

## **EXPLANATORY STATEMENT**

Issued by authority of the Minister for Defence Personnel

*Defence Home Ownership Assistance Scheme Act 2008*

*Defence Home Ownership Assistance Scheme Regulations 2018*

The *Defence Home Ownership Assistance Scheme Act 2008* (the DHOAS Act) provides a home ownership assistance scheme (the Scheme) available to eligible Australian Defence Force (ADF) members. The Scheme is a recruitment and retention tool that provides a subsidy on the home loan interest expense incurred in purchasing a home in which the ADF member or their family will live. As an incentive to remain active in service, benefits provided by the scheme increase progressively over the period of ADF service.

Section 85 of the DHOAS Act provides that the Governor-General may make regulations prescribing matters required or permitted by the DHOAS Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to the DHOAS Act.

The *Defence Home Ownership Assistance Scheme Regulations 2018* (the Regulations) have the following purposes:

- To repeal the *Defence Home Ownership Assistance Scheme Regulations 2008* before they sunset on 1 October 2018.
- To provide methods that identify ADF service that is recognised as effective service for the purposes of the Scheme in relation to the Scheme's qualifying periods, accrued subsidy period and loan limit which contribute to the eligible amount of subsidy payable to an eligible member.
- To provide an ongoing opportunity for specific classes of persons who are eligible as 'old scheme members'.
- To establish an interest rate cap for the scheme.

## Modifications

The Regulations have been remade in substantially the same form with some structural adjustment, along with modern language and drafting compliance to ensure the continuation of benefits to existing members of the Scheme and for those who will apply in the future.

The Regulations are intended to be policy neutral however modifications to the instrument have been made to:

- Ensure the Regulations continue to work as intended and provides the Scheme's administrator with better clarity for a person's eligibility under the Scheme.
- Provide greater detail on effective service requirements for members of the Permanent forces, Reserves and those persons who transfer between these service types during a service year.
- Adjust the definition of a combined service member to reflect that a foreign service member is not included in this definition when calculating a person's service credit in determining the subsidy period or loan limit. Foreign service is only assessed in relation to qualifying period (see Division 6).
- Adjust the definition of a day of reserve service to reflect that a person performs a day of reserve service if either they are paid the full daily rate of salary for reserve service, or any combination of days for which the member is paid part of the daily rate of salary for reserve service where the sum of the parts of the daily rate adds up to the whole daily rate. The daily rate of reserve service (not continuous full time service) is paid in accordance with section A.1.5. of Defence Force Remuneration Tribunal Determination 2 of 2017, *Salaries*, as in force from time to time.
- Clarify elements of 'effective service – qualifying period', including the recognition of foreign service for the purpose of calculating the qualifying period; and when a member transfers either from the Permanent forces to the Reserves or from the Reserves to the Permanent forces.
- Include a restructure that provides a logical flow of Parts, Division and Sections to avoid duplications identified within the repealed instrument.

A guide to the new instrument structure appears below with reference to against the old Regulation.

<i>New Instrument</i>	<i>Repealed Instrument</i>
section 5	based on old regulation 3
sections 6, 7	based on old regulation 6

sections 8, 9	based on old regulations 5, and 6
sections 10, 11, 12, 13	based on old regulations 7,8 and 9
section 14	based on old regulation sub- sections 15(3)-(6)
section 15	based on old regulation sub-sections 14(4)-(8)
section 16	based on the old regulation 11
section 17	based on old regulation 20
section 18	based on old regulations 22 and 23
section 19	based on old regulation 25
section 20	based on the old regulation 26
section 21	based on the old regulation 28
section 22	based on old regulation 29
section 23	based on old regulation 30
sections 24, 25	new (transitional provisions)

## Consultation

### Internal

- Navy, Army and Air Force
- Reserve and Youth Division, ADF Headquarters
- Estate and Infrastructure Group
- Defence Legal

### External

- Department of Veterans Affairs

- Office of Parliamentary Counsel
- The Office of Best Practice and Regulation advised that the changes are minor or machinery in nature and a regulation impact statement is not required (ID 18646)
- The Australian Government Solicitor was consulted and they confirmed that the scope of the regulation making powers in the DHOAS Act in relation to calculating effective service was supported

The authorising DHOAS Act specifies no conditions that need to be fulfilled before the Regulations can be made.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Regulations will commence on 1 October 2018 on the Federal Register of Legislation and the details of the Regulations are set out in the [Attachment](#).

