



Defence Legislation Amendment (Superannuation and ADF Cover) Act 2015

No. 120, 2015

**An Act to amend the law relating to defence and
superannuation, and for related purposes**

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No. 120, 2015

**An Act to amend the law relating to defence and
superannuation, and for related purposes**

[Assented to 10 September 2015]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Defence Legislation Amendment
(Superannuation and ADF Cover) Act 2015*.

2 Commencement

- (1) Each provision of this Act 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. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	10 September 2015
2. Schedule 1	The later of: (a) the beginning of the day after this Act receives the Royal Assent; and (b) the commencement of the <i>Australian Defence Force Superannuation Act 2015</i> . However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.	11 September 2015 (paragraph (a) applies)
3. Schedule 2	The later of: (a) the beginning of the day after this Act receives the Royal Assent; and (b) the beginning of 1 July 2016.	1 July 2016 (paragraph (b) applies)
4. Schedule 3	The later of: (a) immediately after the commencement of Schedule 1 to this Act; and (b) the commencement of Schedule 1 to the <i>Acts and Instruments (Framework Reform) Act 2015</i> .	
Note:	This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.	

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

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Main amendments

Part 1—Amendments

Defence Act 1903

1 Part IIIAA (heading)

Repeal the heading, substitute:

Part IIIAA—Superannuation

2 After section 52

Insert:

52A Department's employer superannuation contributions

- (1) This section applies in relation to a person if:
- (a) the person:
 - (i) renders service as a member of the Permanent Forces on or after 1 July 2016; or
 - (ii) renders continuous full time naval, military or air force service as a member of the Reserves on or after that day; and
 - (b) the person:
 - (i) is a member of the Australian Defence Force Superannuation Scheme; or
 - (ii) would have been a member of ADF Super except that another fund has become the person's chosen fund for contributions by the Department.

Employer superannuation contributions

- (2) Each payday for the person, the Department must contribute to the person's chosen fund, for the benefit of the person, 16.4% of the ordinary time earnings paid by the Department for the person for the pay period.

Definitions

(3) In this section:

ADF Super has the meaning given by the *Australian Defence Force Superannuation Act 2015*.

chosen fund for a person:

- (a) if the person has chosen a fund under section 32F of the *Superannuation Guarantee (Administration) Act 1992*—has the same meaning as in that section; or
- (b) otherwise—means ADF Super.

ordinary time earnings for a person is the number of dollars in the person's ordinary time earnings (within the ordinary meaning of the expression):

- (a) including any payments of parental leave; but
- (b) excluding any amount that is deducted from those earnings under a salary sacrifice arrangement.

payday for a person means the day on which the person's ordinary time earnings are ordinarily paid for a pay period.

pay period for a person means the period in relation to which person's ordinary time earnings are ordinarily paid.

52B Providing information to CSC in relation to invalidity

The Department may disclose information obtained by the Department to CSC if:

- (a) the information relates to a person:
 - (i) who has been, or is to be, retired from the Defence Force; or
 - (ii) whose service in the Defence Force has been, or is to be, terminated;as a result of physical or mental impairment; and
- (b) the information is provided to CSC for the purposes of:
 - (i) Part V of the *Defence Force Retirement and Death Benefits Act 1973* (invalidity benefits); or
 - (ii) Division 2 of Part 3 of the Schedule to the Military Superannuation and Benefits Trust Deed (invalidity

benefits) made under section 4 of the *Military Superannuation and Benefits Act 1991*.

Note: This section constitutes an authorisation for the purposes of other laws, such as the *Privacy Act 1988*.

Defence Force Retirement and Death Benefits Act 1973

3 Subsection 3(1)

Insert:

continuous full-time Reservist has the meaning given by the *Australian Defence Force Superannuation Act 2015*.

4 Subsection 3(1) (definition of *eligible child*)

Omit “16” (wherever occurring), substitute “18”.

5 Subsection 3(1) (subparagraphs (a)(i) and (ii) of the definition of *eligible member of the Defence Force*)

After “re-engagement”, insert “that occurred before 1 July 2016”.

