 April 2019, the former Prime Minister requested an evaluation of the Total Permanent Incapacity (TPI) Payment. The TPI Payment is the common name for the special rate of disability pension under section 24 of the VEA. It is paid to severely disabled veterans who are unable to have a normal working life because of a permanent incapacity resulting from their war or Defence service.

The Evaluation, undertaken by Mr David Tune AO PSM, recommended that the Defence Force Income Support Allowance (DFISA) be abolished and adjusted disability pension (including the TPI payment and permanent impairment payment under the MRCA), be defined as exempt income under the SSA. The Exempting Act formed part of the then Government's response to Mr Tune's review.

AUTHORITY

Section 216 of the *Veterans' Entitlements Act 1986* provides, in part, that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters which are by the Act required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The proposed Regulations would be a legislative instrument for the purposes of the *Legislation Act 2003*.

The proposed Regulations would commence on the day after this instrument is registered.

CONSULTATION

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

External consultation was not undertaken as the Regulations make technical and consequential amendments to repeal a redundant scheme.

Mr Tune consulted with the Australian Federation of Totally and Permanently Incapacitated Ex Servicemen and Women Ltd (also known as the TPI Federation of Australia) and the Disabled Veterans of Australia Network as part of the Evaluation.

The Department of Veterans' Affairs consulted the Attorney-General's Department and the Department of Social Services during the development of the Regulations.

RETROSPECTIVITY

None.

REGULATORY IMPACT

None.

DOCUMENTS INCORPORATED BY REFERENCE

None.

Statement of Compatibility with Human Rights

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

VETERANS' ENTITLEMENTS (DFISA-LIKE PAYMENT) REPEAL REGULATIONS 2023.

The *Veterans' Entitlements (DFISA-like Payment) Repeal Regulations 2023* (Regulations) are 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 Legislative Instrument

The *Veterans' Entitlements (DFISA-like Payment) Repeal Regulations 2023* (Regulations) repeal the *Veterans' Entitlements (DFISA-like Payment) Regulation 2015* (2015 Regulations).

This repeal follows commencement of the Veterans' Affairs Legislation Amendment (Exempting Disability Payments from Income Testing and Other Measures) Act 2021 (Exempting Act) which formed part of the then Government's response to the 2019 *Independent Review into the TPI Payment* by Mr David Tune AO PSM.

The Exempting Act exempted payments referred to as 'adjusted disability pension' from the income test under the SSA, effectively ending the Defence Force Income Support Allowance (DFISA) on 1 January 2022. It repealed the provisions for determining the amount of DFISA payable and the definitions related to DFISA from the *Veteran's Entitlements Act 1986* (VEA).

The Exempting Act also made consequential amendments, removing all references to payments of DFISA from the primary legislation of the portfolios of other Ministers.

This instrument is required because the repeal of the provisions under the VEA did not automatically revoke the 2015 Regulations.

Human rights implications

The Regulations do not engage any of the applicable rights or freedoms. This is because following the repeal of the provisions for determining the amount of DFISA payable and the definitions related to DFISA from the VEA when the Exempting Act entered into force, this instrument ceased to have any legal effect.

Conclusion

The Regulations are compatible with human rights as they do not raise any human rights issues.

The Hon Matthew James Keogh MP
Minister for Veterans' Affairs

FURTHER EXPLANATION OF PROVISIONS

Section 1 – Name of Regulations

This section provides that the name of the instrument is the *Veterans' Entitlements (DFISA-like Payment) Repeal Regulations 2023*

Section 2 – Commencement

This section provides that the whole of the instrument commences on the day after registration on the Federal Register of Legislation.

Section 3 – Authority

This section provides that the instrument is made under the following:

- (a) the *Family Law Act 1975*;
- (b) the *Veterans' Entitlements Act 1986* (VEA).

Section 4 – Schedules

Section 4 of the instrument provides that the instruments specified in a Schedule of the instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and that any other item in a Schedule of to the instrument has effect according to its terms.

Schedule 1 — Repeals

Schedule 1 provides for the repeal of the *Veterans' Entitlements (DFISA-like Payment) Regulation 2015*.

Schedule 2 — Consequential amendments

Item 1

This item amends regulation 12A(a)(ii) of the *Family Law Regulations 1984* to remove the reference to Defence Force Income Support Allowance (DFISA). This consequential amendment is required to remove the only other remaining reference to DFISA on the statute books.

The item omits the term “Defence Force Income Support Allowance (DFISA)” and substitute “veteran payment”. The effect of this item is that “veteran payment” will become a prescribed pension allowance or benefit for the purposes of the definition of ‘income test pension, allowance, or benefit’ under subsection 4(1) of the *Family Law Act 1975*.

Veteran Payment is an income support payment under the VEA which provides interim income support for current and former members of the Australian Defence Force who may be in financial difficulty, between lodging a claim for a mental health condition under the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* or the *Military Rehabilitation and Compensation Act 2004* and the claim being determined.

Veteran Payment is not a replacement for DFISA. The insertion of veteran payment addresses the omission of the veteran payment as a prescribed pension, allowance or benefit since it was introduced in 2018 and this instrument is an appropriate opportunity to address this oversight.