## **Statement of Compatibility with Human Rights**

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

### **Defence Home Ownership Assistance Scheme Regulations 2018**

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*.

### **Overview of the Legislative Instrument**

The purpose of the *Defence Home Ownership Assistance Scheme Regulations 2018* (the Regulations) is to remake and improve the *Defence Home Ownership Assistance Scheme Regulations 2008* before they sunset on 1 October 2018. The Regulations provide eligible members of the Australian Defence Force with a subsidy on the interest of their home loans as an encouragement for the members and their families to achieve home ownership. The Regulations primarily provide the effective service and qualifying periods which contribute to the eligible amount of subsidy.

### **Human rights implications**

The person's right to an adequate standard of living engages article 11 of the International Covenant on Economic, Social and Cultural Rights. Article 11 ensures the realisation of this right, recognising to this effect the essential importance of an adequate standard of living and this includes housing. The Regulations provide beneficial entitlements and promote this right.

The Regulations engage article 17 of the International Covenant on Civil and Political Rights – no one shall be subjected to arbitrary or unlawful interference with privacy.

The Regulations set out the purpose for which personal information about persons in circumstances specified in section 79 of the DHOAS Act may be used and disclosed by persons. The use and disclosure must fall within the scope of purposes as set out in the Regulations. The purposes prescribed relate directly to the administration of benefits under the DHOAS Act and the scheme.

The *Privacy Act 1988* protects personal information from unauthorised use and disclosure. Applicants under the scheme will be advised of the range and use and disclosure to which their information may be put, and their consent sought as part of the application process, the persons whose information is routinely disclosed or used will be informed of the disclosures and uses.

### **Conclusion**

The Regulations are compatible with human rights and to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.

**Minister for Defence Personnel, the Honourable Darren Chester MP**

**Details of the Regulations are as follows:**

**Part 1 - Preliminary**

**Section 1 – Name**

This section provides that the title of the instrument is the *Defence Home Ownership Assistance Scheme Regulations 2018*.

**Section 2 – Commencement**

This section provides for the Regulations to commence on 1 October 2018.

**Section 3 – Authority**

The Regulations are made under the *Defence Home Ownership Assistance Scheme Act 2008*.

**Section 4 – Schedules**

This section provides that each instrument as set out in the Schedule is amended or repealed as specified.

**Section 5 – Definitions**

This section sets out key definitions used in these Regulations, including the introduction of the term *transfer year* which replaces the concept of a combined member in the old Regulations.

## **Part 2 – Effective service**

### **Division 1 – Preliminary**

This division sets out the relationship between division 2 and divisions 3 to 8 of this part in order to calculate a person's benefit under the DHOAS Act.

### **Section 6 – Effective service**

This section recognises types of service in the Defence Force as 'effective service' for the purpose of the definition in section 3 of the DHOAS Act. It also identifies the divisions in the Regulations that specify how effective service is calculated. This concept is prescribed by regulation for three reasons:

- To align with any changes in the way that service is performed in the ADF;
- To ensure that members who transfer to the ADF from a foreign service, or between the Permanent and Reserves, can have service performed before their transfer recognised; and
- To ensure that the Scheme is a meaningful incentive to retention.

### **Division 2 – Requirements for effective service**

This division sets out the requirements for both Permanent Forces and Reserves in terms of defining effective service.

### **Section 7 – Requirements for effective service**

This section provides that effective service for either a member of the Permanent Forces or Reserves is service for which remuneration is received and that the service is not ineffective service. A member receives remuneration when they are required to attend for duty in accordance with Defence Force Remuneration Tribunal Determination 2 of 2017, *Salaries*, as amended from time to time.

This section also provides a period of approved absence without pay of no more than 21 continuous days for a member of the Reserves on continuous full-time service is not 'ineffective service'.

### **Division 3 – Period of effective service: members of the Permanent Forces**

This division applies to members of the Permanent Forces.

### **Section 8 – When this Division applies**

This section identifies members to whom division 3 applies. It applies to persons who were members of the permanent forces on the day of calculation of effective service or a member who was a member of the permanent forces immediately before they ceased being a member of the ADF. This section does not apply to a member of the Reserves.

### **Section 9 – Period of effective service for members of the Permanent Forces**

This section provides the basis on which a year of effective service for a member in the permanent forces is calculated. For a year in the Permanent Force a member has 1 year of effective service for each service year the person performs continuous full-time service.