6 Subsection 3(1) (at the end of the definition of *eligible member of the Defence Force*)

Add:

Note: For a continuous full-time Reservist whose engagement spans 30 June 2016, see section 5B.

7 Subsection 3(1) (subparagraph (a)(ii) of the definition of *period of effective service*)

Omit “57 or 58”, substitute “5B or 57”.

8 Subsection 3(1) (paragraph (b) of the definition of *period of effective service*)

Omit “subsection 62(3) or section”.

9 Subsection 3(1) (definition of *recipient member*)

Repeal the definition, substitute:

recipient member:

- (a) means a member of the scheme who is entitled to retirement pay or invalidity pay; and
- (b) includes a member of the scheme who, apart from the suspension of his or her invalidity pay under subsection 35(3), would be entitled to invalidity pay.

10 Subsection 3(1) (definition of *total period of effective service*)

Omit “, subject to subsections 62(4) and (5)”.

11 At the end of section 5

Add:

- (4) Subsection (3) does not apply in relation to a person who is taken to have retired under section 5B.

12 Paragraph 5A(2)(b)

Repeal the paragraph.

13 After section 5A

Insert:

5B Continuous full-time Reservists whose engagements span 30 June 2016

- (1) This section applies if:
 - (a) a person is an eligible member of the Defence Force; and
 - (b) the person commences as a continuous full-time Reservist as a result of an engagement that is made before 1 July 2016; and
 - (c) the period of the engagement is extended on or after that day.
- (2) For the purposes of this Act, the person is taken:
 - (a) to have retired, but not at his or her own request, on the day before the day (the *extension day*) the period of the engagement is extended; and
 - (b) to have commenced as a continuous full-time Reservist on the extension day.

Note: The effect of this section is that this Act applies in relation to service before the extension day, while the *Australian Defence Force Superannuation Act 2015* applies in relation to service on and after the extension day.

- (3) For the purposes of this Act, disregard as a period of effective service the service rendered on or after the extension day of any member who is taken to have retired under this section.

14 Subsection 23(1)

Repeal the subsection, substitute:

- (1) A contributing member is entitled, on the member's retirement, to retirement pay at the rate applicable to the member under this section if:
- (a) the member retires and is not entitled to invalidity benefit; and
 - (b) on the member's retirement:
 - (i) the member's total period of effective service is not less than 20 years; or
 - (ii) the member's total period of effective service is not less than 15 years and the member has attained the retiring age for the rank held by the member immediately before the member's retirement.

15 Subsection 23(5)

Repeal the subsection.

16 Subsection 24(1A)

Omit "subsection 62(1) or (2)", substitute "section 62".

17 Paragraph 24(1B)(a)

Omit "subsection 62(1)", substitute "section 62".

18 Paragraphs 24(2A)(a) and (b)

Repeal the paragraphs, substitute:

- (a) any amount or amounts specified in any previous election or elections by the person, under this section or section 32A of this Act, to commute a portion or portions of his or her retirement pay or invalidity pay, as the case may be; and

- (b) any amount paid to the person as a result of an application, under section 74 of the previous Act, to commute a portion of any pension payable to him or her under that Act reduced by any amount or amounts required, under subsection 69(1B) or 69(3A) of the previous Act, to be paid by the person to the Defence Forces Retirement Benefits Fund established under the previous Act, in respect of that commutation;

19 Subsections 24(5) to (7)

Repeal the subsections.

20 Subsection 30(3)

Omit “subsection 62(1)”, substitute “section 62”.

21 Subsection 32A(1A)

Omit “subsection 62(1) or (2)”, substitute “section 62”.

