EXPLANATORY STATEMENT

Select Legislative Instrument 2008 No. 139

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

Defence Home Ownership Assistance Scheme Act 2008

Defence Home Ownership Assistance Scheme Regulations 2008

The Defence Home Ownership Assistance Scheme Act 2008 (the Act) provides a home ownership assistance scheme (the Scheme) that will be available to eligible persons, including members of the Australian Defence Force (ADF) who are serving on or after 1 July 2008. The scheme 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 in active service, benefits in the scheme increase progressively over the period of ADF service.

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

The Regulations establish the following:

(a) a method for identifying the ADF service that is recognised for the purposes of the scheme;

(b) the classes of person who are eligible as ‘old scheme members’ as a transitional measure;

(c) an interest rate cap for the scheme; and

(d) a set of purposes for which personal information can be used and disclosed between different entities involved in the administration of the scheme. This is needed to ensure that all of these activities are taken to be required or authorised by law and so do not breach the Privacy Act 1988.

Section 3 of the Act provides for the concept of ‘effective service’ to be prescribed by regulation. The Regulations set out the mechanism by which service can be identified as effective for an ADF member and counted towards a qualifying service period, accrued subsidy period or loan limit under the Act.

Section 13 of the Act provides that a person is eligible as an ‘old scheme member’ under the Act if the person meets requirements prescribed by the regulations. Eligibility is conferred on these persons under the Act as a saving and transitional measure to allow them to use eligibility that they gained, but will no longer have access to, under the Defence Force (Home Loans Assistance) Act 1990 (the DFHLA Act).

Section 53 of the Act provides that a maximum median interest rate cap is to be set by regulation. The Regulations set this cap and ensure that the growth of costs is controlled. The median monthly interest rate may be varied by Ministerial determination up to but not over the cap. Requiring regulations to be made to vary the cap will provide for Parliamentary scrutiny of actions that could increase the costs of the Scheme.
Section 71 of the Act provides that a ‘reviewable decision’ may include decisions declared under the regulations to be reviewable. The Regulations provide for a decision regarding ‘effective service’ to be reviewable by the Secretary of Defence (or a delegate of the Secretary in the Department of Defence) in accordance with the Act.

Section 79 of the Act provides that a person covered by subsection 79(3) may, for a purpose prescribed by the regulations, use or disclose personal information to another person covered by subsection 79(3). Subsection 79(3) expressly identifies the Secretary of Defence, the Secretary’s delegates under the Act, the Secretary’s delegates under the DFHLA Act and Defence Service Homes Act 1918 and the loan providers, bank or credit provider under the three Acts referred to above. The Regulations provide for the use and disclosure of personal information by the people mentioned in subsection 79(3) only where it is relevant to the administration of the scheme.

Details of the Regulations are set out in the Attachment.

The Act specifies no conditions that need to be satisfied before the power to make the Regulations may be exercised.

The Regulations are a legislative instrument for the purposes of the Legislative Instruments Act 2003.

The Regulations commence on 1 July 2008, which is the day on which the Act commences.

Consultation was considered inappropriate and unnecessary pursuant to section 18 of the Legislative Instruments Act 2003 because the Regulations relate to the service of members of the Australian Defence Force. However, the Department of Prime Minister and Cabinet was consulted in relation to the regulations relating to disclosure and use of personal information, and the Australian Government Solicitor has been engaged to report on the privacy impact of the Act and Regulations.
Details of the *Defence Home Ownership Assistance Scheme Regulations 2008*

**Part 1 Preliminary**

**Regulation 1 – Name of Regulations**

This regulation provides that the title of the Regulations is the *Defence Home Ownership Assistance Scheme Regulations 2008*.

**Regulation 2 – Commencement**

This regulation provides for the Regulations to commence on 1 July 2008.

**Regulation 3 – Definitions**

This regulation sets out definitions of key terms used in the Regulations, including the following:

- **authorisation month** is defined in detail in the Regulations for the purpose of allowing an assessment of subsidy for a month to be precisely measured as required to give effect to section 58 of the Act. The ‘authorisation day’ is the first day of the authorisation month. It is the day 10 business days before the end of a month. It is not expressly defined in the Regulations because it is set out under the agreement made between the Commonwealth as represented by the Department of Defence and its scheme administrator, currently the Commonwealth as represented by the Department of Veterans’ Affairs.

- **service year** means the year commencing on 1 July each year, similar to a financial year.

