Defence Home Ownership Assistance Scheme Regulations 2008¹

Select Legislative Instrument 2008 No. 139

I, PHILIP MICHAEL JEFFERY, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the Defence Home Ownership Assistance Scheme Act 2008.

Dated 24 June 2008

P. M. JEFFERY
Governor-General

By His Excellency’s Command

WARREN SNOWDON
Minister for Defence Science and Personnel
## Contents

### Part 1  Preliminary

1. Name of Regulations  4  
2. Commencement  4  
3. Definitions  4  

### Part 2  Effective service

#### Division 1  Preliminary

4. Effective service  6  

#### Division 2  Effective service — Permanent Forces members

5. Purpose of Division  6  
6. Effective service  6  

#### Division 3  Effective service — Reserves members

7. Purpose of Division  7  
8. Effective service — qualifying service period  7  
9. Effective service — accrued subsidy period and loan limit  8  

#### Division 4  Effective service — foreign service members

10. Purpose of Division  8  
11. Effective service — qualifying service period  8  

#### Division 5  Effective service — combined service members

12. Purpose of Division  9  
13. Effective service — qualifying service period  9  
14. Reserves to Permanent Forces — qualifying service period  9  
15. Permanent Forces to Reserves — qualifying service period  11  
16. Effective service — accrued subsidy period and service credit  12  
17. Reserves to Permanent Forces — accrued subsidy period and service credit  12  

<table>
<thead>
<tr>
<th>Page</th>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>13</td>
<td>18</td>
<td>Permanent Forces to Reserves — accrued subsidy period and service credit</td>
</tr>
<tr>
<td>14</td>
<td>19</td>
<td>Effective service — loan limit</td>
</tr>
<tr>
<td>15</td>
<td>Division 6</td>
<td>Deemed effective service</td>
</tr>
<tr>
<td>20</td>
<td>20</td>
<td>Deemed effective service — exceptional circumstances</td>
</tr>
<tr>
<td>15</td>
<td>Division 7</td>
<td>Ineffective service</td>
</tr>
<tr>
<td>21</td>
<td>21</td>
<td>Purpose of Division</td>
</tr>
<tr>
<td>15</td>
<td>22</td>
<td>Ineffective service — qualifying service period</td>
</tr>
<tr>
<td>16</td>
<td>23</td>
<td>Ineffective service — service credit</td>
</tr>
<tr>
<td>17</td>
<td>Part 3</td>
<td>Eligibility — old scheme members</td>
</tr>
<tr>
<td>24</td>
<td>24</td>
<td>Eligibility</td>
</tr>
<tr>
<td>17</td>
<td>25</td>
<td>Eligibility — incapacitated persons</td>
</tr>
<tr>
<td>18</td>
<td>26</td>
<td>Operational service members</td>
</tr>
<tr>
<td>18</td>
<td>27</td>
<td>Deceased members</td>
</tr>
<tr>
<td>19</td>
<td>Part 4</td>
<td>Miscellaneous</td>
</tr>
<tr>
<td>28</td>
<td>28</td>
<td>Median interest rate</td>
</tr>
<tr>
<td>19</td>
<td>29</td>
<td>Reviewable decisions</td>
</tr>
<tr>
<td>19</td>
<td>30</td>
<td>Use and disclosure of personal information — prescribed purposes</td>
</tr>
</tbody>
</table>

2008, 139  
*Defence Home Ownership Assistance Scheme Regulations 2008*  

Federal Register of Legislative Instruments F2008L02221
Part 1 Preliminary

1 Name of Regulations
These Regulations are the Defence Home Ownership Assistance Scheme Regulations 2008.

2 Commencement
These Regulations commence on 1 July 2008.

3 Definitions
(1) In these Regulations:


   authorisation month means a period commencing at the beginning of the authorisation day of one of the 12 months of the year and ending immediately before the beginning of the corresponding day of the next month or, if there is no corresponding day, ending at the expiration of the next month.

   combined service member means a member who, in a service year, has rendered service in 2 or more of the following:

   (a) a foreign service;
   (b) the Permanent Forces;
   (c) the Reserves.

   ineffective service has the meaning given by Division 7 of Part 2.

   old scheme member means a person who is eligible, or who may be eligible, for a subsidy under the Defence Force (Home Loans Assistance) Act 1990.