22 Paragraphs 32A(4)(a) and (b)

Repeal the paragraphs, substitute:

- (a) any amount or amounts specified in any previous election or elections by the member, under this section or section 24 of this Act, to commute a portion or portions of his or her retirement pay or invalidity pay, as the case may be; and
- (b) any amount paid to the member as a result of an application, under section 74 of the previous Act, to commute a portion of any pension payable to him or her under that Act reduced by any amount or amounts required, under subsection 69(1B) or 69(3A) of the previous Act, to be paid by the member to the Defence Forces Retirement Benefits Fund established under the previous Act in respect of that commutation;

23 Subsection 49Q(1)

Repeal the subsection, substitute:

- (1) If:
 - (a) a person’s invalidity pay, worked out having regard to section 49N, is cancelled under section 62; and
 - (b) after that cancellation, the person becomes entitled to retirement pay or invalidity pay;

the rate of the person's retirement pay or invalidity pay mentioned in paragraph (b) is to be reduced in accordance with section 49N.

24 Subsection 49Q(2)

Omit "retirement pay or".

25 Section 58

Repeal the section.

26 Sections 61B to 61D

Repeal the sections.

27 Subsection 62(1)

Omit "(1)".

28 Subsection 62(1)

Omit "retirement pay or invalidity pay, as the case may be," substitute "or her invalidity pay".

29 At the end of subsection 62(1)

Add "(except if the rate of the invalidity pay is determined under subsection 31(3))".

30 Subsections 62(2) to (8)

Repeal the subsections.

31 At the end of sections 63 and 64

Add:

- (3) This section does not apply in relation to a person who is taken to have retired under section 5B.

32 Section 98C

Omit ", 61C(1), 61D(2) or 135(2)".

33 Subsection 102(1)

After "Part", insert "or Part 5 of the *Australian Defence Force Cover Act 2015*".

34 Subsection 102(1) (note)

After “Note”, insert “1”.

35 At the end of subsection 102(1)

Add:

Note 2: Part 5 of the *Australian Defence Force Cover Act 2015* provides for CSC to refer to the Panel a decision of CSC under that Act if a person affected by the decision requests CSC to reconsider the decision.

36 Subsection 106(1)

After “referred to it”, insert “under section 99”.

37 At the end of subsection 106(1)

Add:

Note: Part 5 of the *Australian Defence Force Cover Act 2015* contains similar provisions for CSC to take into account recommendations of the Panel relating to decisions referred to it under that Part, and to confirm or vary those decisions or set them aside and substitute new decisions.

38 Subsection 135(1)

Omit “(1)”.

39 Subsection 135(2)

Repeal the subsection.

Future Fund Act 2006

40 Section 5 (after paragraph (g) of the definition of *superannuation benefit*)

Insert:

(ga) the *Australian Defence Force Cover Act 2015*; or

***Governance of Australian Government Superannuation
Schemes Act 2011***

41 After subparagraph 3(b)(iv)

Insert:

- or (v) the *Australian Defence Force Superannuation Act 2015*;
or
- (vi) the *Australian Defence Force Cover Act 2015*;

42 Section 4 (after paragraph (d) of the definition of Act administered by CSC)

Insert:

- (da) the *Australian Defence Force Superannuation Act 2015*; or
- (db) the *Australian Defence Force Cover Act 2015*; or

43 Section 4

Insert:

ADF Cover (short for the Australian Defence Force Cover Scheme) means the scheme provided for by the *Australian Defence Force Cover Act 2015*.

ADF Super (short for the Australian Defence Force Superannuation Scheme) has the same meaning as in the *Australian Defence Force Superannuation Act 2015*.

ADF Super Fund has the same meaning as in the *Australian Defence Force Superannuation Act 2015*.

44 Section 4 (at the end of the definition of governing deed)

Add:

- ; or (d) in relation to the ADF Super—the Trust Deed (within the meaning of the *Australian Defence Force Superannuation Act 2015*).

45 Section 4 (definition of *military schemes*)

Repeal the definition, substitute:

military schemes means:

- (a) the DFRB, DFRDB, DFSPB, MSB, ADF Super or ADF Cover; or
- (b) the DFRB, DFRDB, DFSPB, MSB, ADF Super and ADF Cover.