**Part 2 Effective service**

**Division 1 Preliminary**

**Regulation 4 – Effective service**

This regulation provides that ‘effective service’, for the purpose of the Act, is service calculated under Part 2 of the Regulations. This concept is proposed to be prescribed by regulation for three reasons:

- so that it can keep pace with any changes in the way that service is rendered in the ADF;
- to ensure that members who transfer to the ADF from a foreign service, or between the Permanent and Reserve Forces, are able to count service rendered before their transfer; and
- to ensure that the scheme is a meaningful incentive to retention. As such, the regulations will set a minimum number of days of service that a Reserve member must perform each year in order to be eligible under the Act.

The years of effective service completed by a member of the ADF are calculated differently depending on the member’s eligibility status – whether as a serving member of the Permanent Forces or of the Reserves. ‘Effective service’ is calculated using different methods for the purpose of ascertaining the service that can be counted toward a qualifying service period, accrued subsidy period or loan limit under the Act. The different methods ensure that members are able to move between service types without suffering a disadvantage, having regard to the incentive value of the Scheme.
The following points provide a summary explanation of the different purposes for which ‘effective service’ must be calculated:

♦ The ‘qualifying service period’ is the period of service that a member must perform before he or she can accrue a service credit and be paid a subsidy on their home loan interest under the Act.

♦ A borrower’s ‘accrued subsidy period’ is the number of months of effective service that the ADF member to whom the home loan relates has performed at any particular time subsequent to qualifying for the subsidy. This period is used in working out an eligible person’s service credit.

♦ The loan limit for a subsidised borrower is worked out on a graduated scale as a percentage of the amount that was the determined average house price at the time the subsidy first became payable on the borrower’s loan. The percentage increases with the years of effective service completed by the borrower. The scale applies differently depending on the borrower’s eligibility status.

**Division 2 Effective service – Permanent Forces members**

**Regulation 5 – Purpose of Division**

This regulation explains the purpose of Division 2 is to establish the methods for calculating ‘effective service’ for a member of the Permanent Forces in order to work out the member’s qualifying service period, accrued subsidy period and loan capital under the Act.

**Regulation 6 – Effective service – Permanent Forces members**

This regulation provides that ‘effective service’ for a member of the Permanent Forces is continuous full-time service, it is paid service and it is not ineffective service (defined in Division 7 of Part 2 of the Regulations). This has the effect that periods of long-term leave without pay do not contribute to calculations of a member’s benefits under the Act.

**Division 3 Effective service – Reserves members**

**Regulation 7 – Purpose of Division**

This regulation explains the purpose of Division 3 is to establish the methods for calculating ‘effective service’ for a member of the Reserves in order to work out the member’s qualifying service period, accrued subsidy period and loan limit under the Act.

**Regulation 8 – Effective service – Qualifying service period**

This regulation provides that during the qualifying service period, when the member performs Reserve service on 20 or more days in a service year, he or she is taken to have one year of ‘effective service’. The 20 days represents the minimum number of days that many Reserves currently perform each year.

This regulation also provides that during the qualifying service period, if a member of the Reserves performs a period or periods of continuous full-time service it will accelerate the member’s qualifying period. For example, if a Reserve member performs more than six months but less than one year of duty overseas on peacetime service, the member would be taken to have completed two years of ‘effective service’. This is a significant incentive to Reserve members to provide additional service.
**Regulation 9 – Effective service – Accrued subsidy period and loan limit**

This regulation provides that, for the purpose of the accrued subsidy period and loan limit, when the member performs Reserve service on 20 or more days in a service year, he or she is taken to have one year of ‘effective service’.

**Division 4 Effective service – Foreign service members**

**Regulation 10 – Purpose of Division**

This regulation explains that the purpose of Division 4 is to establish the methods for calculating ‘effective service’ for a foreign service member in order to work out the member’s qualifying service period.

**Regulation 11 – Effective service – Qualifying service period**

This regulation permits members who are recruited from foreign service to count their former service toward the qualifying period for the scheme, if the ADF recognises that service for the member’s seniority in rank. The regulation provides that the member’s effective service includes the number of years of seniority determined by the relevant Service Chief under the *Defence (Personnel) Regulations 2002*.

**Division 5 Effective service – Combined service members**

**Regulation 12 – Purpose of Division**

This regulation explains the purpose of Division 5 is to establish the methods for calculating ‘effective service’ for a combined service member in order to work out the member’s qualifying service period, accrued subsidy period, loan limit and service credit under the Act.

**Regulation 13 – Effective service – Qualifying service period**

This regulation assists the reader by explaining that the ‘effective service’ for a member who has served in the Permanent and the Reserve Forces in a single service year can be calculated by reference to regulations 14 and 15. The regulation chosen, 14 or 15, would depend on the direction of the member’s transfer (to or from the Reserves).