   Permanent service means service in one or more of the Permanent Forces.

   Reserve service means service in one or more of the Reserves.
(2) In these Regulations, a day of Reserve service is a day on which a member was required for, and attended, duty.

(3) For section 4 of the Act:

\textit{service year} means the period from 1 July of one calendar year to 30 June of the following calendar year.
Part 2 Effective service

Division 1 Preliminary

4 Effective service

For the definition of effective service in section 3 of the Act, service calculated under this Part is effective service.

Division 2 Effective service — Permanent Forces members

5 Purpose of Division

This Division sets out the methods for calculating effective service for a member of the Permanent Forces for calculating the member’s:

(a) qualifying service period (Act, paragraph 8 (2) (a)); and
(b) accrued subsidy period (Act, section 47); and
(c) loan limit (Act, section 51).

6 Effective service

(1) Subject to subregulation (2), effective service means service:

(a) that is continuous full-time service; and
(b) in relation to which the member receives remuneration; and
(c) that is not ineffective service.

(2) For paragraph (1) (b), the member is taken to receive remuneration during a period of leave without pay if the period of leave is not more than 21 continuous days.
Division 3 Effective service — Reserves members

7 Purpose of Division

This Division sets out the methods for calculating effective service for a member of the Reserves for the purpose of calculating the member’s:
(a) qualifying service period (Act, paragraph 8 (2) (b)); and
(b) accrued subsidy period (Act, section 47); and
(c) loan limit (Act, section 51).

8 Effective service — qualifying service period

(1) This regulation prescribes the service types and periods that can be used to calculate the effective service that is to be counted in calculating the member’s qualifying service period.

(2) If the member performs Reserve service on 20 or more days in a service year, the member has 1 year of effective service.

(3) If:
(a) the member of the Reserves renders, in a service year, a period or periods of continuous full-time service; and
(b) the period, or the sum of the periods, of continuous full-time service is not greater than 6 months;
the member has 1 year of effective service.

(4) If:
(a) the member of the Reserves renders, in a service year, a period or periods of continuous full-time service; and
(b) the period, or the sum of the periods, of continuous full-time service is greater than 6 months;
the member has 2 years of effective service.

(5) Subject to subregulation (6), if the member has effective service in more than 1 service year, the member’s effective service for this regulation is the sum of the effective service calculated for each service year.
(6) If the amount calculated under subregulation (5) is more than the number of years of effective service that the member requires for his or her qualifying service period, any service in excess of that requirement is to be disregarded.

9 Effective service — accrued subsidy period and loan limit

(1) If a member of the Reserves performs Reserve service on 20 or more days in a service year, the member has 1 year of effective service that is to be counted in calculating the member’s accrued subsidy period and loan limit.

(2) For subregulation (1), a day or days of continuous full-time service is counted as a day or days of Reserve service.

Division 4 Effective service — foreign service members

10 Purpose of Division

This Division sets out the method for calculating effective service for a foreign service member, for the purpose of calculating the member’s qualifying service period (Act, paragraph 8 (2) (c)).

11 Effective service — qualifying service period

(1) The foreign service member’s effective service is calculated under subregulations (2) and (3).

(2) If the foreign service member is appointed under regulation 15 of the Defence (Personnel) Regulations 2002, the member’s effective service includes the number of years of seniority determined, by the Chief of the Service to which the member is appointed, under regulation 16 of those Regulations.

