



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

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I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 30 August 2018

Peter Cosgrove  
Governor-General

By His Excellency's Command

Darren Chester  
Minister for Defence Personnel

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## Part 1—Preliminary

### 1 Name

This instrument is the *Defence Home Ownership Assistance Scheme Regulations 2018*.

### 2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	1 October 2018.	1 October 2018

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

### 3 Authority

This instrument is made under the *Defence Home Ownership Assistance Scheme Act 2008*.

### 4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

## Section 5

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### 5 Definitions

Note: A number of expressions used in this instrument are defined in the Act, including the following:

- (a) eligible;
- (b) foreign service member;
- (c) Permanent Forces;
- (d) Reserves.

(1) In this instrument:

*Act* means the *Defence Home Ownership Assistance Scheme Act 2008*.

*day of Reserve service*: see section 12.

*ineffective service*: see section 18.

*service year*: see subsection (2).

*transfer year* for a person means a service year in which the person transfers:

- (a) from the Permanent Forces to the Reserves; or
- (b) from the Reserves to the Permanent Forces.

(2) For the purposes of the definition of *service year* in section 3 of the Act, a service year is a financial year.

## **Part 2—Effective service**

### **Division 1—Preliminary**

#### **6 Effective service**

For the purposes of the definition of *effective service* in section 3 of the Act:

- (a) a person's service is effective service if it meets the requirements of Division 2 of this Part; and
- (b) a person's period of effective service as at a particular time is the period worked out in accordance with Divisions 3 to 8 of this Part (subject to paragraph (a) of the definition of *effective service* in section 3 of the Act).

Note: Under paragraph (a) of the definition of *effective service* in section 3 of the Act, if a person stops being a member of the Defence Force and again becomes a member more than 5 years later, any service performed before they stopped being a member is not counted as effective service.

## Division 2—Requirements for effective service

### 7 Requirements for effective service

- (1) A person's service as a member of the Permanent Forces or the Reserves is effective service if:
  - (a) both of the following apply:
    - (i) the person receives remuneration in relation to the service;
    - (ii) the service is not ineffective service; or
  - (b) the service is determined to be effective service under Division 7 of this Part.

Note: For *ineffective service*, see Division 8 of this Part.

- (2) For the purposes of subparagraph (1)(a)(i), a person is taken to receive remuneration in relation to the service during the following periods:
  - (a) a period of leave without pay, of no more than 21 continuous days, while the person is serving as a member of the Permanent Forces;
  - (b) a period of approved absence without pay, of no more than 21 continuous days, while the person is serving as a member of the Reserves on a continuous full-time basis.



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

### **8 When this Division applies**

- (1) This Division applies to a person who is a member of the Permanent Forces.
- (2) This Division also applies to a person who was a member of the Permanent Forces immediately before the person stopped being a member of the Defence Force.

Note: A person who is not a member of the Defence Force but was previously a member of the Permanent Forces may be eligible under the Act as an incapacitated member (see section 9 of the Act) or as a separated member (see section 12 of the Act).

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

#### *Service only in the Permanent Forces*

- (1) For the purposes of calculating the person's qualifying service period, accrued subsidy period and loan limit, the person's period of effective service includes each period during which the person performed continuous full-time service as a member of the Permanent Forces that is effective service, excluding any part of the period that is in a transfer year.

Note: For the meaning of *transfer year*, see section 5. The person's period of effective service for a transfer year is worked out under Division 5 of this Part.

#### *Service also in the Reserves*

- (2) If the person has also performed service as a member of the Reserves, the person's period of effective service also includes the following periods:
  - (a) assuming that section 11 applied to the person but that the person had only performed service as a member of the Reserves:
    - (i) for the purposes of calculating the person's qualifying service period—a period equal to half the length of the period of effective service that would have applied under subsections 11(1) to (3); and
    - (ii) for the purposes of calculating the person's accrued subsidy period and loan limit—the period of effective service that would have applied under subsection 11(1);
  - (b) for each of those purposes—the period worked out under Division 5 (effective service for transfer years) for each transfer year for the person.

Note: In certain circumstances, the person's period of effective service under this Division may be:

- (a) increased under Division 6 (foreign service members: qualifying service period) or Division 7 (recognising service as effective service in exceptional circumstances) of this Part; or
- (b) decreased under Division 8 (ineffective service) of this Part.

