Defence (Employer Support Payments) Determination 2005

as amended

made under subsection 58B (1) of the

Defence Act 1903

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Part 1 Preliminary

1 Name of Determination [see Note 1]
This Determination is the Defence (Employer Support Payments) Determination 2005.

2 Commencement
This Determination is taken to have commenced on 5 June 2001.

3 Definitions
In this Determination:

*absent on defence service*, in relation to a member, means that the member is:
(a) travelling, by the most direct and efficient means, to or from his or her residence to or from the place at which he or she is required to report for defence service; or
(b) rendering defence service.

*Act* means the Defence Act 1903.

*Assistant Director* means the person nominated under paragraph 3AA (2) (b) to be the Assistant Director, Australian Defence Force Reserves Employer Support Payment Scheme.

*Australian workplace agreement* has the same meaning as in subsection 4 (1) of the Workplace Relations Act 1996.

*award* has the same meaning as in subsection 4 (1) of the Workplace Relations Act 1996.

*AWOTE* means:
(a) for the financial year ending on 30 June 2001 — the amount equivalent to the average weekly full-time adult ordinary time earnings for Australia, using the Trend Estimates for November 2000 as published by the Australian Bureau of Statistics on 1 March 2001; and
(b) for the 12 months commencing on 1 July in each following year — the amount equivalent to the average weekly full-time adult ordinary time earnings for Australia, using the Trend Estimates for February as published by the Australian Bureau of Statistics.

*certified agreement* has the same meaning as in subsection 4 (1) of the Workplace Relations Act 1996.

*claim period* means the period:
(a) in which a member is absent on defence service; and
(b) in relation to which a claim for the employer support payment is made by:
   (i) the member’s employer; or
   (ii) if the member is self-employed — the member.
commission agent has the same meaning as in section 7 of the DRSP Act.

Commonwealth authority has the same meaning as in section 4 of the Commonwealth Authorities and Companies Act 1997.

Commonwealth company has the same meaning as in section 4 of the Commonwealth Authorities and Companies Act 1997.

Commonwealth Department means a Department within the meaning of section 7 of the Public Service Act 1999.

continuous defence service means a period of defence service of 5 or more continuous days (whether or not those days include 1 or more public holidays in the place in which the defence service is being undertaken), and includes time spent travelling, by the most direct and efficient means, to and from the place of continuous defence service.

contractor has the same meaning as in section 7 of the DRSP Act.

controlling interest has the meaning given by section 3E.

day, in relation to defence service, means a whole day of defence service, and also includes:

(a) a part of the day at the beginning of a period of a member’s defence service if:

(i) the part includes defence service or a period of travelling time to the place where the member is required to report for defence service; and

(ii) the part is at least 6 hours; and

(iii) if the part of the day includes a period of travelling time — the period of travelling time is not less than 3 hours, and is a period during which the member is travelling, by the most direct and efficient means, from his or her residence to the place where he or she is required to report for defence service; and

(iv) the part of the day does not include any period used for rest purposes; and

(b) a part of the day at the end of a period of defence service:

(i) if:

(A) the part of the day includes defence service or a period of travelling time to the member’s residence; and

(B) the part of the day is at least 6 hours; and

(C) if the part of the day includes a period of travelling time — the period of travelling time is not less than 3 hours, and is a period during which the member is travelling, by the most direct and efficient means, from the place where he or she is required to report for defence service to his or her residence; or

(ii) if:

(A) the part of the day includes defence service for less than 6 hours; and
(B) the part of the day includes a period used for rest purposes; and
(C) the member has been authorised, in writing, to cease duty early in order to provide recovery time.

decision-maker, in relation to a person, means a person identified as a decision-maker for the person in section 3A or 3B.

de facto partner has the meaning given by section 2D of the Acts Interpretation Act 1901.

defence service, in relation to a member:
(a) means service (including training) in a part of the Reserves; and
(b) includes voluntary unpaid attendance or voluntary unpaid service only if the attendance or service has been authorised in writing, before it is undertaken, by:
   (i) the commanding officer of the member; or
   (ii) the branch head of the member.

Deputy Director means the person nominated under paragraph 3AA (2) (a) to be the Deputy Director, Australian Defence Force Reserves Employer Support Payment Scheme.

Director means the person nominated under subsection 3AA (1) to be the Director, Australian Defence Force Reserves Employer Support Payment Scheme.


eligible service has the meaning given by section 6.

employer includes the persons mentioned in section 3J.

employer support payment means a payment to an employer or self-employed member in the circumstances mentioned in section 7, 15 or 15C.

employment includes the arrangements mentioned in section 3I.

ESP Scheme means Australian Defence Force Reserves Employer Support Payment Scheme.

family member, for a member, includes the following persons:
(a) the member’s spouse or de facto partner;
(b) the spouse or de facto partner of a person who is a family member of the member;
(c) the member’s son or adopted son;
(d) the son or adopted son of the member’s spouse or de facto partner;
(e) the member’s daughter or adopted daughter;
(f) the daughter or adopted daughter of the member’s spouse or de facto partner;
(g) the member’s parent or grandparent;
(h) the parent or grandparent of the member’s spouse or de facto partner;
(i) the member’s brother or sister;
Section 3AA

(j) the brother or sister of the member’s spouse or de facto partner;
(k) the member’s uncle or aunt;
(l) the uncle or aunt of the member’s spouse or de facto partner;
(m) the member’s nephew or niece;
(n) the nephew or niece of the member’s spouse or de facto partner;
(o) another lineal descendant of the member;
(p) a lineal descendant of the member’s spouse or de facto partner;
(q) the spouse or de facto partner of a person mentioned in any of paragraphs (c) to (p).

full-time work has the meaning given by section 3K.
government business enterprise has the same meaning as in section 4 of the Commonwealth Authorities and Companies Act 1997.
income means an amount described in paragraph 3A (1) (a).
member has the same meaning as in section 7 of the DRSP Act.
military leave means leave (however described) that an employer may grant to a member to undertake defence service, other than leave mentioned in subparagraph 7 (4) (b) (ii).

normal working hours, for a member, means the working hours worked out using section 3L.

part-time work has the meaning given by section 3K.
qualifying period has the meaning given by subsection 4 (1).
Reserves has the same meaning as in section 7 of the DRSP Act.
self-employed member means a member who is a self-employed member in accordance with Division 2 of Part 2.

service chief has the same meaning as in section 7 of the DRSP Act.
sessional fee means the compensation known as legal officer sessional fee to which a legal officer who is a member of the Reserves may be entitled.

Unit means the defence authority responsible for an employee’s or self-employed member’s personal administration as a member.

3AA Nomination of Director etc of ESP Scheme

Nomination of Director

(1) The Director, Australian Defence Force Reserves Employer Support Payment Scheme may be:
(a) appointed by a person at the appropriate level; or
(b) nominated by the Head Cadet, Reserve and Employer Support Division.
Section 3A

Nomination of Deputy Director or Assistant Director

(2) A person may be appointed by a person at the appropriate level, or nominated by the Head Cadet, Reserve and Employer Support Division, to be:

(a) a Deputy Director, Australian Defence Force Reserves Employer Support Payment Scheme; or

(b) an Assistant Director, Australian Defence Force Reserves Employer Support Payment Scheme.

(3) A person nominated as a Deputy Director or an Assistant Director must not be below the rank of:

(a) for an officer in the Australian Navy — Lieutenant Commander; or

(b) for an officer in the Australian Army — Major; or

(c) for an officer in the Australian Air Force — Squadron Leader; or

(d) for an APS employee — APS Level 6.

3A Decision-makers by position

Claims by employers

(1) For the determination of a claim for employer support payment made by an employer, or of a matter relating to a claim for employer support payment made by an employer (other than the determination of the claim for employer support payment itself):

(a) the Director is a decision-maker for all Units; and

(b) each Deputy Director and Assistant Director appointed or nominated under subsection 3AA (2) is a decision-maker for all Units.

Note Each delegate of the Director under subsection 3B (1) is also a decision-maker.

Example of matter relating to a claim for employer support payment

A decision to use section 3L to work out a member’s normal working hours per week for periods of defence service to which a claim or employer support payment relates.

Claims by self-employed members

(2) For the determination of a claim for employer support payment made by a self-employed member, a service chief is the only decision-maker for a claim made by a member of the chief’s service.

(3) For the determination of a matter relating to a claim for employer support payment made by a self-employed member (other than the determination of the claim for employer support payment itself), a service chief is a decision-maker for a matter relating to a member of the chief’s service.

Note Each delegate of the service chief under subsection 3B (7) is also a decision-maker.

Examples of matters relating to a claim for employer support payment

1 A determination that treating a member as having a controlling interest in a company would, in all the circumstances, be unfair to the member (subsection 3E (10)).

2 A decision to use section 3L to work out a member’s normal working hours per week for periods of defence service to which a claim or employer support payment relates.
3B Decision-makers by delegation

Claims by employers

(1) For the determination of a claim for employer support payment made by an employer, or of a matter relating to a claim for employer support payment made by an employer (other than the determination of the claim for employer support payment itself):
   (a) the Director may, in writing, delegate his or her responsibility as a decision-maker to:
      (i) an officer who holds the rank of Lieutenant Commander, Major, Squadron Leader or a higher rank; or
      (ii) an APS employee at Executive Level 1 or higher; and
   (b) a delegate is a decision-maker; and
   (c) a delegate mentioned in subparagraph (a) (i) is a delegate only in relation to his or her own service.

(2) The delegation may specify a class or classes of claims to which it relates.

(3) The Director may, in writing, suspend the operation of a delegation.

(4) The Director may, in writing, revoke a suspension at any time.

(5) The suspension does not affect anything done by a delegate before the suspension takes effect.

Claims by self-employed members

(6) For the determination of a claim for employer support payment made by a self-employed member, a service chief must not delegate his or her responsibility as a decision-maker.