(3) If the foreign service member is enlisted under regulation 25 of the Defence (Personnel) Regulations 2002, the member’s effective service includes the number of years of seniority determined, by the Chief of the Service to which the member is enlisted, under regulation 26 of those Regulations.
Division 5  Effective service — combined service members

12  Purpose of Division
This Division sets out the methods for calculating effective service for a combined service member, for the purpose of calculating the member’s:
(a) qualifying service period (Act, subsection 8 (2)); and
(b) accrued subsidy period (Act, section 47); and
(c) loan limit (Act, section 51).

13  Effective service — qualifying service period
The combined service member’s effective service, for calculating the member’s qualifying service period, is calculated under regulations 14 and 15.

14  Reserves to Permanent Forces — qualifying service period
(1) If, in a service year, the combined service member transfers from the Reserves to the Permanent Forces, the member’s effective service is the sum of:
(a) the number of years calculated under subregulation (2); and
(b) the number of months identified under subregulation (4).

Whole years of service
(2) If, in a service year, the combined service member transfers from the Reserves to the Permanent Forces, the member’s effective service is:
\[
\frac{\text{RSY}}{2}
\]
where:

\( RSY \) is the number of years of Reserve service completed by the member prior to the service year in which the member transferred.

(3) If the result of the calculation under subregulation (2) includes half a year, that part of the effective service is 6 months.

**Part-years of service**

(4) If, in a service year:

(a) the combined service member transfers from the Reserves to the Permanent Forces; and

(b) in the service year, the member has completed less than 20 days of Reserve service;

the member’s effective service for the service year, up to the date of transfer, is the lesser of the number of months calculated under subregulations (5) and (7).

(5) For subregulation (4), the effective service of the combined service member is:

\[
RSD \times 0.3
\]

expressed as a number of months, where:

\( RSD \) is the number of days of Reserve service completed by the member in the service year.

(6) If the result of the calculation under subregulation (5) includes a part of a month, that part is to be rounded up to a whole month.

(7) For subregulation (4), the effective service of the combined service member is:

\[
\frac{RSM}{2}
\]

where:

\( RSM \) is the number of months of the service year that the member was a member of the Reserves.
(8) If the result of the calculation under subregulation (7) includes a part of a month, that part is to be rounded up to a whole month.

15 Permanent Forces to Reserves — qualifying service period

(1) If, in a service year, the combined service member transfers from the Permanent Forces to the Reserves, the member’s effective service is the sum of:
(a) the number of years calculated under subregulation (2); and
(b) the number of years calculated under subregulation (3), (4) or (5), as applicable.

Whole years of service

(2) If, in a service year, the combined service member transfers from the Permanent Forces to the Reserves, the member’s effective service is:

\[ \text{PSY} \times 2 \]

where:
\( \text{PSY} \) is the number of years of Permanent service completed by the member prior to the service year in which the member transferred.

Part-years of service

(3) If, in a service year:
(a) the combined service member transfers from the Permanent Forces to the Reserves; and
(b) in the service year, the member has completed less than 20 days of Permanent service;
the member’s effective service for the service year is the sum of:
(c) the number of days of Permanent service completed by the member in the service year; and
(d) the number of days of Reserve service completed by the member in the service year.

(4) For subregulation (3), if the sum of the number of days of Permanent service and Reserve service is more than 20 days, the member’s effective service for the service year is equal to 1 year of Reserve service.

(5) If, in a service year:
(a) the combined service member transfers from the Permanent Forces to the Reserves; and
(b) in the service year, the member has completed not less than 20 days and not more than 6 months of Permanent service;
the member’s effective service for the service year is equal to 1 year of Reserve service.

(6) If, in a service year:
(a) the combined service member transfers from the Permanent Forces to the Reserves; and
(b) in the service year, the member has completed more than 6 months and not more than 12 months of Permanent service;
the member’s effective service for the service year is equal to 2 years of Reserve service.

16 **Effective service — accrued subsidy period and service credit**

For a combined service member, the member’s effective service, for calculating the member’s accrued subsidy period and service credit, is calculated under regulations 17 and 18.