Section 10

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

### 10 When this Division applies

- (1) This Division applies to a person who is a member of the Reserves.
- (2) This Division also applies to a person who was a member of the Reserves immediately before the person stopped being a member of the Defence Force.

Note: A person who is not a member of the Defence Force but was previously a member of the Reserves may be eligible under the Act as an incapacitated member (see section 9 of the Act) or a separated member (see section 12 of the Act).

### 11 Period of effective service for members of the Reserves

#### *Service only in the Reserves*

- (1) For the purposes of calculating the person's qualifying service period, accrued subsidy period and loan limit, the person has 1 year of effective service for each service year (other than a transfer year) in which the person performs 20 or more days of Reserve service.

Note 1: For working out the number of days of Reserve service performed, see section 12.

Note 2: A day of Reserve service includes service on a continuous full-time basis (see section 12).

Note 3: For the meanings of *service year* and *transfer year*, see section 5. The person's period of effective service for a transfer year is worked out under Division 5 of this Part.

- (2) If:
  - (a) the person performs a period or periods of effective service as a member of the Reserves on a continuous full-time basis in a service year, or in 2 consecutive service years; and
  - (b) the service year, or service years, are not transfer years; and
  - (c) the period, or the sum of the periods, is greater than 6 months but less than 1 year;

then, for the purposes of calculating the person's qualifying service period, the person has 2 years of effective service for that service year or those service years.

- (3) Subsection (1) does not apply in relation to a service year for the purposes of calculating the person's qualifying service period if subsection (2) applies in relation to the person for the service year.

#### *Service also in the Permanent Forces*

- (4) If the person has also performed service as a member of the Permanent Forces, the person's period of effective service also includes the following periods:
  - (a) assuming that section 9 applied to the person but that the person had only performed service as a member of the Permanent Forces:
    - (i) for the purposes of calculating the person's qualifying service period—a period equal to twice the length of the period of effective service that would have applied under subsection 9(1); and

- (ii) for the purposes of calculating the person's accrued subsidy period and loan limit—the period of effective service that would have applied under subsection 9(1);
- (b) for each of those purposes—the period worked out under Division 5 (effective service for transfer years) for each transfer year for the person.

*Adjustment for calculating loan limit*

- (5) Despite subsection (1), for the purposes of calculating the person's loan limit, if:
- (a) the person is eligible as a rejoining incapacitated member or rejoining member; and
  - (b) the person again became a member of the Defence Force by becoming a member of the Reserves more than 2 years but less than 5 years after stopping being a member of the Defence Force;

then, for the purposes of calculating the person's loan limit, the person's period of effective service does not include the period of service performed by the person before the person stopped being a member of the Defence Force for the purposes of section 10 or 11 of the Act.

Note 1: For eligibility as a rejoining incapacitated member, see section 10 of the Act. For eligibility as a rejoining member, see section 11 of the Act.

Note 2: In certain circumstances, the person's period of effective service under this Division may be:

- (a) increased under Division 6 (foreign service members: qualifying service period) or Division 7 (recognising service as effective service in exceptional circumstances) of this Part; or
- (b) decreased under Division 8 (ineffective service) of this Part.

## **12 Days of Reserve service**

- (1) The number of days of Reserve service performed by a person in a service year is the total of the number of days worked out under subsections (2) and (3).
- (2) The person performs 1 day of Reserve service in a service year for each day in the service year on which the person performs effective service as a member of the Reserves if:
  - (a) the service is on a continuous full-time basis; or
  - (b) the person is paid at the full daily rate for that day.
- (3) If:
  - (a) the person performs effective service as a member of the Reserves on 2 or more days in a service year; and
  - (b) the person is paid for each of those days on the basis of a proportion of a daily rate;

then the number of days of Reserve service that the person performs in the service year is increased by the number worked out by adding together the proportions (expressed as fractions) mentioned in paragraph (b) and rounding down the result to the nearest whole number.

**Part 2** Effective service

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

Section 13

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

For the purposes of subparagraph 5(1)(b)(ii) of the Act, a person performs effective service as a member of the Reserves during a service year if the person performs at least 20 days of Reserve service in the service year.

Note 1: The number of days of Reserve service performed in a service year is worked out under section 12.

Note 2: There are consequences under the Act if a member of the Reserves fails to perform effective service in a service year: see subsection 5(2) of the Act.