(7) For the determination of a matter relating to a claim for employer support payment made by a self-employed member (other than the determination of the claim for employer support payment itself):
   (a) a service chief may, in writing, delegate his or her responsibility as a decision-maker to:
      (i) an officer in the chief’s service who holds the rank of Lieutenant Commander, Major, Squadron Leader or a higher rank; or
      (ii) an APS employee at Executive Level 1 or higher who performs duties relating to the chief’s service; and
   (b) a delegate is a decision-maker; and
   (c) a delegate mentioned in subparagraph (a) (i) is a delegate only in relation to his or her own service.

Note APS employees who perform duties relating to a chief’s service work in the Navy, Army or RAAF Group of the Department.

(8) The delegation may specify a class or classes of claims to which it relates.

(9) A service chief may, in writing, suspend the operation of a delegation.

(10) The service chief may, in writing, revoke a suspension at any time.
Section 3C

(11) The suspension does not affect anything done by a delegate before the suspension takes effect.

3C Responsibilities of decision-makers—claims by employers

(1) For a claim for employer support payment made by an employer, the Director, each Deputy Director and each Assistant Director must ensure that he or she:
   (a) is involved in the consideration of the claim; and
   (b) is satisfied that each claim to be approved is legitimate in all respects.

Note A service chief is the only decision-maker for a claim for employer support payment made by a self-employed member who is a member of the chief’s service.

(2) Each delegate under subsection 3B (1) or (7) must ensure that he or she is satisfied as to whether a claim for employer support payment, or a matter relating to a claim, that the delegate is considering is legitimate in all respects.

Note A decision-maker who is considering a claim for employer support payment, or a related matter, must be satisfied that all aspects of the claim or matter are correct before approving the claim. The decision-maker is not to approve a claim if:
   (a) the claimant has not satisfied the eligibility criteria; or
   (b) the decision-maker is in doubt as to the legitimacy of a claim.

If the decision-maker is in doubt as to the legitimacy of a claim, the decision-maker must act quickly to request additional information in accordance with paragraph 9 (5) (b).

The decision-maker must be vigilant in the examination of claims, and is expected to make enquiries in relation to claims about employment (particularly self-employment).

A decision-maker may be found negligent for not showing due diligence in relation to his or her responsibilities under the scheme.
Part 2  How to identify employment

Division 1  Persons who are not employers or employees

3D  Hobbies and volunteers

(1) A person described in the table is taken not to be an employer or an employee for any of the purposes of this Determination.

<table>
<thead>
<tr>
<th>Item</th>
<th>A person who ...</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>conducts an activity or interest of a kind that is conducted primarily for pleasure or relaxation</td>
</tr>
<tr>
<td>2</td>
<td>conducts an activity or interest that is not primarily the person’s regular occupation</td>
</tr>
<tr>
<td>3</td>
<td>conducts an activity or interest wholly or primarily in the person’s spare time</td>
</tr>
<tr>
<td>4</td>
<td>voluntarily engages in an activity of a charitable kind and without the expectation of receiving significant remuneration or another significant reward</td>
</tr>
<tr>
<td>5</td>
<td>voluntarily engages in an activity that is not reasonably likely to create a financial profit for the person and without the expectation of receiving significant remuneration or another significant reward</td>
</tr>
<tr>
<td>6</td>
<td>voluntarily engages in an activity for a body that operates on a not-for-profit basis, and engages in the activity without the expectation of receiving significant remuneration or another significant reward</td>
</tr>
</tbody>
</table>

(2) Subsection (1) applies whether or not another provision of this Determination implies that the person may be undertaking employment.

*Example*

Conducting an activity or interest for pleasure or recreation could be argued to be ‘part-time work’, but the person who conducts the activity or interest is taken not to be an employer or an employee.

Division 2  Self-employed members

3E  Self-employed member

*General*

(1) A member who:

(a) is a director of a company; or
(b) is a sole trader; or
(c) is employed by a family member who is a sole trader; or
(d) is a partner in a partnership; or
(e) has a controlling interest in a company; or
Part 2  
Division 2  
Self-employed members

Section 3E

(f) is a trustee of a trust; or
(g) has power under a trust deed to remove the trustee or trustees of a trust and appoint another trustee or trustees; or
(h) is a director of, or has a controlling interest in, a company that is a trustee of a trust;

is taken to be a self-employed member in relation to employment or work for the company, as a sole trader, for the family member, for the partnership or for the trust.

Note  A service chief is the only decision-maker for a claim for employer support payment made by a self-employed member who is a member of the chief’s service.

(2) The member may only make a claim for employer support payment as a self-employed member in relation to employment or work for a company, as a sole trader, for the sole trader, for the partnership or for the trust.

(3) If a member is a self-employed member in relation to particular work, a claim for employer support payment in relation to the same work by:
(a) a company in relation to the member’s employment or work for the company; or
(b) a family member in relation to the member’s employment or work for the family member; or
(c) a partnership in relation to the member’s employment or work for the partnership; or
(d) a trust in relation to the member’s employment or work for the trust;

is not a valid claim.

Controlling interest in company

(4) A member has a controlling interest in a company if:
(a) the member; or
(b) a family member of the member; or
(c) the member and one or more family members;

is or are able to control the exercise of more than 20% of the voting power of the company.

(5) A member has a controlling interest in a company if:
(a) the member; or
(b) a family member of the member; or
(c) the member and one or more family members;

receives or receive more than 20% of the dividends of the company.

(6) A member has a controlling interest in a company if:
(a) the member; or
(b) a family member of the member; or
(c) the member and one or more family members;

has or have the right to receive more than 20% of any distribution of capital of the company.
(7) A member is taken not to have a controlling interest in a company if, under the company’s ownership arrangements, the member:
(a) is not the owner of a significant shareholding in the company; and
(b) has never owned a significant shareholding in the company; and
(c) is not, and has never been, a director of the company; and
(d) is employed in a junior position in the company.

(8) A member is taken not to have a controlling interest in a company if, under the company’s ownership arrangements:
(a) 100% of the company is owned by the member’s spouse or de facto partner; and
(b) the member has never owned a significant shareholding in the company; and
(c) the company employs a number of employees, including the member; and
(d) the member is not in a position to control the direction of the company; and
(e) the member is not, and has never been, a director of the company.

3F Status of self-employed member

(1) A member:
(a) can be a self-employed member; and
(b) can also be an employer or an employee in relation to other employment or work in which he or she is not self-employed.

Example

The member may be a self-employed member to provide his or her principal source of income or employment, but may also do other work for a different person as an employee. Both activities can qualify for employer support payment if the requirements of this Determination are met.

(2) For any purpose relating to employer support payment:
(a) a self-employed member is taken to be an employer in relation to the activity in which the member is a self-employed member; and
(b) the member is taken not to be an employee in relation to the activity.

Note A self-employed member must seek employer support payment in the capacity of being his or her own employer, and cannot also seek employer support payment in the capacity of being his or her own employee.

(3) A payment of employer support payment to a self-employed member is taken to be made:
(a) in the member’s capacity as an employer; and
(b) on behalf of the member’s business or company.
3G **Principles of eligibility for self-employed member**

If a member makes a claim for employer support payment as a self-employed member in relation to employment or work for a company, as a sole trader, for a sole trader, for a partnership or for a trust:

(a) the company, the sole trading, the sole trader, the partnership or the trust must:
   (i) provide the member’s principal source of income; and
   (ii) have provided the member’s principal source of income for a continuous period of at least the preceding 12 months; or

(b) the company, the sole trading, the sole trader, the partnership or the trust must:
   (i) provide the member’s principal source of employment; and
   (ii) have provided the member’s principal source of employment for a continuous period of at least the preceding 12 months.

3H **Change of circumstances**

(1) In relation to an unpaid or ongoing claim, a self-employed member must advise the relevant service chief, as soon as practicable, if:

(a) the member does not complete any period of defence service that is mentioned in the claim for employer support payment; or

(b) the relevant business is disposed of; or

(c) the relevant business ceases to trade or operate on a permanent basis; or

(d) the relevant business ceases to trade or operate on a temporary basis; or

(e) the member ceases to have a controlling interest in the relevant company or business; or

(f) the member ceases to be a sole trader, or to be employed by a family member who is a sole trader; or

(g) the member ceases to be a partner; or

(h) the member ceases to be employed by a trust or the trustee of a trust.

*Example*

A member who is a sole trader, but then sets up a company to operate the business, must advise that he or she has ceased to be a sole trader.

(2) If a self-employed member is required by subsection (1) to advise the service chief, the member must not submit another claim for employer support payment unless the claim is accompanied by the advice.

(3) The service chief must:

(a) decide that the member is still a self-employed member; or

(b) decide that the member has become an employed member; or

(c) refer the matter to the Director, or a delegate under subsection 3B (1), for advice about whether the member has become an employed member.
(4) If the Director or a delegate advises the service chief that the member has not become an employed member, the service chief must, as soon as practicable:
   (a) decide, under paragraph (3) (a), that the member is still a self-employed member; and
   (b) continue to deal with the claim.

(5) If the Director or a delegate advises the service chief that the member has become an employed member, the service chief must, as soon as practicable:
   (a) decide, under paragraph (3) (b), that the member has become an employed member; and
   (b) deal with the claim only to the extent that it relates to the member as a self-employed member; and
   (c) refer the remainder of the claim to the Director.

(6) If the service chief decides that the member has become an employed member, he or she must, as soon as practicable after the decision is made, give the member written notice of:
   (a) the decision; and
   (b) the reasons for rejecting the application.

Division 3       Other employment

3I       Examples of employment

(1) Without limiting the kinds of arrangements that may be employment, the arrangements in the table are kinds of employment.