46 Section 4 (after paragraph (b) of the definition of *superannuation fund administered by CSC*)

Insert:

- (ba) the ADF Super Fund; or

47 Section 4 (after paragraph (f) of the definition of *superannuation scheme administered by CSC*)

Insert:

- (fa) the ADF Super; or
- (fb) the ADF Cover; or

48 After paragraph 8(3)(d)

Insert:

- or (e) the *Australian Defence Force Superannuation Act 2015*; or
- (f) the *Australian Defence Force Cover Act 2015*;

49 Subparagraph 30(1)(c)(i)

After “DFSPB”, insert “, ADF Cover”.

50 After paragraph 30(2)(b)

Insert:

- (ba) the *Australian Defence Force Cover Act 2015*; and

51 Paragraphs 34(1)(b) and (2)(b) and 35(3)(a)

After “DFSPB”, insert “, ADF Cover”.

52 Subsection 35(5)

After “Act)”, insert “, and the *Australian Defence Force Superannuation Act 2015* and the Trust Deed (within the meaning of that Act)”.

53 Subsection 36(2) (cell at table item 1, column headed “If the decision was made by CSC or its delegate under ...”)

Repeal the cell, substitute:

- (a) the *Defence Force Retirement and Death Benefits Act 1973* or regulations made under that Act; or
- (b) the *Defence Forces Retirement Benefits Act 1948* or regulations made under that Act; or
- (c) the *Australian Defence Force Cover Act 2015* or rules made under that Act

Income Tax Assessment Act 1997

54 After paragraph 55-5(1)(c)

Insert:

- (ca) *Australian Defence Force Superannuation Act 2015*;
- (cb) *Australian Defence Force Cover Act 2015*;

Military Rehabilitation and Compensation Act 2004

55 Subsection 5(1) (paragraphs (aa) and (a) of the definition of *Commonwealth superannuation scheme*)

After “authority” (last occurring), insert “and the *Australian Defence Force Cover Act 2015*”.

56 Subsection 5(1) (at the end of paragraph (b) of the definition of *Commonwealth superannuation scheme*)

Add “or the *Australian Defence Force Cover Act 2015*”.

Military Superannuation and Benefits Act 1991

57 Subsection 3(1)

Insert:

member of the Scheme has the meaning given by sections 6 and 7.

58 Section 6

Repeal the section, substitute:

6 Membership of Superannuation Scheme

- (1) Each of the following persons is a *member* of the Scheme:
 - (a) a person who is a member of the Permanent Forces;
 - (b) a member of the Reserves:
 - (i) whose undertaking to render a period of continuous full-time service has been accepted; and
 - (ii) who is rendering that continuous service under the undertaking.
- (2) This section is subject to section 7.

7 Persons excluded from membership of Superannuation Scheme

Defence Force Retirement and Death Benefits scheme

- (1) A person is not a *member* of the Scheme if the person is an eligible member of the Defence Force for the purposes of the DFRDB Act.

Those commencing on or after 1 July 2016

- (2) A person is not a *member* of the Scheme if:
 - (a) the person does not have a preserved benefit that includes an amount of employer benefit; and
 - (b) on or after 1 July 2016:
 - (i) the person becomes a member of the Permanent Forces; or
 - (ii) the person, as a member of the Reserves, begins to render continuous full-time service under an undertaking that has been accepted.

Those choosing Australian Defence Force Superannuation

- (3) A person is not a **member** of the Scheme if the person has chosen to become an ADF Super member under section 12 of the *Australian Defence Force Superannuation Act 2015* (whether or not the person is still an ADF Super member).

59 After section 48

Insert:

48A CSC may rely on information supplied by the Department

- (1) For the purposes of the Trust Deed in its application to or in respect of a person who is or has been a member of the Scheme, CSC may presume that any information provided to CSC by the Department is correct.
- (2) If a tribunal, authority or person is empowered:
- (a) to review a decision of CSC under this Act, the regulations or the Trust Deed; and
 - (b) to vary, or make a decision in substitution for, CSC's decision under this Act, the regulations or the Trust Deed;
- the tribunal, authority or person is not bound by any presumption made by CSC under subsection (1).

60 Paragraph 51(a)

After "CSC", insert "or an employee of CSC".