If, in the course of their career, a member has performed service in the Reserves, a method is provided to calculate the person's effective service, recognising effective service performed as a member of the Reserves (calculated under section 11) and in a transit year (calculated under section 14). The calculations may differ for the member's qualifying period, accrued subsidy period and loan limit.

#### **Division 4 Period of effective service: members of the Reserves**

This division applies to members of the Reserves and provides the means of calculating their effective service under the Scheme.

#### **Section 10 – When this Division applies**

This section identifies members to whom division 4 applies. It applies to persons who were members of the Reserves on the day of calculation of effective service or a member who was a member of the Reserves immediately before they ceased being a permanent member of the ADF. This section does not apply to permanent members.

#### **Section 11 – Period of effective service for members of the Reserves**

This section provides the basis on which a year of effective service for member of the Reserves is calculated. For 20 or more days at the daily rate in the Reserves, a member of the Reserves has 1 year of effective service. If, in the course of their career, a member has performed service as a member of the Permanent Forces, a method is provided to calculate the person's effective service, recognising effective service performed as a member of the Permanent Forces.

This section also provides that a member of the Reserves who serves on a continuous full time basis either within one service year or across 2 service years, then for the purposes of calculating the person's qualification, if the period or periods are greater than 6 months but less than 1 year, then the person has 2 years of effective service.

Additionally, a method for calculating loan limit is provided if the person is eligible as a re-joining incapacitated member or re-joining member.

#### **Section 12 – Days of Reserve Service**

This section provides a definition of a reserve day for the purpose of calculating the number of days a person performs effective service during a service year as a member of the Reserves. For a day of continuous full time service or on a day the member is paid the full daily rate of remuneration under *Defence Force Remuneration Tribunal Determination No.2 of 2017, Salaries*, as in force from time to time, the member has performed one day of effective service. If a member were to be paid less than the full rate of the daily rate of remuneration, the number of days of effective service performed is the total of the proportions of the daily rate the member has been paid, as reflected as a whole number.

#### **Section 13 – Determining when a person stops being treated as a member of the Reserves**

For the purpose of subparagraph 5(1)(b)(ii) of the DHOAS Act. This section states that to have effective service in a service year a member of the Reserves must completed 20 days of reserve service in that year. A member of the Reserves who does not complete their 20 days of reserve service may not be treated as member of the Reserves for that service year.



### **Division 5 Period of effective service for transfer years**

This division applies to a member of the Defence force who transfers from either the Reserves to the Permanent Forces or from the Permanent Forces to the Reserves within a specific transfer year and how this combined service is calculated. Section 14 applies to a person who transfers from the Permanent Forces to the Reserves. Section 15 applies to a person who transfers from the Reserves to the Permanent Forces within a transfer year.

A transfer year replaces the concept of a combined member by dealing with that single transfer year as a separate calculation which then gets used in the calculation of effect service for the purpose of sections 9 and 11.

### **Section 14 – Transfer from the Permanent Forces to the Reserves**

This section sets out the method for calculating “effective service” for a service member who transfers from the Permanent Forces to the Reserves during a transfer year. It also provides that regardless of type of service (for example service in the permanent forces or Reserves) if the person has performed 20 days of service then the person has 1 year of effective service for a transfer year.

### **Section 15 – Transfer from the Reserves to the Permanent Forces**

This section sets out the method for calculating “effective service” for a service member who transfers from the Reserves to the Permanent Forces during a transfer year.

### **Division 6 – Foreign service members: qualifying service period**

This division establishes the how a member’s former service as a member of the armed forces of another country is to be calculated in for the purpose of the qualifying service period.

### **Section 16 – Increasing period of effective service for foreign service members – qualifying service period**

This section permits a person who has served in a foreign service to have their former service considered toward their qualifying period for the Scheme. The regulation recognises the person’s foreign service as effective service based on the number of years seniority determined by the Chief of the Defence Force at the time of appointment of enlistment into the ADF. For foreign service to be recognised for these purposes, there cannot be a gap between ceasing the foreign service and commencing with the ADF of more than 5 years. A decision of the CDF about the member’s seniority is not reviewable under section 22 for the purposes of section 71 of the DHOAS Act as it is not a decision made under these regulations.

### **Division 7 – Recognising service as effective service in exceptional circumstances**

This division establishes the parameters around recognising service as effective service in exceptional circumstances.