<table>
<thead>
<tr>
<th>Item</th>
<th>Arrangement</th>
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<tbody>
<tr>
<td>1</td>
<td>Full-time work</td>
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<tr>
<td>2</td>
<td>Part-time work</td>
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<tr>
<td>3</td>
<td>An apprenticeship</td>
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<tr>
<td>4</td>
<td>A traineeship arrangement</td>
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<td>5</td>
<td>An appointment to, or employment by:</td>
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<tr>
<td></td>
<td>(a) a Commonwealth Department; or</td>
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<tr>
<td></td>
<td>(b) a Commonwealth authority; or</td>
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<td></td>
<td>(c) a Commonwealth company; or</td>
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<td></td>
<td>(d) a government business enterprise; or</td>
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<td></td>
<td>(e) a statutory corporation</td>
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<tr>
<td>6</td>
<td>An appointment to, or employment by:</td>
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<td>(a) a Department of a State or Territory; or</td>
</tr>
<tr>
<td></td>
<td>(b) an authority of a State or Territory</td>
</tr>
<tr>
<td>7</td>
<td>An appointment to, or employment by, a local government body</td>
</tr>
<tr>
<td>8</td>
<td>Work as a commission agent</td>
</tr>
</tbody>
</table>
(2) Despite subsection (1), an arrangement described in the table is not employment for a member if a provision of this Determination states that:
(a) the arrangement is not employment in particular circumstances; or
(b) the member is to be treated as a self-employed member.

(3) An arrangement described in the table is not employment if it:
(a) appears to be employment; but
(b) is made wholly or substantially for the purpose of making it appear to be eligible for the payment of employer support payment.

Example
An arrangement that is made between 2 or more persons, who are not at arm’s length from each other, by which they present themselves as employer and employee but do not act as employer and employee.

(4) Work for a person as an independent contractor is not employment.

Note An independent contractor may be a self-employed member but, in that capacity, is not treated as being employed by another person.

(5) Being a director of a company is not employment.

Note A director of a company may be a self-employed member but, in that capacity, is not treated as being employed by another person.

(6) Being a partner in a partnership is not employment.

Note A partner may be a self-employed member but, in that capacity, is not treated as being employed by another person.

(7) Casual work, being employment on an irregular or unreliable basis, is not employment.

3J Examples of employers

Without limiting the kinds of persons that may be employers, the persons in the table are kinds of employers.

<table>
<thead>
<tr>
<th>Item</th>
<th>Person</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>A partner in a partnership</td>
</tr>
<tr>
<td>2</td>
<td>A member’s business or professional associate (within the meaning of the Corporations Act 2001)</td>
</tr>
<tr>
<td>3</td>
<td>A corporation</td>
</tr>
<tr>
<td>4</td>
<td>An association</td>
</tr>
<tr>
<td>5</td>
<td>A trust</td>
</tr>
<tr>
<td>6</td>
<td>The trustee of a trust</td>
</tr>
<tr>
<td>7</td>
<td>A sole trader</td>
</tr>
<tr>
<td>8</td>
<td>A professional practice</td>
</tr>
</tbody>
</table>
Division 4 Working arrangements

3K Full-time work and part-time work

(1) If:
   (a) a member is employed to perform work for at least 35 hours per week:
      (i) under a workplace instrument (for example, an agreement or award) that is made or certified by a Commonwealth or State industrial tribunal; or
      (ii) under another employment agreement that a decision-maker is satisfied is an agreement to perform work; and
   (b) the member’s normal working hours for a period of defence service to which the claim relates are, on a weekly average, at least 28 hours each week;

   the employment is full-time work.

   Note 1 Section 3L may be used to work out a member’s normal working hours if the decision-maker considers it appropriate.

   Note 2 See subsection (2).

(2) If:
   (a) a member is employed to perform work for the number of hours specified as the full-time hours each week for that work under a workplace instrument (for example, an agreement or award) that is made or certified by a Commonwealth or State industrial tribunal; and
   (b) the member’s normal working hours for a period of defence service to which the claim relates are, on a weekly average, at least 80% of the number of hours specified as full-time work hours;

   the employment is full-time work.

   Note Section 3L may be used to work out a member’s normal working hours if the decision-maker considers it appropriate.

(3) If:
   (a) a member is employed to perform work for:
      (i) at least 35 hours per week; or
      (ii) the number of hours specified as the full-time hours each week for that work under a workplace instrument (for example, an agreement or award) that is made or certified by a Commonwealth or State industrial tribunal; and
   (b) the member’s normal working hours for a period of defence service to which the claim relates are, on a weekly average:
      (i) less than 80% of that number; and
      (ii) less than 28 hours each week;

   the employment is part-time work.

   Note Section 3L may be used to work out a member’s normal working hours if the decision-maker considers it appropriate.
(4) If:
   (a) a member is employed to perform work for less than 35 hours per week under:
      (i) a workplace instrument (for example, an agreement or award) that is made or certified by a Commonwealth or State industrial tribunal; or
      (ii) another employment agreement that a decision-maker is satisfied is an agreement to perform work; and
   (b) the number of hours are not specified as full-time hours in the workplace instrument; and
   (c) the member’s normal working hours for a period of defence service to which the claim relates are, on a weekly average, more than the member’s work hours specified in the claim form;

the employment is part-time work for the member’s normal working hours per week unless subsection (1) applies.

Note 1 Section 3L may be used to work out a member’s normal working hours if the decision-maker considers it appropriate.

Note 2 If the member’s normal working hours each week, on a weekly average, are 35 hours a week or more, subsection (1) treats the member’s employment as full-time work.

(5) If:
   (a) a member is employed to perform work for less than 35 hours per week:
      (i) under a workplace instrument (for example, an agreement or award) that is made or certified by a Commonwealth or State industrial tribunal; or
      (ii) under another employment agreement that a decision-maker is satisfied is an agreement to perform work; and
   (b) the number of hours are not specified as full-time hours in the workplace instrument; and
   (c) the member’s normal working hours for a period of defence service to which the claim relates are, on a weekly average, at least 80% of the member’s work hours specified in the claim form but not more than the number of hours per week specified in the claim form;

the employment is part-time work for the number of hours per week specified in the claim form.

Note Section 3L may be used to work out a member’s normal working hours if the decision-maker considers it appropriate.

(6) If:
   (a) a member is employed to perform work for less than 35 hours per week:
      (i) under a workplace instrument (for example, an agreement or award) that is made or certified by a Commonwealth or State industrial tribunal; or
      (ii) under another employment agreement that a decision-maker is satisfied is an agreement to perform work; and
(b) the number of hours are not specified as full-time hours in the workplace instrument; and
(c) the member’s normal working hours for a period of defence service to which the claim relates are, on a weekly average, less than 80% of the member’s work hours specified in the claim form;
the employment is part-time work for the member’s normal working hours per week.

Note Section 3L may be used to work out a member’s normal working hours if the decision-maker considers it appropriate.

3L Normal working hours of member

(1) A decision-maker may use this section to work out a member’s normal working hours per week for periods of defence service to which a claim relates if the decision-maker considers it appropriate.

Work for 26 weeks or more

(2) If a member was employed by an employer for a continuous period of at least 26 weeks immediately before defence service to which a claim for employer support payment relates, the member’s normal working hours per week for the periods of defence service to which the claim relates are worked out using the following steps.

Step 1 Calculate the number of hours that the member worked in the employment over the 26 week period.

Step 2 Calculate the number of weeks that are to be excluded because of absence covered by a public holiday or the member’s use of accrued personal leave entitlements.
A maximum of 4 weeks can be excluded because of absences covered by annual leave.
A maximum of 2 weeks can be excluded because of absences covered by sick leave.
If:
(a) a member’s absence on a day is covered by paid or unpaid Defence leave; and
(b) the member has a personal leave entitlement to a specified number of days of Defence leave in a year; and
(c) the member used that entitlement to cover the absence;
the day is excluded. A maximum of 4 weeks can be excluded because of absences covered in this way by paid or unpaid Defence leave.
An absence on a day of a week is to be counted as 0.2 of a week. However, a period of 6 or 7 consecutive days cannot be counted as more than 1 week, no matter how many absences occurred on days during that period.

Step 3 Subtract the number of excluded weeks from the 26 week period. The result is the remainder period.
Step 4  Divide the number of hours that the member worked in the employment over the 26 week period by the remainder period. The result is the member’s normal weekly working hours.

Work for less than 26 weeks

(3) If a member was employed by an employer for a continuous period (the work period) of at least 3 months, but less than 26 weeks, immediately before defence service to which a claim for employer support payment relates, the member’s normal working hours per week for the periods of defence service to which the claim relates are worked out using the steps in subsection (2), but using the work period instead of the 26 week period mentioned in those steps.

Previous continuous full-time service before defence service to which claim relates

(4) If:
   (a) a member was employed by an employer for a continuous period of at least 26 weeks immediately before defence service to which a claim for employer support payment relates; and
   (b) a claim for employer support payment relates to defence service that commenced on a day (the starting day); and
   (c) the member undertook continuous full-time service (the prior service) before the starting day; and
   (d) the period between the end of the prior service and the starting day is at least 3 months but less than 26 weeks; and
   (e) the claim does not relate to the prior service;

the member’s normal working hours for the claim are worked out using the steps in subsection (2), but using the period between the end of the prior service and the starting day instead of the 26 week period mentioned in those steps.

(5) If:
   (a) a member is employed by an employer; and
   (b) a claim for employer support payment relates to defence service by the member that commenced on a day (the starting day); and
   (c) the member completed a period of continuous full-time service (the prior service) less than 3 months earlier than the starting day; and
   (d) there is a continuous period (the earlier work period) that ended:
      (i) before the start of the prior service; and
      (ii) no earlier than 2 years before the starting day;
      during which the member was employed by the employer; and
   (e) the earlier work period is:
      (i) if the member was employed for at least 26 weeks—the 26 weeks ending immediately before the start of the prior service; or
(ii) if the member was employed for less than 26 weeks but at least 3 months—the period during which the member was employed; and

(f) the claim does not relate to the prior service;
the member’s normal working hours for the claim are worked out using the steps in subsection (2), but using the earlier work period instead of the 26 week period mentioned in those steps.

(6) If:
(a) a member is employed by an employer; and
(b) a claim for employer support payment relates to defence service by the member that commenced on a day (the starting day); and
(c) the member undertook 2 or more periods of continuous full-time service (the prior service) in the period of 2 years before the starting day; and
(d) the member completed the last of the periods of prior service less than 3 months before the starting day; and
(e) there is a continuous period (the earlier work period) that:
   (i) is between 2 periods of prior service; and
   (ii) ended no earlier than 2 years before the starting day;
   during which the member was employed by the employer; and
(f) the earlier work period is:
   (i) at least 3 months; and
   (ii) if there is more than 1 period of at least 3 months—the latest of those periods; and
(g) the claim does not relate to the prior service;
the member’s normal working hours for the claim are worked out using the steps in subsection (2), but using the earlier work period instead of the 26 week period mentioned in those steps.

