

## EXPLANATORY STATEMENT

### Veterans' Entitlements (Veterans' Children Education Scheme) Amendment Determination 2024

#### EMPOWERING PROVISION

The Minister for Veterans' Affairs makes this instrument under section 117 of the *Veterans' Entitlements Act 1986* (the *Act*).

#### PURPOSE

This instrument amends the *Veterans' Children Education Scheme (Instrument 2015 No. R43)* (the *VCES*).

#### OVERVIEW

Paragraph 7.3 of the VCES provides for the Long Tan Bursary (the **Bursary**), which supports the children and grandchildren of veterans who served in the Vietnam War, during the period 31 July 1962 to 30 April 1975, to enable them to undertake tertiary education. The bursaries are awarded to candidates whose further education should, by obtaining a qualification, enable them to support themselves through gainful employment.

The Australian Veterans' Children Assistance Trust (**AVCAT**) administers the Bursary for the Repatriation Commission, applying the *Long Tan Bursary Operational Guidelines* approved by the Commission (the **Guidelines**).

This instrument amends paragraph 7.3 of the VCES by:

- making technical and clarifying amendments; and
- confirming the Commission's power to impose a condition when awarding a bursary; and
- giving the Commission more flexibility to consider all relevant matters in deciding eligibility; and
- confirming the Commission's power to suspend or terminate a bursary for noncompliance with a condition imposed when awarding the bursary; and
- confirming the activities covered by the administration power mentioned in paragraphs 7.3.5 and 7.3.6.

#### EXPLANATION OF PROVISIONS

**Section 1** states the name of the instrument.

**Section 2** provides that the instrument commences on the day after it is registered.

**Section 3** sets out the authority for the Commission making the instrument, namely subsection 117(8) of the Act. The Minister for Veterans' Affairs then approves the instrument under subsection 117(9).

**Section 4** is a standard provision used in instruments that amend or repeal other instruments. It gives effect to Schedule 1.

## **Schedule 1—Amendments**

### **Item 1**

#### **Paragraph 1.2.1 (definition of double orphan, paragraphs (b), (c) and (d))**

The amendments made by this instrument include a technical correction to paragraph 1.2.1 to clarify the definition of double orphan.

### **Item 2**

#### **Paragraph 7.3.3**

Under paragraph 7.3 of the VCES, the Repatriation Commission may determine the duration and value of the Bursary and the number of bursaries to be granted each year. The Commission currently awards 37 bursaries annually with each student receiving up to \$12,000 over three years of continuous study.

Paragraph 7.3.3 of the VCES sets out the matters to be considered by the Commission when deciding whether or not to award a bursary to an eligible student.

Paragraph 7.3.3, as amended, requires the Commission to consider any matter the Commission considers relevant, not only the Guidelines.

This amendment will give the Commission the flexibility to consider extenuating circumstances when deciding whether to award a bursary to an eligible student. Relevant matters that may be considered by the Commission include:

- the latest Guidelines;
- whether financial support in pursuing tertiary education could assist long-term in helping the applicant overcome financial disadvantage;
- the academic prospects of the applicant successfully completing a tertiary course; and
- any personal and family circumstances that could represent disadvantage to the applicant, where financial support in pursuing post-secondary education could assist the applicant long-term to overcome disadvantage.

#### **Paragraph 7.3.3A**

This item adds new paragraph 7.3.3A, which confirms the Commission's power to impose 1 or more conditions when awarding a bursary. The conditions are usually stated on the letter of grant given to the selected students. An acceptance form stating the conditions are also usually attached to the letter. As part of administering the bursaries, AVCAT monitors the recipients of the bursary for compliance with the conditions and notifies the Commission about any potential noncompliance.

### **Item 3**

#### **After paragraph 7.3.4**

This item adds new paragraphs 7.3.4A, 7.3.4B and 7.3.4C, which set out the ground for suspending or terminating a bursary and the procedures that follow a suspension or termination.

Paragraph 7.3.4A confirms the Commission's power to terminate a bursary if a recipient of the bursary does not comply with any of the conditions imposed under the new paragraph 7.3.3A. The Commission can, but is not required to, suspend or terminate a bursary for noncompliance with a condition.