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

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

For the purposes of paragraphs 9(2)(b) and 11(4)(b), a person has 1 year of effective service for a transfer year if:

- (a) the person transfers from the Permanent Forces to the Reserves in the transfer year; and
- (b) the sum of the following is 20 or more:
  - (i) the number of days on which the person was a member of the Permanent Forces before the transfer;
  - (ii) the number of days of Reserve service performed by the person in the transfer year.

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

- (1) For the purposes of paragraphs 9(2)(b) and 11(4)(b), a person has the period of effective service for a transfer year worked out under this section.
- (2) The person has 1 year of effective service for a transfer year if, in the transfer year:
  - (a) the person transfers from the Reserves to the Permanent Forces; and
  - (b) the person has performed 20 or more days of Reserve service.
- (3) If in a transfer year:
  - (a) the person transfers from the Reserves to the Permanent Forces; and
  - (b) the person has performed less than 20 days of Reserve service;the person's period of effective service for the transfer year is:

$$\frac{\text{Permanent service}}{\text{months}} + \frac{\text{Reserve service}}{\text{months}}$$

where:

***Permanent service months*** means the number of months of effective service as a member of the Permanent Forces performed by the person in the transfer year after the day on which the transfer occurred.

***Reserve service months*** means the lesser of the number of months calculated under subsections (4) and (5).

- (4) For the purposes of the definition of ***Reserve service months*** in subsection (3), the number of months is:

$$\text{Reserve service days} \times N$$

where:

*N* means:

- (a) for the purposes of calculating the person's qualifying service period—0.3; and
- (b) for the purposes of calculating the person's accrued subsidy period or loan limit—0.6.

**Part 2** Effective service

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

Section 15

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*Reserve service days* means the number of days of Reserve service performed by the person in the transfer year.

- (5) For the purposes of the definition of *Reserve service months* in subsection (3), the number of months is equal to half of the number of months of the transfer year in which the person was a member of the Reserves.
- (6) If the number worked out under subsection (4) or (5) is not a whole number of months, that number is to be rounded up to a whole number of months.

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

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

- (1) For the purposes of calculating the qualifying service period of a person who is a foreign service member, the person's period of effective service is increased under subsection (2) if the person became a member of the Defence Force within 5 years after the person stopped being a member of the armed forces of the relevant foreign country.
- (2) The person's period of effective service is increased by a period equal to the length of the number of years of seniority specified in the person's appointment or enlistment, as determined by the Chief of the Defence Force.

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

### **17 Recognising service as effective service in exceptional circumstances**

- (1) A person may apply to the Secretary for a determination that service performed by a person as a member of the Permanent Forces or the Reserves be treated as effective service.
- (2) The Secretary may make the determination if:
  - (a) the service is not recognised as effective service under another provision of this Part; and
  - (b) the member was required for duty in relation to the service; and
  - (c) the Secretary is satisfied that exceptional circumstances exist in relation to the person.

Note 1: A decision under this section is reviewable under the Act (see section 22 of this instrument).

Note 2: For variation and revocation of a determination, see subsection 33(3) of the *Acts Interpretation Act 1901*.

- (3) Without limiting paragraph (2)(c), exceptional circumstances exist if:
  - (a) the person has had an extended period of illness or injury that prevents the person from performing service; or
  - (b) service has been performed but, as a result of a defective decision, is not recognised as effective service.
- (4) The determination must specify the period of service that is to be treated as effective service.
- (5) The person's period of effective service is increased by the period specified in accordance with subsection (4).



## **Division 8—Ineffective service**

### **18 Ineffective service**

#### *Calculating qualifying service period*

- (1) For the purposes of calculating a person's qualifying service period, if the person is absent without pay (whether or not the absence is authorised) for 12 or more consecutive months, the following periods are ***ineffective service***:
  - (a) the period of absence without pay;
  - (b) any service as a member of the Permanent Forces or the Reserves before the period of absence without pay.

#### *Calculating accrued subsidy period and loan limit*

- (2) For the purposes of calculating a person's accrued subsidy period and loan limit, a period in which the person is absent without pay (whether or not the absence is authorised) is ***ineffective service*** if the absence is after the person becomes eligible under the Act.