**New employment**

(7) If a claim for employer support payment relates to periods of defence service undertaken at different times by a member who has been employed by the employer for less than 3 months, the decision-maker:

(a) must review the member’s actual work hours during the period commencing on the day the employment commenced and ending when the period of service identified on the claim form commenced; and

(b) may work out the member’s normal working hours for:
   (i) each period of defence service; or
   (ii) one or more combinations of the periods of defence service; or
   (iii) the total of the periods of defence service;
as the decision-maker thinks reasonable in all the circumstances.

*Note* A member’s pattern of employment may not be constant throughout the first 3 months of employment. It may be appropriate for the decision-maker to treat different periods of the defence service differently for the purposes of working out the member’s normal working hours.
Example
If an employer submits a claim for multiple periods of defence service undertaken within the first 3 months of employment, and for defence service commenced after the employment reaches its 3 month point, the member’s normal working hours for the service that commenced after the employment reaches its 3 month point would be assessed under subsections (2) to (6).

Alternative method of working out normal working hours

(8) An employer may give evidence, in writing, to the Director, Deputy Director or Assistant Director with:
(a) a statement that working out a member’s normal working hours for a claim using subsections (2) to (7) would, in all the circumstances, be unfair; and
(b) a request that a different method should be used.

(9) If an employer makes a request under paragraph (8) (b):
(a) the Director, Deputy Director or Assistant Director may:
   (i) determine that the member’s normal working hours for the claim should not be worked out using subsections (2) to (7) that would relate to the member on the basis that the use of the steps would, in all the circumstances, be unfair; and
   (ii) direct that the member’s normal working hours for the claim are to be worked out using the method specified by the Director, Deputy Director or Assistant Director; or
(b) the Director, Deputy Director or Assistant Director may reject the request.

Circumstances not covered by subsections (2) to (9)

(10) If it is not possible to work out a member’s normal working hours for a claim using subsections (2) to (7), or a method specified by the Director, Deputy Director or Assistant Director under subsection (9), the member’s normal working hours for the period of employment are zero.

(11) An employer may give evidence, in writing, to the Director, Deputy Director or Assistant Director with:
(a) a statement that the application of subsection (10) to a claim would, in all the circumstances, be unfair; and
(b) a request that a different method should be used.

(12) If an employer makes a request under paragraph (11) (b):
(a) the Director, Deputy Director or Assistant Director may:
   (i) decide that subsection (10) does not apply in relation to the claim on the basis that the application of the subsection would, in all the circumstances, be unfair; and
   (ii) determine a number of working hours for the member; or
(b) the Director, Deputy Director or Assistant Director may reject the request.
Review of decision

(13) If the Director, Deputy Director or Assistant Director rejects a request under paragraph (9) (b) or (12) (b), he or she must, as soon as practicable after the decision is made, give the employer written notice of:

(a) the decision; and
(b) the reasons for rejecting the request; and
(c) if the Deputy Director or Assistant Director made the decision—the employer’s right to have the decision reconsidered by the Director under section 15D; and
(d) if the Director made the decision—the employer’s right to have the decision reviewed by the AAT.

Division 5 Income

3M Income—general principles

Income

(1) Income is the amount earned, derived or received by a member (in the form of earnings, moneys or profits) for the member’s own use or benefit.

(2) The table sets out examples of things that are, or are not, income.

<table>
<thead>
<tr>
<th>Item</th>
<th>Example</th>
</tr>
</thead>
<tbody>
<tr>
<td>Item</td>
<td>Example</td>
</tr>
<tr>
<td>Examples of income</td>
<td>Salary paid in respect of defence service as a member</td>
</tr>
<tr>
<td>1.1</td>
<td>A non-cash benefit that forms part of a package of remuneration, including:</td>
</tr>
<tr>
<td>1.2</td>
<td>(a) contributions to superannuation, made in accordance with a salary sacrifice or other arrangement, that exceed the amount that would be paid under the Superannuation Guarantee (Administration) Act 1992; and</td>
</tr>
<tr>
<td>1.3</td>
<td>(b) an amount deducted from a member’s salary or wages in accordance with a salary sacrifice or other arrangement</td>
</tr>
<tr>
<td>Examples of things that are not income</td>
<td>An amount related to, or derived from, the depreciation of a business asset</td>
</tr>
<tr>
<td>1.4</td>
<td>An amount of pension</td>
</tr>
<tr>
<td>2.2</td>
<td>Potential income or projected income</td>
</tr>
<tr>
<td>2.3</td>
<td>For a claim relating to an income year—a profit made, or a loss incurred, in a previous income year</td>
</tr>
<tr>
<td>2.4</td>
<td>A capital gain or loss, including a gain or loss relating to:</td>
</tr>
<tr>
<td>2.4</td>
<td>(a) the sale of plant, equipment or other property; or</td>
</tr>
<tr>
<td>2.4</td>
<td>(b) the sale of shares or an investment; or</td>
</tr>
</tbody>
</table>
### 3N When income is earned, derived or received from business or company

(1) A member earns, derives or receives an amount of income from a business or a company if:
   (a) the amount is not the income, profit, loss or turnover of the business or company itself (unless it is the profit or loss of a sole trader); and
   (b) the amount relates to the activities of the business; and
   (c) any additional requirements in this section are met.

(2) It is a requirement that the activity of the business or company is not:
   (a) the investment of accumulated wealth; or
   (b) investment in a superannuation fund.

(3) If the member earns, derives or receives the amount from the sale of stocks or assets, it is a requirement that the stocks or assets were owned by the business or company.

   **Example**
   If a member identifies income received from the sale of shares as part of the member’s income:
   (a) the share trading must have been conducted by the business or company that provides the member’s principal source of income; and
   (b) the shares must have been owned by the business or company; and
   (c) the business or company must have provided the income from the share trading to the member.

(4) If the member is a director of a company or is employed by a company in which the member has a controlling interest:
   (a) it is a requirement that the amount is attributable to the member’s income from the company; and
   (b) fees, emoluments and dividends are to be treated as part of the member’s income from the company; and
   (c) an amount paid as a repayment of a loan is not to be treated as part of the member’s income from the company.

(5) If:
   (a) the member is employed by a trust or the trustee of a trust; and
   (b) the member:
      (i) is a trustee of the trust; or
      (ii) has power under the trust deed to remove the trustee or trustees of the trust and appoint another trustee or trustees; or

<table>
<thead>
<tr>
<th>Item</th>
<th>Example</th>
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<tbody>
<tr>
<td>(c)</td>
<td>the sale of a business or company, or a significant part of the business or company; or</td>
</tr>
<tr>
<td>(d)</td>
<td>a transaction relating to foreign currency that is treated as a capital gain for taxation purposes</td>
</tr>
</tbody>
</table>
(iii) if the trustee is a company—is a director of the company or has a controlling interest in the company;

it is a requirement that the amount is the member’s distribution of the net income of the trust that would be declared by the member as personal income in the member’s tax return.

(6) If the member is a partner in a business that is a partnership, it is a requirement that the amount is the member’s share of the net income of the partnership that would be required to be shown in the partner’s personal tax return as a partner’s share:

(a) whether the income is a profit or a loss; and

(b) whether or not the partnership has distributed the income.

(7) If the member is a sole trader, it is a requirement that the amount is the net income or loss from the business that would be required to be shown in the member’s personal tax return.

30 Principal source of income—documents and information

General

(1) A business, company or member (a *claimant*) that wishes to assert that the business or company provides the member’s principal source of income, as part of a claim for employer support payment, must give the documents and information in the table, in writing, to a decision-maker.

*Note* A service chief is the only decision-maker for a claim for employer support payment made by a self-employed member who is a member of the chief’s service.

<table>
<thead>
<tr>
<th>Item</th>
<th>Material or information</th>
</tr>
</thead>
<tbody>
<tr>
<td>30</td>
<td>Principal source of income—documents and information</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Documents and information about whether the business or company is legitimate</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.1</td>
</tr>
<tr>
<td>(a)</td>
</tr>
<tr>
<td>(b)</td>
</tr>
<tr>
<td>(c)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Documents and information about whether the business or company is trading or otherwise operating</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.1</td>
</tr>
<tr>
<td>(a)</td>
</tr>
<tr>
<td>(b)</td>
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<tr>
<td>(c)</td>
</tr>
<tr>
<td>(i)</td>
</tr>
<tr>
<td>(ii)</td>
</tr>
<tr>
<td>(d)</td>
</tr>
</tbody>
</table>
Part 2  
How to identify employment

Division 5  
Income

Section 30

<table>
<thead>
<tr>
<th>Item</th>
<th>Material or information</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(e) other relevant evidence from an accountant or financial adviser for the business or company, certified by the accountant or financial adviser to be accurate</td>
</tr>
</tbody>
</table>

**Documents and information about whether the business or company provides the member’s principal source of income**

3.1 At least one of the following:

(a) a copy of a current financial statement for the member, certified by the member’s accountant or financial adviser to be accurate;

(b) a copy of:
   (i) the member’s current personal tax return; and
   (ii) the notice of assessment in relation to the member’s current personal tax return (which must be given as soon as practicable after it has been issued by the Commissioner of Taxation);

(c) other relevant documents and information provided by the member’s accountant or financial adviser, certified by the accountant or financial adviser to be accurate, that the decision-maker is satisfied:
   (i) is current; and
   (ii) relates to a period of at least the previous 6 months; and
   (iii) contains details of all of the member’s income during the period; and
   (iv) for information requested by the decision-maker—is of a kind mentioned in paragraph (a) or (b) that is sufficient to substantiate the information

(2) The claimant may give the decision-maker other information relevant to the claim.

(3) The decision-maker may ask the claimant, in writing, for further information in relation to the claim.