**Regulation 14 – Reserves to Permanent Forces – Qualifying service period**

This regulation sets out the method for calculating ‘effective service’ for a combined service member who transfers from the Reserves to the Permanent Forces during the qualifying service period.

Subregulations 14(2) and (3) provide that full years of prior service in the Reserves are divided by two to work out how much effective service can count toward the member’s qualifying period. This is not a reduction in the member’s effective service, instead, it reflects the changed qualifying period that applies to a Permanent Force member (four years instead of eight years). This avoids the member receiving a windfall for occasional service in Reserve years.
Subregulations 14(4)-(8) provide a method for identifying partial years of Reserve service and including them in the calculation of the qualifying period, in addition to subsequent Permanent Force service. The amount of service that is effective is the lesser of two alternatives. The method in subregulation 14(5) provides a formula that can be applied to translate the total service in Reserve days into the context of full-time service. The method in subregulation 14(7) provides an alternative means of calculating the effective service based on the actual months for which the member served as a member of the Reserves. Both formulae include a cap that reflects the change in the qualifying period that the member will need to satisfy on transfer into the Permanent Force.

Regulation 15 – Permanent Forces to Reserves – Qualifying service period

This regulation sets out the method for calculating ‘effective service’ for a combined service member who transfers from the Permanent Forces to the Reserves during the qualifying service period.

Subregulation 15(2) provides that full years of prior service in the Permanent Forces are multiplied by two to work out how much effective service can count toward the member’s qualifying period. This is not an increase in the member’s effective service, instead, it reflects the changed qualifying period that applies to a Reserve Force member (eight years instead of four years). This avoids the member receiving a detriment for the full-time service they have provided over a shorter period in the Permanent Force.

Subregulations 15(3)-(7) provide methods for identifying partial years of Permanent Force service. This allows the part-year of Permanent service served before a member’s transfer to the Reserves to be taken into account in the calculation of the member’s effective service for the qualifying period, in addition to the member’s subsequent Reserve Force service. The amount of effective service is worked out based on the actual time that the member has served in the Permanent Force and the Reserves. The methods deem the member to have an amount of effective service that is adjusted and increased for the longer qualifying period that the member will need to satisfy on transfer into the Reserve Force.

Regulation 16 – Effective service – Accrued subsidy period and service credit

This regulation assists the reader by explaining that the ‘effective service’ for an accrued subsidy period for a member who has served in the Permanent and the Reserve Forces in a single service year can be calculated by reference to regulations 17 and 18. The regulation chosen, 17 or 18, would depend on the direction of the member’s transfer (to or from the Reserves).

Regulation 17 – Reserves to Permanent Forces – Accrued subsidy period and service credit

This regulation sets out the method for calculating ‘effective service’ for a combined service member who transfers from the Reserves to the Permanent Forces after the qualifying service period. In the service year that a member moves from the Reserves to the Permanent Force, months in a partial year of Reserve service may be counted towards accrual of a subsidy period in addition to subsequent permanent service. The amount of service that is effective is the lesser of two alternatives. The formula in subregulation (2) reflects the requirement that a Reserve member serve 20 days in a year in order to be taken to have rendered effective service in that service year. The formula in subregulation (3) counts the months a member has spent in the Reserves. The calculations reflect a nominal conversion from Reserve days to full-time service.
Regulation 18 – Permanent Forces to Reserves – Accrued subsidy period and service credit

This regulation sets out the method for calculating ‘effective service’ for a combined service member who transfers from the Permanent Forces to the Reserves after the qualifying service period. In the service year that a member moves from the Permanent Force to the Reserves and performs Reserve service of less than twenty days, a partial year of permanent service may be counted towards accrual of a subsidy period in addition to or in lieu of Reserve service.

Regulation 19 – Effective service – Loan limit

This regulation sets out the method for calculating a member’s ‘effective service’ for the purpose of working out the member’s loan limit. The formula provides that the member’s effective service under this regulation is the qualifying service period that the member has completed plus the effective service calculated for the member’s accrued subsidy period.

Subregulation 19(3) provides an exception to this rule for a separated member. The purpose of this exception is to ensure that effective service reflects the rule in table item 4 of subsection 51(2) of the Act, which removes the accelerated accrual of qualifying service that was previously deemed for the benefit of the member. Instead all service is counted using the method for accrued subsidy, more closely reflecting the actual number of years of service that a member has served.

Division 6 Deemed effective service

Regulation 20 – Deemed effective service – Exceptional circumstances

This regulation provides discretion 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 which is later fixed might leave a period where it is unclear that the member has provided the effective service. Reserve members who have been ill might also apply for deemed effective service if their illness was long and serious enough to prevent them serving for the entire service year.