## Part 3—Eligibility of old scheme members

### 19 Eligibility—incapacitated persons

- (1) For the purposes of section 13 of the Act, a person is eligible as an old scheme member if:
  - (a) before 1 July 2008, the person:
    - (i) was an incapacitated person covered by paragraph (a) of the definition of *incapacitated person* in section 3 of the *Defence Force (Home Loans Assistance) Act 1990*; and
    - (ii) had not made an application for an entitlement certificate under Part 2 of that Act within the 2 year period mentioned in paragraph 4(1)(a) of that Act; and
  - (b) on and after 1 July 2008, the person has not again become a member of the Defence Force; and
  - (c) on or after 1 July 2010, the person applies for a subsidy certificate under the *Defence Home Ownership Assistance Scheme Act 2008*; and
  - (d) subsection (2) or (3) of this section applies in relation to the person.
- (2) This subsection applies in relation to a person if a determination is in force for the person under subsection 4(1A) of the *Defence Force (Home Loans Assistance) Act 1990*.
- (3) This subsection applies in relation to a person if:
  - (a) before 30 June 2010, the person had not applied for an entitlement certificate under the *Defence Force (Home Loans Assistance) Act 1990*; and
  - (b) the Secretary is satisfied that the person's compensable disability (within the meaning of that Act), caused or contributed to the person's failure to apply for an entitlement certificate before that day.

### 20 Eligibility—operational service members

For the purposes of section 13 of the Act, a person is eligible as an old scheme member if:

- (a) before 1 July 2008, the person:
  - (i) was an operational service member within the meaning of the *Defence Force (Home Loans Assistance) Act 1990*; and
  - (ii) stopped being a member of the Defence Force; and
  - (iii) had not made an application for a determination under subsection 4(1A) of that Act; and
- (b) on or after 1 July 2008, the person applies for a subsidy certificate under the *Defence Home Ownership Assistance Scheme Act 2008*; and
- (c) at the time of the application, the person has not again become a member of the Defence Force.

## Part 4—Miscellaneous

### 21 Median interest rate

For the purposes of paragraph (b) of the definition of *median interest rate* in subsection 53(2) of the Act, the interest rate of 0.7458333333% is prescribed.

Note 1: This interest rate has been calculated by dividing an annual interest rate of 8.95% by 12 and rounding the result to 10 decimal places.

Note 2: This interest rate is the maximum interest rate that can be applied under the Act for the purposes of working out a subsidised borrower's monthly subsidy. A lower interest rate may apply if the Minister makes a determination under paragraph 53(1)(a) or (b) of the Act.

### 22 Reviewable decisions

For the purposes of section 71 of the Act, decisions under the following provisions of this instrument are reviewable decisions:

- (a) section 17;
- (b) paragraph 19(3)(b).

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

For the purposes of subsection 79(2) of the Act, the following purposes are prescribed:

- (a) determining a person's eligibility for a subsidy under the Act, including whether or not a person continues to be eligible;
- (b) determining the amount of a person's subsidy, including correcting or updating the person's subsidy amount;
- (c) deciding whether or not to authorise subsidy payments;
- (d) identifying errors or overpayments of subsidy;
- (e) implementing the findings of the internal review of a decision under the Act;
- (f) administering eligibility and entitlements under the *Defence Force (Home Loans Assistance) Act 1990*;
- (g) administering eligibility and entitlements, including correcting or updating the person's subsidised advance, under the *Defence Service Homes Act 1918*;
- (h) any other purpose that is reasonably necessary for the administration of the *Defence Home Ownership Assistance Scheme Act 2008*.

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

### **24 Savings provision—deemed effective service decisions**

- (1) If, before the commencement of this instrument, the Secretary decided under regulation 20 of the *Defence Home Ownership Assistance Scheme Regulations 2008* to treat particular service by a person as effective service, then, on that commencement, the Secretary is taken to have made a determination under section 17 of this instrument specifying the service as service that is to be treated as effective service.
- (2) To avoid doubt, the Secretary may vary or revoke a determination that is taken to have been made under subsection (1).

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

If, before the commencement of this instrument, a person was taken to be eligible as an old scheme member because of regulation 27 of the *Defence Home Ownership Assistance Scheme Regulations 2008*, then, despite the repeal of those regulations by this instrument, that regulation continues to apply on and after the commencement of this section in relation to the person.

## **Schedule 1—Repeals**

### ***Defence Home Ownership Assistance Scheme Regulations 2008***

#### **1 The whole of the instrument**

Repeal the instrument.