Superannuation Act 2005

61 After subsection 5(1)

Insert:

- (1A) To avoid doubt, a person who is a member of the Defence Force is not a public sector employee by reason only of being a member of the Defence Force.

Superannuation Industry (Supervision) Act 1993

62 Subsection 68AA(9)

Repeal the subsection, substitute:

- (9) This section does not apply to:
- (a) a defined benefit member; or
 - (b) an ADF Super member (within the meaning of the *Australian Defence Force Superannuation Act 2015*); or
 - (c) a person who would be an ADF Super member apart from the fact that the regulated superannuation fund is or was, for the purposes of Part 3A of the *Superannuation Guarantee (Administration) Act 1992*, a chosen fund for contributions for the person's superannuation by the Commonwealth.

Superannuation (Resolution of Complaints) Act 1993

63 After section 4B

Insert:

4C Application of Act in relation to Australian Defence Force Cover

- (1) This Act applies in relation to the scheme provided for by the *Australian Defence Force Cover Act 2015* as if:
- (a) the scheme were a regulated superannuation fund; and
 - (b) a covered ADF member (as defined in that Act) were a member of the fund; and
 - (c) subparagraph (a)(ii) of the definition of ***death benefit*** in subsection 3(2) of this Act and subparagraph (a)(ii) of the definition of ***disability benefit*** in that subsection had not been enacted; and
 - (d) subparagraph 36(b)(ii) had not been enacted; and
 - (e) in connection with a complaint relating to the scheme, paragraphs 64(b) and 65(1)(b) of this Act required the Tribunal Chairperson to give particulars of a contravention of a law, or of a refusal or failure by a party to the complaint to give effect to a determination by the Tribunal, to both the

following Ministers instead of to APRA or ASIC (or both APRA and ASIC):

- (i) the Minister administering the *Australian Defence Force Cover Act 2015*;
- (ii) the Minister administering the *Public Governance, Performance and Accountability Act 2013*.

(2) Paragraph (1)(b) does not limit section 4B.

Part 2—Application provisions

64 Application of section 52A of the *Defence Act 1903*

Section 52A of the *Defence Act 1903* (as inserted by this Schedule) applies on and after 1 July 2016.

65 Application of section 52B of the *Defence Act 1903*

Section 52B of the *Defence Act 1903* (as inserted by this Schedule) applies in relation to any information, whether the information was obtained before or after this item commences.

66 Application of amendments of the *Defence Force Retirement and Death Benefits Act 1973*

- (1) The amendments of the *Defence Force Retirement and Death Benefits Act 1973* made by this Schedule apply (subject to this item) on and after 1 July 2016.
- (2) The amendments or repeals of the following provisions of the *Defence Force Retirement and Death Benefits Act 1973* do not apply in relation to any suspension of retirement pay or invalidity pay under section 61C or 61D of that Act that is in force immediately before 1 July 2016:
 - (a) the definition of *recipient member* in subsection 3(1);
 - (b) sections 61C and 61D;
 - (c) section 98C.
- (3) The amendments or repeals of the provisions of the *Defence Force Retirement and Death Benefits Act 1973* referred to in subitem (4) do not apply in relation to any cancellation of retirement pay that occurs under subsection 62(1) or (2) of that Act:
 - (a) before 1 July 2016; or
 - (b) on or after 1 July 2016 as a result of being taken to have retired under section 5B of that Act.
- (4) The provisions of the *Defence Force Retirement and Death Benefits Act 1973* are the following:
 - (a) section 23;
 - (b) section 24;

- (c) section 30;
- (d) section 32A;
- (e) section 49Q;
- (f) section 58;
- (g) section 135.

Schedule 2—Flexible service arrangements in the Permanent Forces

Air Force Act 1923

1 After section 4G

Insert:

4H Flexible service arrangements for members of the Permanent Air Force

General determinations

- (1) The Chief of Air Force may determine, in writing:
- (a) a class of persons who are members of the Permanent Air Force who may render flexible service instead of continuous full time air-force service; and
 - (b) a period of service, or pattern of service, that constitutes that flexible service.