17 **Reserves to Permanent Forces — accrued subsidy period and service credit**

(1) If, in a service year, the combined service member transfers from the Reserves to the Permanent Forces, the member’s effective service for the service year, up to the date of transfer, is the lesser of the number of months calculated under subregulations (2) and (3).
(2) For subregulation (1), the effective service of the combined service member is:

\[ \text{RSD} \times 0.6 \]

expressed as a number of months, where:

\( \text{RSD} \) is the number of days of Reserve service completed by the member in the service year.

(3) For subregulation (1), the effective service of a combined service member is the number of months of the service year that the member was a member of the Reserves.

(4) If the application of the formula in subregulation (2) does not result in a whole number, the result is to be rounded up to the next whole number.

(5) If the result of the calculation under subregulation (3) includes a part of a month, that part is to be rounded up to a whole month.

18 Permanent Forces to Reserves — accrued subsidy period and service credit

(1) If, in a service year:

(a) the combined service member transfers from the Permanent Forces to the Reserves; and

(b) in the service year, the member has completed less than 20 days of Permanent service;

the member’s effective service for the service year is the sum of:

(c) the number of days of Permanent service completed by the member in the service year; and

(d) the number of days of Reserve service completed by the member in the service year.

(2) For subregulation (1), if the sum of the number of days of Permanent service and Reserve service is more than 20 days, the member’s effective service for the service year is equal to 1 year of Reserve service.
(3) If, in a service year:
   (a) the combined service member transfers from the Permanent Forces to the Reserves; and
   (b) the member has completed not less than 20 days and not more than 12 months of Permanent service;

   the member’s effective service for the service year is equal to 1 year of Reserve service.

19 Effective service — loan limit

(1) Subject to subregulation (3), for a combined service member, the member’s effective service, for calculating the member’s loan limit, is:

\[ \text{QSP} + \text{ESASP} \]

where:

\( \text{QSP} \) is the qualifying service period completed by the member:
   (a) for subsection 8 (2) of the Act; or
   (b) if the member has rejoined the Permanent Forces or the Reserves, for subsection 10 (2) of the Act.

\( \text{ESASP} \) is the effective service for the member, for calculating the member’s accrued subsidy period.

(2) For subregulation (1):
   (a) \( \text{ESASP} \), for a Permanent Forces member is, the sum of the amounts calculated under regulations 6 and 17; and
   (b) \( \text{ESASP} \), for a Reserves member, is the sum of the amounts calculated under regulations 9 and 18.

(3) If the member is a separated member:
   (a) the periods of service that were used to calculate the member’s QSP are to be disregarded; and
   (b) the member’s QSP is to be calculated using the methods for calculating effective service for the member’s accrued subsidy period under regulations 6 and 17, or 9 and 18, whichever apply to the member.
(4) For subregulation (3):

*separated member* means a person who:

- on or after 1 July 2008, stopped being a member of the Defence Force; and
- was eligible immediately before he or she stopped being a member; and
- has not again become a member of the Defence Force.

### Division 6  Deemed effective service

#### 20  Deemed effective service — exceptional circumstances

(1) If:

- a member’s service is not effective service under this Part; and
- the Secretary is satisfied that exceptional circumstances exist;

the Secretary may, on the application of a member, treat the member’s service as effective service.

(2) Without limiting subregulation (1), the following are taken to be exceptional circumstances:

- the member has had an extended period of illness or injury that prevents the member from performing their effective service;
- service has been performed but, as a result of a defective decision, is not recognised as service.

### Division 7  Ineffective service

#### 21  Purpose of Division

This Division sets out the methods for identifying *ineffective service* for:

- a member of the Permanent Forces; and
- a member of the Reserves; and
- a foreign service member; and
22 Ineffective service — qualifying service period

If, during a member’s qualifying service period, the member is on leave without pay for 12 consecutive months (whether or not the leave is authorised):

(a) the period of leave without pay is ineffective service for calculating the member’s qualifying service period; and

(b) any service as a member prior to the period of leave without pay is ineffective service for calculating the member’s qualifying service period.