There would be no exceptional circumstance where a Reserve member 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 7 Ineffective service

Regulation 21 – Purpose of Division

This regulation provides the methods for identifying ‘ineffective service’ depending on the member’s eligibility status.

Regulation 22 – Ineffective service – Qualifying service period

This regulation provides that if a member is on leave without pay for 12 consecutive months during their qualifying service period, the period of leave is ineffective service and will result in the prior effective service being recategorised and unable to count toward benefits under the scheme.
Regulation 23 – Ineffective service – Service credit

This regulation provides that if a member is on leave without pay after their qualifying service period, the period of leave is ineffective service and will not be counted as a service credit. However, it will not affect the member’s eligibility unless it is longer than the period required by the Act (for example, the five year period for rejoining members).

Part 3 Eligibility – old scheme members

Regulation 24 – Eligibility – old scheme members

This regulation provides that Part 3 of the Regulations prescribes the eligibility requirements for an old scheme member in accordance with section 13 of the Act. Old scheme members are a subset of those persons covered by the ‘old scheme’ the Defence Force (Home Loans Assistance) Act 1990 (DFHLA). The Regulations will provide for ‘incapacitated persons’ and ‘operational service members’ eligible but unable to apply for assistance under the DFHLA to receive a limited benefit under the Scheme. These persons are made eligible under the new scheme as a transitional and savings measure, to ensure that they are not prevented from accessing a home loan interest subsidy that they had accrued eligibility for under the DFHLA. The entitlement of a person in this class under the new scheme is capped at the loan limit provided under the DFHLA, which is $80,000.

Regulation 25 – Eligibility – incapacitated persons

This regulation provides access to a home loan interest subsidy for those former ADF members who were incapacitated persons under the DFHLA and unable to apply for a benefit before its finishing day due to their compensable disability. The regulation includes both those who are unable to apply at all under the old scheme before it finishes on 30 June 2010, and those granted an extended period to apply which they cannot use due to the intervention of the finishing day.

Regulation 26 – Operational service members

This regulation provides for an operational service member who had an unlimited benefit under the DFHLA to have a limited benefit under the new scheme after the DFHLA finishing day of 30 June 2010. The reason eligibility is extended to these members is that they previously had a period to apply for their eligibility under the DFHLA that was limited only by the finishing day. This measure ensures that a person unable to apply under DFHLA by the finishing day has 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, which is $80,000.

Regulation 27 – Deceased members

This regulation provides that if a person eligible for the new scheme under either regulation 26 or 27 dies, they remain eligible for the purpose of conferring their entitlement on a surviving partner, as if that partner were the surviving partner of a separated member under the Act. The surviving partner would be able to use the normal process set up specifically for them under section 18 of the Act. What this means is that there is a single certificate that can be given under the Act for any old scheme member. The entitlement of a member in this class under the new scheme is capped at the loan limit provided under the DFHLA, which is $80,000.
Part 4 Miscellaneous

Regulation 28 – Median interest rate

This regulation provides that the median interest rate for purposes of the Act shall not exceed 0.7458333333% per month. This rate has been derived from an annual interest rate of 8.95%, by dividing by 12 and rounding to 10 decimal places. The current median interest rate ascertained using the index of home loan interest rates published by CANNEX is 8.95% per annum, however the critical rate is the monthly interest rate which works out at 0.745833333(recurring)% per month.

For simplicity in presentation of the Regulations it is proposed to round the monthly interest rate cap to ten decimal places. The Department of Treasury and the Department of Finance and Deregulation were consulted in relation to these figures.

Regulation 29 – Reviewable decision

This regulation provides that a decision regarding ‘effective service’ under Part 2 of the Regulations and a decision about an incapacitated person under paragraph 25(3)(b) of the Regulations are reviewable under the Act.

Regulation 30 – Use and disclosure of personal information – Prescribed purposes

Regulation 30 ensures that the usual anticipated uses by, and disclosures of, personal information for the purposes of administering the scheme will be required or authorised under a law, for the purposes of the Privacy Act 1988.

The regulation sets out the purposes for which personal information about persons in circumstances specified in subsection 79(1) of the Act may be disclosed or used by persons specified under subsection 79(3) of the Act. The use and disclosure must fall within the scope of purposes set out in the regulations. The purposes prescribed relate directly to the administration of benefits under the Act and the Scheme.

The Privacy Act 1988 protects personal information from unauthorised use and disclosure. If a use or disclosure of personal information under the scheme is outside of the purposes prescribed by these Regulations, it may not fall within the scope of the exceptions to Information Privacy Principles in the Privacy Act 1988, as it may not be prescribed or authorised under a law.

As applicants under the Scheme will be advised of the range of 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.

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