Note: A person may choose not to apply to render flexible service even if the person is in a class of persons in relation to whom a determination is made under this subsection.

Application to render flexible service

- (2) A person who is a member of the Permanent Air Force may, in writing, apply to the Chief of Air Force to render flexible service instead of continuous full time air-force service (whether or not the person is in a class of persons covered by a determination made under subsection (1)).

Approving and refusing application to render flexible service

- (3) The Chief of Air Force may determine, in writing:
- (a) that a person who has applied under subsection (2) to render flexible service may render that service; and
 - (b) the period of service, or pattern of service, that constitutes that flexible service; and

(c) the period during which the determination is in force.

Note: The determination may be varied or revoked (see subsections (7), (9) and (10)).

(4) Without limiting subsection (3), if a person is in a class of persons covered by a determination made under subsection (1), the Chief of Air Force may:

- (a) still refuse the person's application; or
- (b) determine under subsection (3) a different period of service, or pattern of service, from the period or pattern determined under subsection (1);

but only if the Chief of Air Force is satisfied that it is appropriate to do so because of operational or other requirements of the Permanent Air Force.

Flexible service taken to be continuous full time air-force service for certain purposes

(5) A person rendering flexible service in accordance with a determination under subsection (3) is taken to be rendering continuous full time air-force service for the purposes of the following:

- (a) section 120B of the *Defence Act 1903*;
- (b) the *Defence Force Discipline Act 1982*;
- (c) the *Defence Force Retirement and Death Benefits Act 1973*;
- (d) the *Military Superannuation and Benefits Act 1991*;
- (e) a determination made for the purposes of section 58B or 58H of the *Defence Act 1903*;
- (f) any instrument made for the purposes of a provision or Act referred to in any of paragraphs (a) to (d);
- (g) any other Act, instrument or provision prescribed by the regulations.

Determination may deal with the treatment of flexible service

(6) Without limiting subsection (1) or (3), a determination under that subsection in relation to a person or class of persons may deal with:

- (a) the treatment of flexible service (including how remuneration and allowances are to be treated) for the person or persons in that class; and

- (b) whether, when the person or persons in that class are rendering flexible service, the person or persons are fulfilling their obligation to render continuous full time air-force service under section 4G.

Varying and revoking determinations—Chief of Air Force

- (7) The Chief of Air Force may, at any time, vary or revoke a determination under subsection (1) or (3).
- (8) A determination under subsection (3) in relation to a person is taken to be revoked if:
- (a) the person is appointed to a position under section 179, 188FB, 188FL, 188GF or 188GP of the *Defence Force Discipline Act 1982*; or
 - (b) the person ceases to be a member of the Permanent Air Force; or
 - (c) the person is in a class of persons covered by a determination made under subsection (1) that is revoked.

Revoking determinations—directions by Chief of the Defence Force

- (9) The Chief of the Defence Force may at any time direct, in writing, the Chief of Air Force to revoke a determination under subsection (3) if the Chief of the Defence Force is satisfied that it is appropriate to do so because of operational or other requirements of the Defence Force.
- (10) The Chief of Air Force must comply with a direction given under subsection (9).

Status of determinations

- (11) A determination under subsection (1) or (3), and a direction under subsection (9), are not legislative instruments.

2 After subsection 8A(1)

Insert:

- (1AA) The Chief of Air Force may, by instrument in writing, delegate his or her powers under section 4H to an officer of the Permanent Air Force who holds a rank not below the rank of Air Commodore.

Defence Act 1903

3 After section 45

Insert:

46 Flexible service arrangements for members of the Regular Army

General determinations

- (1) The Chief of Army may determine, in writing:
- (a) a class of persons who are members of the Regular Army who may render flexible service instead of continuous full time military service; and
 - (b) a period of service, or pattern of service, that constitutes that flexible service.

Note: A person may choose not to apply to render flexible service even if the person is in a class of persons in relation to whom a determination is made under this subsection.