**Treatment of income that is employer support payment**

(4) If the claimant is a self-employed member:

(a) any amount stated to be the member’s total income from a business or company must be reduced by any income that is employer support payment (*ESP income*), whether or not the ESP income was wholly or partially passed on to the member; but

(b) the reduction is to be ignored or varied if the relevant service chief is satisfied, having regard to receipts or accounts, that the ESP income was used to address a loss or shortcoming directly caused by the absence of the member on defence service.

**Treatment of income for part of income year**

(5) If a document or information mentioned in paragraph (c) of item 3.1 of the table in subsection (1) relates to a part of a year, or a claimant wishes to use a document mentioned in paragraph 3.1 (a) or (b) of the table in relation to a period that is part of a year:
(a) calculations that are made in support of a claim using the document or information must be made on a proportional basis by reference to a financial statement or income tax return mentioned in paragraph 3.1 (a) or (b) of the table; or

(b) if no financial statement or income tax return mentioned in paragraph 3.1 (a) or (b) of the table is available, calculations that are made using the document or information must be made on a proportional basis using the same methods and principles that are intended to be used in preparing the member’s income tax return for the income year in which the defence service was undertaken.

Notification of decision

(6) If a service chief refuses to ignore or vary a reduction under paragraph (4) (b), he or she must, as soon as practicable after the decision is made, give the claimant written notice of:

(a) the decision; and

(b) the reasons for the decision.

3P Principal source of income—substantiating claim

Substantiation of information

(1) A person must ensure that information provided by the person’s accountant or financial adviser in accordance with paragraph (a) or (c) of item 3.1 of the table in subsection 3O (1) as part of a claim for employer support payment must be substantiated by the provision of:

(a) the member’s tax return as soon as practicable; and

(b) a copy of the notice of assessment in relation to the member’s tax return, as soon as practicable after it has been issued by the Commissioner of Taxation.

(2) If a decision-maker requires material other than the information mentioned in subsection (1) to substantiate information provided as part of a claim for employer support payment:

(a) the decision-maker must:

(i) notify the person, in writing, that the material is required; and

(ii) state in the notice that the person must provide the material in a period, or by the date, stated in the notice; and

(b) the person must comply with the notice.

Updating information

(3) If a document or information mentioned in the table in subsection 3O (1) is required to be current, a decision-maker may:

(a) treat the document or information as not being current if the information contained in it was last up-to-date more than 3 months before the defence service to which the claim relates; and

(b) require the person to provide up-to-date information.
(4) If a self-employed member:
(a) has previously undertaken a period of continuous defence service (the *previous period*):
   (i) for which an employer support payment was made; or
   (ii) that was counted towards the member’s qualifying period for that year; and
(b) makes a claim for employer support payment in relation to a subsequent period of continuous defence service (the *subsequent period*); and
(c) claims that the business or company that provided the member’s principal source of income in relation to the previous period is still providing the member’s principal source of income;
the member may rely on the information given under subsection 3P (1) in relation to the previous period.

*Note* As an alternative, the member may choose to give updated information in accordance with subsection 3O (1).

(5) For subsection (4), if:
(a) a self-employed member has relied on information relating to previous defence service in accordance with that subsection; and
(b) the information was current when it was provided; and
(c) the member has not been required to update the information for a period of one year after the last time the information was current; and
(d) the member proposes to undertake further defence service;
the member must update the information before undertaking any further defence service.

*Note* A self-employed member who is unable to identify a principal non-military source of income within the previous year would be ineligible to receive employer support payment.

An example would be a self-employed member who has undertaken defence service for most or all of the previous year: the member’s status as a self-employed member would probably have been displaced by that defence service.
Part 3  Eligibility to claim employer support payment

4  Qualifying period — general

(1) Eligibility for employer support payment requires the completion of a qualifying period of defence service, during which a member is:
(a) absent from his or her employment on defence service; and
(b) on military leave or leave without pay.

(1AA) The qualifying period in a financial year is a total of 2 weeks of eligible defence service, which may be a continuous period or a total of 2 or more periods of eligible defence service.

(1A) For a period during which a member is absent on defence service that:
(a) is a period of continuous service mentioned in an item in the table; and
(b) includes:
   (i) a number of public holidays mentioned in a column in the table on which the member did not work a whole day; or
   (ii) a number of authorised stand-down days mentioned in a column in the table on which the member did not work at all; or
   (iii) a number of days mentioned in a column in the table on which the member was unable to work for the whole or a part of the day because of an illness or injury;
the number of weeks mentioned in the item in that column is the number of weeks served by the member, for the qualifying period, in relation to that period of continuous service.

(1B) In this section:
period of continuous service, in relation to a number of days served by a member:
(a) includes a day on which a member worked a whole day; and
(b) includes a part of a day mentioned in paragraphs (a) and (b) of the definition of day in section 3; and
(c) includes a day that was a public holiday or authorised stand-down day; and
(d) includes a day on which the member was unable to work for the whole or a part of the day if the decision-maker is satisfied, having regard to evidence provided by the member, that the member was unable to work because of an illness or injury; and
(e) does not include any of the following:
   (i) a day on which the member was undertaking a type of leave mentioned in subparagraph 7 (4) (a) (ii);
   (ii) a day on which the member was performing work relating to the member’s employment in circumstances to which subparagraph 7 (4) (b) (i) or (ii) does not apply;
(iii) a day on which the member performed work, or engaged in an activity, for which a sessional fee was payable.

<table>
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<th>Item</th>
<th>Period of continuous service (days)</th>
<th>No public holiday, authorised stand-down day or sick day in period (see note 1)</th>
<th>1 public holiday, authorised stand-down day or sick day in period (see note 1)</th>
<th>Total of 2 public holidays, authorised stand-down days or sick days in period (see note 1)</th>
<th>Total of 3 public holidays, authorised stand-down days or sick days in period (see note 1)</th>
<th>Total of 4 public holidays, authorised stand-down days or sick days in period (see note 1)</th>
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*Note 1* Public holidays and authorised stand-down days are described in paragraph (1A) (b).

*Note 2* The number of weeks served for the qualifying period is zero because in this case the member has already served the full qualifying period for the year.
(1BA) If:
   (a) a member undertakes defence service; and
   (b) at that time, it has not been established, in accordance with this Determination, that a business or company conducted by the member, or by which the member is employed, provides the member’s principal source of income or principal source of employment;

   the member’s defence service is not to be counted for a qualifying period.

(1BB) If:
   (a) a member undertakes defence service; and
   (b) at that time, it has been established, in accordance with this Determination, that a business or company conducted by the member, or by which the member is employed, provides the member’s principal source of income or principal source of employment;

   the member’s defence service is to be counted for a qualifying period unless another provision of this Determination excludes the defence service.

(2) If a member changes employment in a financial year (including a change to or from self-employment):
   (a) the member must complete a new qualifying period in relation to the new employer; and
   (b) the new employer is not entitled to create a qualifying period in relation to the new employer by relying on defence service that the member rendered while employed by a previous employer.

(3) If:
   (a) a member has completed part or all of the qualifying period for a financial year in relation to an employer; and
   (b) the ownership of the member’s employer changes during that financial year; and
   (c) the member continues to be employed by the new owner;

   all of the qualifying service which a member completed in relation to the former owner is taken to have been completed in relation to the new owner.

(4) If, after completing the qualifying service for a financial year (the first year), a member is on continuous defence service for a period that begins before the end of the first year and ends after the beginning of the following financial year (the second year):
   (a) so much of the period that occurs in the first year is taken to be service that is rendered in that year; and
   (b) the remainder of the period is taken to be service rendered in the second year; and
   (c) after the completion of the period, the member must complete a new qualifying period for the second year before the employer or self-employed member is entitled to the employer support payment for the second year.
Section 6

(5) If a member has not completed the qualifying service for a financial year (the first year) and is on continuous defence service for a period that begins before the end of the first year and ends after the beginning of the following financial year (the second year):

(a) all of the period is taken to be defence service that is rendered in the second year; and

(b) the period is to be counted towards the qualifying period for the second year.

(6) If:

(a) a member is undertaking defence service; and

(b) the member suffers an injury or illness as a result of the member’s defence service; and

(c) the injury or illness prevents the member from:

(i) returning to work for at least 5 days; or

(ii) continuing to work for at least 5 days; or

(iii) performing the full duties of the member’s work for at least 5 days; and

(d) the member:

(i) receives medical treatment for the injury or illness from the Joint Health Command (whether from a health practitioner employed by the Joint Health Command or another practitioner authorised by the Joint Health Command to provide this treatment); or

(ii) receives compensation payments from the Department of Veterans’ Affairs in relation to the injury or illness;

the total of the following periods are to be counted towards the member’s qualifying period:

(e) the period of defence service that the member undertook;

(f) the period commencing on the day after the period of service and ending on the day before the member returned to work.

(7) The Director or the relevant service chief may determine that a particular member is not required to satisfy paragraph (6) (d) in relation to a particular period of defence service.

6 Eligible service

(1) Eligible service is:

(a) ordinary reserve service undertaken as part of normal peace time training or service; or

(b) voluntary continuous full-time service:

(i) to which Parts 5, 6 and 7 of the DRSP Act apply in accordance with subsection 12 (1) of the DRSP Act; or

(ii) in relation to which an undertaking to comply with the requirements of the DRSP Act, as if the service were service to which Parts 5 and 6 of the DRSP Act applied in accordance with subsection 12 (1) of the DRSP Act, has been given to the member by the member’s employer; or
(c) continuous full-time service rendered as a result of an order under section 51A, 51B or 51C of the Act (whether or not the member is also subject to an order under section 50D of the Act); or

(d) continuous full-time service rendered as a result of an order under section 50D of the Act in relation to:
   (i) a member of the Reserve Response Force; and
   (ii) a civil emergency.

(2) Continuous full-time service rendered as a result of an order under section 50D of the Act (other than service mentioned in paragraph (1) (d) or service that is also as a result of an order under section 51A, 51B or 51C of the Act) is not eligible service for the purposes of this Determination unless the Minister determines, under paragraph 58B (1) (ga) of the Act, that it is eligible service.