23 Ineffective service — service credit

If, after:

(a) the member’s qualifying service period is completed; or

(b) the member is eligible;

the member is on leave without pay (whether or not the leave is authorised), the period of leave without pay is ineffective service for the purpose of calculating the member’s service credit.
Part 3  Eligibility — old scheme members

24  Eligibility

For section 13 of the Act, this Part prescribes the requirements for eligibility for old scheme members.

Note In this Part, a reference to a member’s eligibility relates to the making of an application under section 17 of the Act.

25  Eligibility — incapacitated persons

(1) The old scheme member is eligible under the Act if:
   (a) before 1 July 2008, the old scheme member:
      (i) is an incapacitated person referred to in paragraph (a) of the definition of incapacitated person in section 3 of the Defence Force (Home Loans Assistance) Act 1990; and
      (ii) has not made an application for an entitlement certificate within the 2 year period mentioned in paragraph 4 (1) (a) of that Act; and
      (iii) is a person to whom subregulation (2) or (3) applies; and
   (b) on or after 1 July 2010, the person:
      (i) applies for a subsidy certificate under the Act; and
      (ii) at the time of application, has not rejoined the Permanent Forces or the Reserves.

(2) This subregulation applies to the old scheme member if the Secretary has made or makes a determination under subsection 4 (1A) of the Defence Force (Home Loans Assistance) Act 1990.

(3) This subregulation applies to the old scheme member if:
   (a) the old scheme member has not, before 30 June 2010, applied for an entitlement certificate under the Defence Force (Home Loans Assistance) Act 1990; and
Regulation 26

(b) the Secretary is satisfied that the old scheme member’s compensable disability, under section 3 of that Act, caused or contributed to the old scheme member’s failure to apply for an entitlement certificate before 30 June 2010.

26 Operational service members

The old scheme member is eligible under the Act if:
(a) before 1 July 2008, the person:
   (i) was an operational service member referred to in section 3A of the Defence Force (Home Loans Assistance) Act 1990; and
   (ii) ceased to be a member of the Permanent Forces or the Reserves; and
   (iii) has not made an application for an entitlement certificate under section 4 of that Act; and
(b) on or after 1 July 2008, the person:
   (i) applies for a subsidy certificate under the Act; and
   (ii) at the time of application, has not rejoined the Permanent Forces or the Reserves.

27 Deceased members

If:
(a) a person who is eligible under regulation 25 or 26 dies; and
(b) the person has a surviving partner;
the person is taken to be eligible, under the applicable regulation, for the purposes of conferring the person’s entitlement under the Act to the surviving partner, as if the partner were the surviving widow or widower of an eligible member, for section 30 of the Defence Force (Home Loans Assistance) Act 1990.
Part 4  Miscellaneous

28  Median interest rate

For paragraph 53 (2) (b) of the Act, the interest rate for a monthly authorisation period is 0.7458333333%.

Note  This interest rate is the maximum interest rate that can be applied under the Act. This monthly interest rate has been calculated by dividing an annual interest rate of 8.95% by 12 and rounding the result to 10 decimal places.

29  Reviewable decisions

For section 71 of the Act, decisions under the following provisions of these Regulations are declared to be reviewable decisions:
(a)  Part 2;
(b)  paragraph 25 (3) (b).

30  Use and disclosure of personal information – prescribed purposes

For 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 member continues to be eligible;
(b)  determining the amount of a person’s subsidy, including correcting or updating the member’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;
Regulation 30

(g) administering eligibility and entitlements, including correcting or updating the member’s subsidised advance, under the Defence Service Homes Act 1918;

(h) any other purpose that is reasonably necessary for the administration of the Act.

Note