Application to render flexible service

- (2) A person who is a member of the Regular Army may, in writing, apply to the Chief of Army to render flexible service instead of continuous full time military service (whether or not the person is in a class of persons covered by a determination made under subsection (1)).

Approving and refusing application to render flexible service

- (3) The Chief of Army may determine, in writing:
- (a) that a person who has applied under subsection (2) to render flexible service may render that service; and
 - (b) the period of service, or pattern of service, that constitutes that flexible service; and
 - (c) the period during which the determination is in force.

Note: The determination may be varied or revoked (see subsections (7), (9) and (10)).

- (4) Without limiting subsection (3), if a person is in a class of persons covered by a determination made under subsection (1), the Chief of Army may:
- (a) still refuse the person's application; or
 - (b) determine under subsection (3) a different period of service, or pattern of service, from the period or pattern determined under subsection (1);
- but only if the Chief of Army is satisfied that it is appropriate to do so because of operational or other requirements of the Regular Army.

Flexible service taken to be continuous full time military service for certain purposes

- (5) A person rendering flexible service in accordance with a determination under subsection (3) is taken to be rendering continuous full time military service for the purposes of the following:
- (a) section 120B of this Act;
 - (b) the *Defence Force Discipline Act 1982*;
 - (c) the *Defence Force Retirement and Death Benefits Act 1973*;
 - (d) the *Military Superannuation and Benefits Act 1991*;
 - (e) a determination made for the purposes of section 58B or 58H of this Act;
 - (f) any instrument made for the purposes of a provision or Act referred to in any of paragraphs (a) to (d);
 - (g) any other Act, instrument or provision prescribed by the regulations.

Determination may deal with the treatment of flexible service

- (6) Without limiting subsection (1) or (3), a determination under that subsection in relation to a person or class of persons may deal with:
- (a) the treatment of flexible service (including how remuneration and allowances are to be treated) for the person or persons in that class; and

- (b) whether, when the person or persons in that class are rendering flexible service, the person or persons are fulfilling their obligation to render continuous full time military service under section 45.

Varying or revoking determinations—Chief of Army

- (7) The Chief of Army may, at any time, vary or revoke a determination under subsection (1) or (3).
- (8) A determination under subsection (3) in relation to a person is taken to be revoked if:
 - (a) the person is appointed to a position under section 179, 188FB, 188FL, 188GF or 188GP of the *Defence Force Discipline Act 1982*; or
 - (b) the person ceases to be a member of the Regular Army; or
 - (c) the person is in a class of persons covered by a determination made under subsection (1) that is revoked.

Revoking determinations—directions by Chief of the Defence Force

- (9) The Chief of the Defence Force may at any time direct, in writing, the Chief of Army to revoke a determination under subsection (3) if the Chief of the Defence Force is satisfied that it is appropriate to do so because of operational or other requirements of the Defence Force.
- (10) The Chief of Army must comply with a direction given under subsection (9).

Status of determinations

- (11) A determination under subsection (1) or (3), and a direction under subsection (9), are not legislative instruments.

4 Subsection 120A(4AA)

Omit “and section”, insert “and sections 46 and”.

Defence Force Retirement and Death Benefits Act 1973

5 At the end of section 19

Add:

- (3) If a member is rendering flexible service in accordance with a determination under subsection 32(3) of the *Naval Defence Act 1910*, subsection 46(3) of the *Defence Act 1903* or subsection 4H(3) of the *Air Force Act 1923*, then the fortnightly rate of pay applicable to the member is the rate of pay that would have been applicable if the member were not rendering that flexible service.

Naval Defence Act 1910

6 After section 31

Insert:

32 Flexible service arrangements for members of the Permanent Navy

General determinations

- (1) The Chief of Navy may determine, in writing:
- (a) a class of persons who are members of the Permanent Navy who may render flexible service instead of continuous full time naval service; and
 - (b) a period of service, or pattern of service, that constitutes that flexible service.

Note: A person may choose not to apply to render flexible service even if the person is in a class of persons in relation to whom a determination is made under this subsection.