(3) If:
   (a) a member is stood down on a day, or for a part of a day; and
   (b) on that day, the member is rendering or intended to render:
      (i) ordinary reserve service mentioned in paragraph (1) (a); or
      (ii) voluntary continuous full-time service mentioned in paragraph (1) (b); or
      (iii) continuous full-time service mentioned in paragraph (1) (c) or (d); and
   (c) on that day:
      (i) the member’s Unit is stood down; or
      (ii) the member is stood down, for a stand-down that is authorised by the member’s commanding officer or supervisor:
         (A) in writing, for Unit management reasons; or
         (B) because of a defence requirement that prevents the member from completing 6 hours of defence duty on the day; or
         (C) because of equipment failure or other similar reasons; and
   (d) the stand-down did not result from the wilful or negligent actions of the member;

the member is taken to have rendered eligible service on the day.

(4) For subparagraph (3) (c) (i), a member’s Unit is not taken to be stood down on a day by reason only that the day occurs on a weekend.

7 

Employer support payment

(1) This section applies to:
   (a) an employer of a member who has been absent on defence service while employed by the employer; and
   (b) a self-employed member who has been absent on defence service while self-employed.
Section 7

Employer

(2) For paragraph 58B (1) (ga) of the Act, the employer is eligible for a payment because of the member’s absence on defence service if:

(a) the absence occurs after the qualifying period; and

(b) the absence is for at least 5 continuous days, and whether or not those days include, at the place in which the defence service is being undertaken:

(i) one or more public holidays; or

(ii) one or more days on which the member is stood-down; or

(iii) one or more days on which:

(A) the member was required or scheduled to work, or work was planned for the member to perform; and

(B) the member was unable to work for the whole or a part of the day;

if the decision-maker is satisfied that the member was unable to work because of an illness or injury; and

(c) the defence service is eligible service; and

(d) the employer has released the member to undertake the defence service on military leave or leave without pay.

Self-employed member

(2A) For paragraph 58B (1) (ga) of the Act, the self-employed member is eligible for a payment because of his or her absence on defence service if:

(a) the absence occurs after the qualifying period; and

(b) the absence is for at least 5 continuous days, and whether or not those days include, at the place in which the defence service is being undertaken:

(i) one or more public holidays; or

(ii) one or more days on which the member is stood-down; or

(iii) one or more days on which:

(A) the member was required or scheduled to work, or work was planned for the member to perform; and

(B) the member was unable to work for the whole or a part of the day;

if the decision-maker is satisfied that the member was unable to work because of an illness or injury; and

(c) the defence service is eligible service; and

(d) the employed member is undertaking the defence service on military leave or leave without pay; and
Eligibility to claim employer support payment

Part 3

Section 7

(e) the member’s service chief is satisfied that the payment would facilitate the most cost-effective means of delivering capability required by the chief’s service.

Note In accordance with this Determination, the only days that are counted towards the 5 continuous days are:
(a) days on which the member undertakes defence service; and
(b) public holidays in the State or Territory in which the defence service is being undertaken; and
(c) days on which the member is stood-down.

(3) However, if a member’s absence on defence service immediately follows the qualifying period for a financial year:
(a) the member’s employer is entitled to a payment for the length of the period (the ESP period) following the qualifying period even if the ESP period is less than 5 continuous days; and
(b) the self-employed member is entitled to a payment for the ESP period following the qualifying period even if the ESP period is less than 5 continuous days.

(4) In addition to subsections (2) and (3):
(a) an employer or self-employed member is not eligible for an employer support payment for a period in which the member is absent on defence service if the absence occurs:
   (i) during the qualifying period; or
   (ii) concurrently with 1 or more of the following types of leave that the employee or member undertakes:
       (A) annual leave;
       (B) personal or carer’s leave;
       (C) sick leave in circumstances to which section 7A or 7B does not apply;
       (D) family leave;
       (E) bereavement leave;
       (F) compassionate leave;
       (G) cultural leave;
       (H) parental leave;
       (I) maternity or adoption leave;
       (J) long service leave; or
   (iii) on a public holiday on which the member did not work a whole day; or
   (iv) on a day on which the member is stood down for the whole day; or
   (v) on a day on which the member:
       (A) had an illness or injury; and
       (B) did not work for the whole of the day; whether or not the decision-maker is satisfied that the illness or injury was the reason the member was unable to work, unless the member worked on a part of the day for a period that is
Section 7A

mentioned in paragraph (a) or (b) of the definition of *day* in section 3; and

(b) an employer or self-employed member is not eligible for an employer support payment for a period in which the member is absent on defence service if the member performs work relating to the member’s employment, other than:
   (i) work in an emergency; or
   (ii) work performed with the written permission of the member’s commanding officer or Branch Head; and

(d) an employer or self-employed member who is a legal officer is not eligible for an employer support payment for a period in which the member is absent on defence service if a sessional fee is payable in relation to the defence service.

*Note* Under section 25 of the DRSP Act, an employer must not require an employee to take any type of paid or unpaid leave concurrently with all or part of the employee’s absence on defence service unless the employee agrees to take the leave concurrently with all or part of that absence.

7A Injury or illness arising from defence service (member unable to work)

(1) This section applies if:
   (b) the member suffers an injury or illness as a result of the member’s defence service; and
   (c) the injury or illness:
      (i) prevents the member from returning to work for at least 5 days; or
      (ii) prevents the member from continuing to work for at least 5 days; and
   (d) the member:
      (i) receives medical treatment for the injury or illness from the Joint Health Command (whether from a health practitioner employed by the Joint Health Command or another practitioner authorised by the Joint Health Command to provide this treatment); or
      (ii) receives compensation payments from the Department of Veterans’ Affairs in relation to the injury or illness.

(2) For paragraph 58B (1) (ga) of the Act, the employer, or self-employed member, is taken to be eligible for an employer support payment as if section 7 applied to the employer or self-employed member.

*Note* Part of eligibility for an employer support payment under section 7 is that the member must have completed the qualifying period for entitlement to employer support payment. The qualifying period may include part of the period of injury or illness.

(3) The employer, or self-employed member, ceases to be eligible for the employer support payment at the earlier of:
   (a) the day on which the member returns to work, or is reasonably able to return to work; and
Section 7B

(b) the day on which the member:
   (i) ceases to receive medical treatment for the injury or illness from the Joint Health Command (whether from a health practitioner employed by the Joint Health Command or another practitioner authorised by the Joint Health Command to provide this treatment); or
   (ii) ceases to receive compensation payments from the Department of Veterans’ Affairs in relation to the injury or illness.

(4) Subsection 12 (3), 13 (3) or 14 (3) (as appropriate) applies in calculating payments.

(5) The Director, Deputy Director, Assistant Director or the relevant service chief may determine that a particular member is not required to satisfy paragraph (1) (d) or (3) (b) in relation to a particular claim.

Note Subsection 3AA (3) provides that a Deputy Director or an Assistant Director must not be below the rank of Lieutenant Commander in the Australian Navy, or equivalent, or APS Level 6, as the case may be.

7B Injury or illness arising from defence service (member unable to resume full duties)

(1) This section applies if:
   (b) the member suffers an injury or illness as a result of the member’s defence service; and
   (c) the member is able to perform duties relating to the member’s employment; and
   (d) the injury or illness prevents the member from performing the full duties of the member’s work for at least 5 days; and
   (e) the member:
      (i) receives medical treatment for the injury or illness from the Joint Health Command (whether from a health practitioner employed by the Joint Health Command or another practitioner authorised by the Joint Health Command to provide this treatment); or
      (ii) receives compensation payments from the Department of Veterans’ Affairs in relation to the injury or illness.

(1A) The Director, Deputy Director, Assistant Director or the relevant service chief may determine that a particular member is not required to satisfy paragraph (1) (e) in relation to a particular claim.

(2) For paragraph 58B (1) (ga) of the Act, the employer, or self-employed member, is taken to be eligible for an employer support payment in accordance with this section.

Note Part of eligibility for an employer support payment is that the member must have completed the qualifying period for entitlement to employer support payment. The qualifying period may include part of the period of injury or illness.
Section 7B

(3) The employer or self-employed member may make a claim, in writing, to the Director, Deputy Director, Assistant Director or the relevant service chief for an amount of employer support payment in relation to the period of the illness or injury.

(4) The Director, Deputy Director, Assistant Director or the relevant service chief may, in writing, ask the employer or self-employed member to give him or her further information about the claim.

(5) If the Director, Deputy Director, Assistant Director or the relevant service chief asks the employer or self-employed member to give him or her further information under subsection (4):
   (a) the employer or self-employed member must give him or her the information within 30 days after the day on which the request was made; and
   (b) the Director, Deputy Director or Assistant Director is not required to make a decision while waiting for the information.

(6) If the Director, Deputy Director, Assistant Director or the relevant service chief is satisfied of the matters mentioned in subsection (1), the Director, Deputy Director or Assistant Director must approve the claim.

(7) The Director, Deputy Director, Assistant Director or the relevant service chief must refuse the claim if subsection (6) does not apply.

(8) If the Director, Deputy Director, Assistant Director or the relevant service chief approves a claim, he or she must, within 7 days after the decision is made, determine an amount of employer support payment to be paid and give the employer or self-employed member:
   (a) written notice of the decision; and
   (b) a statement that employer support payment is payable in relation to any period in which the employee is unable to perform the employee’s full duties; and
   (c) a statement that employer support payment will continue until the member:
      (i) is reasonably able to return to full duties; or
      (ii) ceases to receive medical treatment for the injury or illness from the Joint Health Command; or
      (iii) ceases to receive compensation payments from the Department of Veterans’ Affairs in relation to the injury or illness.

(9) If the Director, Deputy Director, Assistant Director or the relevant service chief refuses a claim, he or she must, within 7 days after the decision is made, give the claimant written notice of:
   (a) the decision; and
   (b) the reasons for refusing to approve the claim; and
   (c) if the Director or service chief did not make the decision—the claimant’s right to have the decision reconsidered by the Director or service chief under section 15D or 15E; and
(d) if the Director or service chief made the decision—the claimant’s right to have the decision reviewed by the AAT.

(10) The Director, Deputy Director, Assistant Director or the relevant service chief must use subsection 12 (3), 13 (3) or 14 (3) (as appropriate) in calculating payments made under this section.