**Section 17 – Recognising service as effective service in exceptional circumstances**

This section provides discretion for the Secretary to deem service to be effective where the member is unable to actually serve for exceptional reasons. For example, a defect in a member's appointment, enlistment or transfer may make it unclear whether the member has provided effective service for that period. In the case of a member of the Reserves who was offered service and was unable to render that service due to an illness or injury, the member may apply under this provision if their medical condition was long or serious enough to prevent them completing the required 20 days of effective service in a given year.

There would be no exceptional circumstance if a member of the Reserves is simply not offered service, or where the member is not offered service because they have applied to serve in a rank or employment category for which they are not qualified or competent to serve.

**Division 8 - Ineffective service**

This division provides the circumstances in which service is ineffective service for calculating either the qualifying service period or for calculating the accrued subsidy period and loan limit of an eligible member.

**Section 18 – Ineffective service**

This section provides the circumstances in which service is ineffective service for calculating either the qualifying service period or for calculating the accrued subsidy period and loan limit of an eligible member.

### **Part 3 - Eligibility of old scheme members**

Part 3 of the regulations prescribes the eligibility requirements for an old scheme member in accordance with section 13 of the DHOAS Act.

#### **Section 19 – Eligibility – incapacitated persons**

This section provides access to a home loan interest subsidy for those former ADF members who were incapacitated members under the *Defence Force (Home Loans Assistance) Act 1990* (DFHLA) and were unable to apply for a benefit before its finishing day due to their compensable condition.

#### **Section 20 – Eligibility – operational service members**

This section provides for an operational service member who had unlimited access to benefits under the DFHLA to have a limited benefit under the DHOAS Act after the DFHLA finishing day of 30 June 2010. The reason eligibility is extended to these members is that their previous period in which to apply for their eligibility under DFHLA was limited by their finishing day and hence they had not made an application for an entitlement certificate. This measure ensures that a person unable to apply under DFHLA by the finishing day had an additional opportunity to apply for a benefit. The entitlement of a member in this class under the new scheme is capped at the loan limit provided under the DFHLA, \$80,000.

### **Part 4 – Miscellaneous**

This part provides a maximum interest rate for the purposes of the DHOAS Act, the scope of reviewable decisions regarding effective service and the purposes for which personal information may be used and disclosed.

#### **Section 21 – Median interest rate**

This section provides that the median interest rate for the purposes of the DHOAS Act subsection 53(2), shall not exceed 0.7458333333% per month, however a lower interest rate may apply if the Minister makes a determination under paragraph 53(1)(a) or (b) of the DHOAS Act.

#### **Section 22 – Reviewable decisions**

For the purpose of item 13 of section 71 of the DHOAS Act, this section provides that a decision regarding effective service under section 17 and a decision about a person's compensable condition under section 19(3)(b) are reviewable decisions.

#### **Section 23 – Purposes for which personal information may be used and disclosed**

For the purpose of section 79(2) of the DHOAS Act, this section sets out the purposes for which personal information about persons is specified in section 79(1) of the DHOAS Act may be disclosed or used by persons specified in section 79(3) of the DHOAS Act. It ensures that use, and disclosure of, personal information for the purposes of administering the Scheme will be authorised by Australian law, for the purposes of the *Privacy Act 1988*.

## **Part 5 – Transitional, savings and application provisions**

This part describes savings provisions necessary in the new instrument to preserve existing provisions of the old Regulations in relation to deemed effective service and the eligibility of some deceased members.

### **Section 24 – Savings provision – deemed effective service decisions**

This section provides a savings provision to treat service by a person deemed effective by the Secretary under the current regulation 20 of the *Defence Home Ownership Assistance Scheme Regulations 2008* to be specified as effective service under section 17 of this instrument. A decision made under regulation 20 would be reviewable as a result of subsection 7(2) of the *Acts Interpretation Act 1901*.

### **Section 25 – Savings provision – eligibility of old scheme members (deceased members)**

This section provides a savings provision to allow for regulation 27 of the *Defence Home Ownership Assistance Scheme Regulations 2008* to continue to apply on or after this section commences in relation to a person taken to be eligible as an old scheme member under that regulation.

## **Schedule 1- Repeals**

### **Section 1 – The whole of the Regulations**

This provision repeals *the Defence Home Ownership Assistance Scheme Regulations 2008*.