Application to render flexible service

- (2) A person who is a member of the Permanent Navy may, in writing, apply to the Chief of Navy to render flexible service instead of continuous full time naval service (whether or not the person is in a class of persons covered by a determination made under subsection (1)).

Approving and refusing application to render flexible service

- (3) The Chief of Navy may determine, in writing:
- (a) that a person who has applied under subsection (2) to render flexible service may render that service; and
 - (b) the period of service, or pattern of service, that constitutes that flexible service; and
 - (c) the period during which the determination is in force.
- Note: The determination may be varied or revoked (see subsections (7), (9) and (10)).
- (4) Without limiting subsection (3), if a person is in a class of persons covered by a determination made under subsection (1), the Chief of Navy may:
- (a) still refuse the person's application; or
 - (b) determine under subsection (3) a different period of service, or pattern of service, from the period or pattern determined under subsection (1);
- but only if the Chief of Navy is satisfied that it is appropriate to do so because of operational or other requirements of the Permanent Navy.

Flexible service taken to be continuous full time naval service for certain purposes

- (5) A person rendering flexible service in accordance with a determination under subsection (3) is taken to be rendering continuous full time naval service for the purposes of the following:
- (a) section 120B of the *Defence Act 1903*;
 - (b) the *Defence Force Discipline Act 1982*;
 - (c) the *Defence Force Retirement and Death Benefits Act 1973*;
 - (d) the *Military Superannuation and Benefits Act 1991*;
 - (e) a determination made for the purposes of section 58B or 58H of the *Defence Act 1903*;
 - (f) any instrument made for the purposes of a provision or Act referred to in any of paragraphs (a) to (d);
 - (g) any other Act, instrument or provision prescribed by the regulations.

Determination may deal with the treatment of flexible service

- (6) Without limiting subsection (1) or (3), a determination under that subsection in relation to a person or class of persons may deal with:
- (a) the treatment of flexible service (including how remuneration and allowances are to be treated) for the person or persons in that class; and
 - (b) whether, when the person or persons in that class are rendering flexible service, the person or persons are fulfilling their obligation to render continuous full time naval service under section 31.

Varying or revoking determinations—Chief of Navy

- (7) The Chief of Navy may, at any time, vary or revoke a determination under subsection (1) or (3).
- (8) A determination under subsection (3) in relation to a person is taken to be revoked if:
- (a) the person is appointed to a position under section 179, 188FB, 188FL, 188GF or 188GP of the *Defence Force Discipline Act 1982*; or
 - (b) the person ceases to be a member of the Permanent Navy; or
 - (c) the person is in a class of persons covered by a determination made under subsection (1) that is revoked.

Revoking determinations—directions by Chief of the Defence Force

- (9) The Chief of the Defence Force may at any time direct, in writing, the Chief of Navy to revoke a determination under subsection (3) if the Chief of the Defence Force is satisfied that it is appropriate to do so because of operational or other requirements of the Defence Force.
- (10) The Chief of Navy must comply with a direction given under subsection (9).

Status of determinations

- (11) A determination under subsection (1) or (3), and a direction under subsection (9), are not legislative instruments.
-

7 After subsection 44B(3)

Insert:

- (3AA) The Chief of Navy may, by instrument in writing, delegate his or her powers under section 32 to an officer of the Permanent Navy who holds a rank not below the rank of Commodore.

Schedule 3—Amendments contingent on the Acts and Instruments (Framework Reform) Act 2015

Australian Defence Force Superannuation Act 2015

1 Subsection 7(2)

Omit “*Legislative Instruments Act 2003*”, substitute “*Legislation Act 2003*”.

2 Subsection 8(5)

Repeal the subsection, substitute:

- (5) Despite regulations made for the purposes of paragraph 44(2)(b) of the *Legislation Act 2003*, section 42 (disallowance) of that Act applies to an instrument under subsection (1) of this section.

3 Subsection 21(3)

Omit “*Legislative Instruments Act 2003*”, substitute “*Legislation Act 2003*”.

[Minister’s second reading speech made in—
House of Representatives on 25 June 2015
Senate on 19 August 2015]

(113/15)