Note Subsection 3AA (3) provides that a Deputy Director or an Assistant Director must not be below the rank of Lieutenant Commander in the Australian Navy, or equivalent, or APS Level 6, as the case may be.

8 Member with 2 or more employers [see Note 2]

(1) If a member is absent on defence service during a period in which the member is undertaking full-time work and part-time work concurrently for 2 or more employers:
   (a) the member’s employer in relation to the full-time work is eligible for an employer support payment for that period; and
   (b) an employer of the member in relation to part-time work is not eligible for an employer support payment for that period.

(2) If a member is absent on defence service during a period in which the member is undertaking part-time work for 2 or more employers concurrently, each employer of the member is eligible for the amount of employer support payment for that period worked out under section 14.

(3) Despite subsections (1) and (2), if a member:
   (a) is absent on defence service; and
   (b) is a self-employed member; and
   (c) is not undertaking full-time work for any other employer;
the member and each employer of the member is eligible for the amount of employer support payment worked out under section 14.

(4) Despite subsections (1) and (2), if a member:
   (a) is absent on defence service; and
   (b) is a self-employed member; and
   (c) is also undertaking full-time work for another employer;
the member is not eligible for employer support payment for any work undertaken as a self-employed member.

8A Payment of national minimum wage

General

(1) An employer is not eligible to make a claim for employer support payment in relation to defence service undertaken by a member if the employer pays the member a wage that is less than the national minimum wage as set in a national wage order under the Fair Work Act 2009.
Salary sacrifice or other arrangements

(2) Subsection (1) does not apply if the employer pays the employee wages in accordance with a salary sacrifice or other arrangement which provides an outcome that is equal to or more favourable than the national minimum wage.

8B Minimum period of employment

An employer is not eligible to make a claim for employer support payment in relation to defence service commenced by a member and mentioned in paragraph 6 (1) (b), (c) or (d) if the member was employed by the employer for a continuous period of less than 3 months immediately before the member commenced the defence service to which the claim relates.

8C Continuous full-time service for at least 2 years

An employer or a self-employed member is not eligible to make a claim for employer support payment in relation to defence service undertaken by a member who:

(a) has undertaken continuous full-time defence service as described in paragraph 6 (1) (b), (c) or (d) for a total period of at least 2 years; and

(b) since the start of that continuous full-time service, has not had a continuous period of at least 26 weeks in the member’s employment without undertaking continuous full-time service.

Note The employer or self-employed member would become eligible to make a claim under section 9 for an employer support payment in relation to defence service undertaken by the member if:

(a) work has been performed for the employer, or by the self-employed member, for a continuous period of 26 weeks since the last period of continuous full-time service; and

(b) the other requirements of this Determination are met.

8D Trading or operation of company, trust, partnership or business

No trading or operation before or during defence service

(1) An employer of a member or a self-employed member is not eligible to make a claim for employer support payment in relation to defence service undertaken by the member:

(a) if the company, trust, partnership or business to which the member’s employment relates has not traded or operated for a continuous period of at least 26 weeks before or during the defence service; or

(b) for any period during which it is reasonable, in all the circumstances, to believe that the company, trust, partnership or business has ceased to operate or trade permanently.

Note It is possible that the company, trust, partnership or business could resume operation or trading. The employer or self-employed member would be required to make a new claim for eligibility in accordance with this Determination.
(2) Subsection (1) does not apply in relation to a self-employed member who undertook continuous full-time service during the 26 weeks mentioned in paragraph (1) (a).

No trading or operation after continuous full-time service

(3) If:

(a) a self-employed member undertakes a period of continuous full-time service; and

(b) the company, trust, partnership or business to which the member’s employment relates did not trade or operate during that period; and

(c) for at least 3 months since the period of continuous full-time service ended, the member has not undertaken further continuous full-time service; and

(d) the member then undertakes a further period of defence service as described in paragraph 6 (1) (a); and

(e) the company, trust, partnership or business to which the member’s employment relates has not resumed operating or trading;

the self-employed member is not eligible to make a claim for employer support payment in relation to the further period of defence service.

Note It is possible that the company, trust, partnership or business could resume operation or trading. The self-employed member would be required to make a new claim for eligibility in accordance with this Determination.
Part 4  

Claiming employer support payment

Section 9

9  Claim for employer support payment

Making a claim

(1) An employer (the claimant) who claims to be entitled to an employer support payment must:
   (a) apply to a decision-maker for the employer using the claim form required by the decision-maker; and
   (b) complete the claim form in accordance with any directions on it.

   Note  Sections 3A and 3B identify the decision-makers for an employer.

(2) A self-employed member (the claimant) who claims to be entitled to an employer support payment must:
   (a) apply to the relevant service chief using the claim form required by the service chief; and
   (b) complete the claim form in accordance with any directions on it.

   Note  A service chief is the only decision-maker for a claim for employer support payment made by a self-employed member who is a member of the chief’s service.

(3) A claim form may relate to any number of claim periods.

Claim late by 12 months or less

(4) If claim is made more than 6 months after the start of the claim period to which it relates, but not later than 12 months after the start of the claim period, the claim for the claim period, or the part of the claim period, that occurred more than 6 months before the claim is made is a late claim.

(4A) A decision-maker to whom a late claim is made may:
   (a) accept the late claim and determine it; or
   (b) if the late claim is made by an employer—refer the late claim to the Director, Deputy Director or Assistant Director for consideration; or
   (c) reject the late claim.

(4B) If a late claim is referred to the Director, Deputy Director or Assistant Director, he or she may:
   (a) accept the late claim and then return it to the decision-maker for determination; or
   (b) accept the late claim and determine it; or
   (c) reject the late claim.

(4C) A decision-maker may reject a late claim solely on the ground that it has been made for a claim period, or a part of the claim period, that occurred more than 6 months before the claim was made.
(4D) If a decision-maker rejects a late claim, the claim made under subsection (1) is taken to include only the part of the claim period (if any) that does not relate to the late claim.

(4E) If a decision-maker rejects a late claim, he or she must, within 7 days after the decision is made, give the claimant written notice of:
   (a) the decision; and
   (b) the reasons for rejecting the claim; and
   (c) the Director did not make the decision on a late claim made by an employer—the claimant’s right to have the decision reconsidered by the Director under section 15D; and
   (d) if the Director made the decision—the claimant’s right to have the decision reviewed by the AAT.

Claim late by more than 12 months

(4F) If a claim is made more than 12 months after the start of the claim period to which it relates:
   (a) the claim for the claim period, or the part of the claim period, that occurred more than 12 months before the claim is made, is a very late claim; and
   (b) the decision-maker to whom the late claim is made must reject the very late claim because it is a very late claim; and
   (c) the claim made under subsection (1) is taken to include only the part of the claim period (if any) that does not relate to the very late claim.

(4G) If a decision-maker rejects a very late claim, he or she must, within 7 days after the decision is made, give the claimant written notice of:
   (a) the decision; and
   (b) the reason for rejecting the claim.

(5) Within 30 days after receiving a claim made by an employer:
   (a) the decision-maker must, in writing:
      (i) approve the claim if the claimant is entitled to an employer support payment; or
      (ii) refuse to approve the claim if the claimant is not entitled to an employer support payment; or
   (b) the decision-maker may, in writing, ask the claimant to give the decision-maker further information about the claim; or
   (c) the decision-maker may refer the claim under subsection (7) or (9) for advice or a decision.

(5A) If the Director, Deputy Director or Assistant Director becomes aware that a decision-maker has failed to comply with subsection (5) in relation to a claim made by an employer, he or she may require the decision-maker to forward the claim to the Director for a decision.
(5B) Within 30 days after receiving a claim made by a self-employed member:
   (a) the service chief must, in writing:
       (i) approve the claim if the claim is in a class determined under subsection (14); or
       (ii) approve the claim if the member is in a class determined under subsection (14); or
       (iii) approve the claim if the claimant is otherwise entitled to an employer support payment; or
       (iv) refuse to approve the claim if the claimant is not entitled to an employer support payment; or
   (b) the service chief may, in writing, ask the claimant to give the decision-maker further information about the claim.

Note 1 A service chief is the only decision-maker for a claim for employer support payment made by a self-employed member who is a member of the chief’s service.

Note 2 See paragraph 7 (2A) (e).

(6) If the decision-maker asks the claimant to give him or her further information under paragraph (5) (b):
   (a) the claimant must give the decision-maker the information within 30 days after the day on which the request was made; and
   (b) the decision-maker must not approve, or refuse to approve, the claim until the earlier of:
       (i) when the decision-maker receives the information; and
       (ii) when the period mentioned in paragraph (a) expires.

(7) The decision-maker:
   (a) may refer a claim made by an employer to the Director for advice on any matter relating to the claim; and
   (b) is not required to act in accordance with the Director’s advice.

(8) If the decision-maker refuses to approve a claim, he or she must, within 7 days after the decision is made, give the claimant written notice of the decision, including:
   (a) the reasons for refusing to approve the claim; and
   (b) a statement that the claimant may request reconsideration of the decision under section 15D.

Claim may be referred to Director for decision

(9) The decision-maker may refer a claim made by an employer to the Director for the Director, a Deputy Director or an Assistant Director to make a decision on the claim.

Note A service chief is the only decision-maker for a claim for employer support payment made by a self-employed member who is a member of the chief’s service.
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(10) The Director, Deputy Director or Assistant Director may ask, in writing, the claimant to give him or her further information about a claim:
(a) forwarded under subsection (5A); or
(b) referred under subsection (7) or (9).

(11) If the Director, Deputy Director or Assistant Director asks the claimant to give him or her further information under subsection (10):
(a) the claimant must provide the information within 30 days after the day on which the request was made; and
(b) he or she must not approve, or refuse to approve, the application or claim until the earlier of the following days:
   (i) the day he or she receives the information;
   (ii) the day after the period mentioned in paragraph (a) expires.

(12) Subject to subsection (11), the Director, Deputy Director or Assistant Director must:
(a) accept the claim; or
(b) reject the claim.

