

## **EXPLANATORY STATEMENT**

Issued by the authority of the Minister for Veterans and Minister for Defence Personnel

*Defence Home Ownership Assistance Scheme Act 2008*

*Defence Home Ownership Assistance Scheme Amendment (Period of Effective Service)  
Regulations 2020*

The *Defence Home Ownership Assistance Scheme Amendment (Period of Effective Service) Regulations 2020* (the Regulations) make an amendment consequential to recent amendments made to the *Defence Home Ownership Assistance Scheme Act 2008* (the Act).

The purpose of the Act is to provide a home ownership assistance scheme (the scheme) to assist Australian Defence Force (ADF) members to achieve home ownership.

Under the scheme, ADF members who have completed a sufficient period of effective service are eligible to receive a monthly subsidy to be paid against a home loan for a home in which they and their family live.

An ADF member who remains an eligible scheme recipient when they separate from the ADF can continue to access the scheme post their ADF career subject to some specific requirements. At present, a member must generally apply for a subsidy certificate within two years of leaving the ADF. There is discretion to extend the two year period if the member has a compensable condition that led to their failure to apply for the subsidy within two years. The limited period was included in the scheme to encourage members to use their remaining entitlement as soon as possible after leaving the ADF to assist with their resettlement in the community.

Recent amendments to the Act permit an eligible ADF member who leaves the ADF to apply for a subsidy certificate for up to five years after leaving the ADF. The extension of two years to five years will assist members transitioning to civilian life by allowing additional time to look for suitable accommodation before applying and accessing their final DHOAS certificate.

The purpose of the Regulations is to repeal subsection 11(5) of the *Defence Home Ownership Assistance Scheme Regulations 2018* to ensure consistency with the recent Act amendments.

Currently, subsection 11(5) prevents prior service being recognised as effective service for members joining the Reserves more than two years, but less than five years after transitioning out of the ADF. The Regulations remove this restriction, so that members joining the Reserves within five years can still have their prior service recognised as effective service.

Details of the Regulations are set out in the Attachment A.

The Statement of Compatibility with Human Rights is at Attachment B.

The Act specifies no condition that must be met before the power to make the Regulations may be exercised.

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

### **Commencement**

The Regulations would commence the later of the date of the day after the Regulations is registered and the commencement of Schedule 1 to the *Defence Legislation Amendment (Miscellaneous Measures) Act 2020*.

### **Regulatory Impact Statement**

The Office of Best Practice Regulation advised that no regulatory impact statement was required (OBPR ID 42554).

### **Consultation**

The Department of Veterans' Affairs were consulted in relation to the Regulations.

Authority: Section 85 of the *Defence Home Ownership Assistance Scheme Act 2008*

**Details of the Defence Home Ownership Assistance Scheme Amendment (Period of Effective Service) Regulations 2020**

***Section 1 - Name of Regulation***

This section provides that the title of the instrument is the *Defence Home Ownership Assistance Scheme Amendment (Period of Effective Service) Regulations 2020*.

***Section 2 – Commencement***

This section provides that the Regulations commence the later of the start of the day after this instrument is registered and the commencement of Schedule 1 to the *Defence Legislation Amendment (Miscellaneous Measures) Act 2020*. However the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.

***Section 3 – Authority***

This section provides that the *Defence Home Ownership Assistance Scheme Amendment (Period of Effective Service) Regulations 2020* is made under the *Defence Home Ownership Assistance Scheme Act 2008*.

***Section 4 – Schedules***

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

**SCHEDULE 1 – AMENDMENTS**

**Item 1**

This item adds a note at the end of subsection 11(4) to clarify that in certain circumstances, the person's period of effective service under this Division may be 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 decreased under Division 8 (ineffective service) of this Part.

**Item 2**

This item repeals subsection 11(5) including the notes.

## 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 (Period of Effective Service) Amendment Regulations 2020***

The *Defence Home Ownership Assistance Scheme Amendment (Period of Effective Service) Regulations 2020* (the 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 Regulation**

The Regulations make an amendment consequential to amendments made to the *Defence Home Ownership Assistance Scheme Act 2008* (the Act).

The purpose of the Act is to provide a home ownership assistance scheme (the scheme) to assist Australian Defence Force (ADF) members to achieve home ownership.

Under the scheme, ADF members who have completed a sufficient period of effective service are eligible to receive a monthly subsidy to be paid against a home loan for a home in which they and their family live.

An ADF member who remains an eligible scheme recipient when they separate from the ADF can continue to access the scheme post their ADF career subject to some specific requirements. At present, a member must generally apply for a subsidy certificate within two years of leaving the ADF. There is discretion to extend the two year period if the member has a compensable condition that led to their failure to apply for the subsidy within two years. The limited period was included in the scheme to encourage members to use their remaining entitlement as soon as possible after leaving the ADF to assist with their resettlement in the community.

Recent amendments to the *Defence Home Ownership Assistance Scheme Act 2008* permit an eligible ADF member who leaves the ADF to apply for a subsidy certificate for up to five years after leaving the ADF. The extension of two years to five years will assist members transitioning to civilian life by allowing additional time to look for suitable accommodation before applying and accessing their final DHOAS certificate.

The purpose of the Regulations is to repeal subsection 11(5) of the *Defence Home Ownership Assistance Scheme Regulations 2018* to ensure consistency with the recent Act amendments.

Currently, subsection 11(5) prevents prior service being recognised as effective service for members joining the Reserves more than two years, but less than five years after transitioning out of the ADF. The amending Regulations propose to remove this restriction, so that members joining the Reserves within five years can still have their prior service recognised as effective service.

## **Human Rights Implications**

The Regulations and the associated Act amendments aim to provide formers ADF member with longer period of access to the scheme so that they can carefully consider their housing needs and enhance their capacity to purchase a suitable home in their chosen community.

This will promote the right to an adequate standard of living in Article 11(1) of the International Covenant on Economic, Social and Cultural Rights (ICERSCR), in particular as it relates to housing.

## **Conclusion**

The Regulations are compatible with human rights because it promotes and advances the right to an adequate standard of living, and does not otherwise engage any human rights.