Paragraph 7.3.4B requires the Commission to give written notice to a person whose bursary has been suspended or terminated. Section 28A of the *Acts Interpretation Act 1901* deals with how a document is to be given to a natural person.

Paragraph 7.3.4C allows termination of a bursary to take effect beginning on the day the noncompliance first happens, even if the Commission does not decide to terminate the bursary until a time after that day. This may take place if the Commission is not notified of the noncompliance until some time after it has happened. It would also ensure that a student who has not complied with a condition would not continue to benefit from the bursary only because the Commission has not made a decision to terminate the bursary.

### **Item 4**

#### **At the end of paragraph 7.3**

This item adds new paragraph 7.3.7, to confirm that the power to administer a Long Tan Bursary includes the power to:

- assess bursary applications;
- award, or not award, a bursary; and
- impose 1 or more conditions on a bursary; and
- monitor and report on bursary recipients; and
- suspend or terminate a bursary and give notice of suspension or termination.

The power to award, or not award, a bursary is necessary to enable AVCAT, as the current Long Tan Bursary administrator, to determine the eligibility of Bursary applications, assess eligible applications against selection criteria, and provide the Commission with a shortlist of suitable applicants for Commission consideration to award a bursary.

Whilst paragraph 7.3.7 provides AVCAT the authority to undertake these activities on behalf of the Commission, the authority to award a bursary is exercised only by the Commission itself, as set out in the Guidelines. AVCAT is contractually obliged to adhere to the Guidelines. Thus, in effect, AVCAT does not make the final decision to award a bursary.

### **CONSULTATION**

The Department of Veterans' Affairs consulted with AVCAT. As the instrument makes technical amendments to the VCES, and does not disadvantage any veteran, no further consultation was considered necessary.

## HUMAN RIGHTS IMPLICATIONS

This 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 A**.

## MAKING THE INSTRUMENT

The instrument is made by the Minister for Veterans' Affairs.

## Attachment A

### Statement of Compatibility with Human Rights

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

#### ***Veterans' Entitlements (Veterans' Children Education Scheme) Amendment Determination 2024***

This Disallowable 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 **recognised rights**).

### Overview of the Disallowable Legislative Instrument

The *Veterans' Entitlements (Veterans' Children Education Scheme) Amendment Determination 2024* (the **Instrument**) amends the *Veterans' Children Education Scheme (Instrument 2015 No. R43)* (the **Principal Instrument**).

The Principal Instrument provides for the Long Tan Bursary, which supports the children and grandchildren of veterans who served in the Vietnam War, during the period 31 July 1962 to 30 April 1975, to enable them to undertake tertiary education. The bursaries are awarded to candidates whose further education should, by obtaining a qualification, enable them to support themselves through gainful employment.

The Australian Veterans' Children Assistance Trust (**AVCAT**) administers the Long Tan Bursary for the Repatriation Commission, applying the *Long Tan Bursary Operational Guidelines* approved by the Commission (the **Guidelines**).

The Instrument amends the Long Tan Bursary provisions in the Principal Instrument to:

- clarify the definition of double orphan in paragraph 1.2.1;
- amend paragraph 7.3.3 to require the Commission to consider any matter the Commission considers relevant, not only the Guidelines; and
- add new paragraph 7.3.7 to clarify that the power to administer a Long Tan Bursary includes the power to assess bursary applications, award (or not award) a bursary, impose conditions, monitor and report on bursary recipients, and suspend or terminate a bursary for breach of a condition.

### Human rights implications

The Instrument engages and promotes the right to social security under article 9 of the *International Covenant on Economic Social and Cultural Rights* (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 VCES enables the Repatriation 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. These education benefits includes the Long Tan Bursary.

The Instrument promotes the right to social security by amending the VCES to make technical and clarifying amendments to the Long Tan Bursary provisions and give the Commission more flexibility to consider all relevant matters in deciding eligibility. This improves the education benefits provided by the VCES.

### **Conclusion**

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

Minister for Veterans' Affairs  
Rule-Maker