(13) If the Director, Deputy Director or Assistant Director rejects a claim under subsection (12), he or she must, within 7 days after the decision is made, give the claimant written notice of:
(a) the decision; and
(b) the reasons for rejecting the claim; and
(c) the claimant’s right:
   (i) if the Director made the decision — to have the decision reviewed by the AAT; or
   (ii) if a Deputy Director or an Assistant Director made the decision — to have the decision reconsidered by the Director under section 15D.

Note Subsection 3AA (3) provides that a Deputy Director or an Assistant Director must not be below the rank of Lieutenant Commander in the Australian Navy, or equivalent, or APS Level 6, as the case may be.

Approval of classes of claims by self-employed members

(14) For subsection 9, a service chief may, in writing, determine either or both of the following:
(a) a class of claims made by self-employed members;
(b) a class of self-employed members.

Note A claim that is in a class determined under this subsection, or a claim made by a self-employed member in a class determined under this subsection, will be approved automatically. See paragraph (5) (a).
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9A Information provided by employer or self-employed member—first claim in financial year

Employers

(1) Subsection (2) applies if:
   (a) an employer makes a claim for employer support payment in relation to defence service rendered by a member; and
   (b) the claim is the first made by the employer in a financial year in relation to the member’s defence service.

(2) The employer must include with the claim form:
   (a) evidence that the member is an employee of the employer; and
   (b) evidence of the member’s normal weekly hours of work.

Self-employed members

(3) Subsection (4) applies if:
   (a) a self-employed member makes a claim for employer support payment in relation to defence service undertaken by the member; and
   (b) the claim is the first made by the member in a financial year in relation to the member’s defence service.

(4) The member must include with the claim form evidence of the member’s normal weekly hours of work.

9B Other information provided by employer

(1) This section applies if:
   (a) an employer makes a claim for employer support payment in relation to defence service undertaken by a member; or
   (b) a self-employed member makes a claim for employer support payment in relation to defence service undertaken by the member; whether or not the claim is the first made by the employer in a financial year in relation to the member’s defence service.

(2) The decision-maker may ask the employer or self-employed member to give him or her:
   (a) evidence that the employer’s business is operating or trading; or
   (b) evidence that the member is an employee of the employer; or
   (c) evidence of the member’s normal or actual weekly hours of work; or
   (d) evidence relating to the period of 26 weeks, or another period mentioned in section 3L before the claim is made to determine the member’s normal working hours.

Note Under section 9A, some of this information is required automatically for the first claim made in a financial year.
(3) If the decision-maker asks the employer or self-employed member to give him or her information under subsection (2):
(a) the employer or self-employed member must give the information within 30 days after the day on which the request was made; and
(b) the decision-maker must not approve, or refuse to approve, the claim until the earlier of:
   (i) when he or she receives the information; and
   (ii) when the period mentioned in paragraph (a) ends.

(4) If:
(a) the decision-maker asks the employer or self-employed member to give evidence mentioned in subsection (2) by a time stated in the request; and
(b) the employer or self-employed member does not provide the evidence by that time;
the decision-maker may reject the claim under section 9 on the ground that the employer or self-employed member has not given the evidence.

**9BA Change of circumstance**

(1) In relation to an unpaid or ongoing claim, an employer must advise the decision-maker, as soon as practicable, if:
(a) the member does not complete any period of defence service that is mentioned in the claim for employer support payment; or
(b) the member ceases to be an employee of the employer; or
(c) the relevant business is disposed of; or
(d) the relevant business ceases to trade or operate on a permanent basis; or
(e) the relevant business ceases to trade or operate on a temporary basis; or
(f) the member becomes a director or partner in the relevant business; or
(g) the member gains a controlling interest in the relevant company or business; or
(h) the member ceases to be employed by a trust or the trustee of a trust.

*Example*

If a company is receiving employer support payment in respect of an ongoing period of continuous full-time defence service by an employee, the company must advise if the member ceases to be an employee.

(2) If an employer is required by subsection (1) to advise a decision-maker, the employer must not submit another claim for employer support payment unless the claim is accompanied by the advice.

(3) If a decision-maker receives advice from an employer under subsection (1):
(a) the decision-maker must forward the advice to the Director; and
(b) if the advice relates to paragraph (1) (b), (c), (d), (f), (g) or (h), the decision-maker must not make any further employer support payment to the employer until the Director has approved the employer’s continuing eligibility for employer support payment.
10A Review of payments

(1) The Director may review a decision (the first decision) in relation to a claim for an employer support payment made by an employer:

(a) if:
   (i) the decision concerned the payment of an amount having regard to evidence that requires or required substantiation; or
   (ii) in any other case — the decision was made within 12 months before the start of the review; and

(b) to determine whether the decision:
   (i) was made in accordance with this Determination; or
   (ii) is appropriate.

Note A service chief is the only decision-maker for a claim for employer support payment made by a self-employed member who is a member of the chief’s service.

(2) However, the first decision must not be a decision that the Director has previously substituted under paragraph (3) (d).

(3) If the Director believes that the decision may not have been made in accordance with this Determination, or may have been inappropriate, the Director:

(a) must notify:
   (i) the employer, or self-employed member, to which the decision relates; and
   (ii) the decision-maker who made the first decision (or any person who has replaced the decision-maker);
   of the Director’s opinion as soon as practicable; and

(b) may ask the employer, self-employed member, decision-maker or other person to give the Director further information about the decision or the claim to which the decision relates; and

(c) must notify the employer, or self-employed member, to which the decision relates, if the Director proposes to substitute the decision that the Director believes should have been made instead of the first decision; and

(d) may substitute the decision that the Director believes should have been made for the first decision; and

(e) must notify the employer, or self-employed member, to which the decision relates, as soon as practicable after substituting the decision.

(4) A decision made under paragraph (3) (d) is taken to have effect from:

(a) the date of effect of the first decision; or

(b) a later date specified by the Director.

(5) If, under paragraph 10A (3) (b), the Director asks a member or a representative of the member to provide information that a member may be asked to provide in order to comply with subsection 3P (7), the member is not taken, by reason of compliance with the Director’s request, to have been required to give the information in accordance with subsection 3P (7).
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Note Subsection 3P (7) provides that, if a member has not been required to give information mentioned in the table in subsection 3O (1) for a period of 2 years, the member may be required to give up-to-date information. If the Director asks for that information under subsection 10A (5), it is not intended that compliance with that request should have the effect of relieving the member from the responsibility of complying with subsection 3P (7).

10B Re-examination of Director’s decision—new facts or evidence

Director

(1) The Director may re-examine a decision of the Director in relation to a claim for employer support payment on the request in writing of an employer who submits new information or evidence in relation to the claim.

(2) The Director may make a new decision in relation to the claim after re-examining the decision.

(3) If the Director makes a new decision that is not the same as the decision being re-examined:
   (a) the new decision applies in substitution for the decision being re-examined; and
   (b) the Director must specify a date of effect for the new decision (which may be earlier than the date on which the Director makes the new decision).

(4) If the Director makes a new decision, he or she must, as soon as practicable after the decision is made, give the employer written notice of:
   (a) the decision; and
   (b) the reasons for the decision; and
   (c) the employer’s right to have the decision reviewed by the AAT.

Service chief

(5) A service chief may re-examine a decision of the service chief in relation to a claim for employer support payment on the request in writing of a self-employed member who submits new information or evidence in relation to the claim.

(6) The service chief may make a new decision in relation to the claim after re-examining the decision.

(7) If the service chief makes a new decision that is not the same as the decision being re-examined:
   (a) the new decision applies in substitution for the decision being re-examined; and
   (b) the service chief must specify a date of effect for the new decision (which may be earlier than the date on which the service chief makes the new decision).
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(8) If the service makes a new decision, he or she must, as soon as practicable after the decision is made, give the self-employed member written notice of:
   (a) the decision; and
   (b) the reasons for the decision.

Note It should not be assumed that a new decision can, or should, operate from the date of the decision that is being re-examined.

For example, the new information or evidence may show that a business is a member’s principal source of income, but may also show that it did not become the principal source of income until later than the date on which the claim was previously rejected. It would be inappropriate to decide that the business is the principal source of income with effect from an incorrect date.

11 Payment of employer support payment

(1) If a claim is approved under section 9 or on reconsideration under section 10, the employer support payment must be paid to the employer or self-employed member as follows:
   (a) if the claim is made during a claim period of not more than 21 days:
      (i) if practicable, not later than 14 days after the decision-maker has approved the claim; and
      (ii) as worked out under section 12, 13 or 14;
   (b) if the claim is made during a claim period of more than 21 days:
      (i) on a fortnightly basis, following each fortnight in which the employee or member is on continuous defence service; and
      (ii) as worked out under section 12, 13 or 14;
   (c) if the application is made after the end of a claim period:
      (i) as soon as practicable after the claim is approved; and
      (ii) in total as worked out under section 12, 13 or 14.

(2) The employer, self-employed member, business or company is liable for any income tax payable in respect of the employer support payment under the Income Tax Assessment Act 1936 or the Income Tax Assessment Act 1997.

12 Amount of employer support payment — full-time work

(1) The amount of employer support payment payable for a claim period, in respect of a member in full-time work, that occurs immediately after the completion of the qualifying period for a financial year, is as follows:
   (a) if:
      (i) the length of the claim period is at least 1 day, and not more than 4 days; and
      (ii) the total number of days in the period in which the member has been on continuous defence service is at least 5 continuous days —
      the amount is a daily rate of one-fifth of 1 week of AWOTE;
   (b) if the length of the claim period is 5, 6 or 7 days, the amount is 1 week of AWOTE;
(c) for the second or subsequent week of the claim period, the amount is the amount worked out under paragraph (2) (b) or (c).

Example
If, in a financial year, an employee in full-time work is absent on defence service for 3 periods of 5 continuous days, his or her employer will not be entitled to an employer support payment for the first 2 weeks (the qualifying period for sections 4 and 7). The claim period will start on the 11th day of absence (the beginning of the 3rd week), and the employer or self-employed member will be entitled to an amount of employer support payment that is equivalent to the weekly rate of the employer support payment.

(2) The amount of employer support payment payable for any other claim period, in respect of a member in full-time work, is as follows:
(a) for the first week of the claim period, if the member is on continuous defence service for 5, 6 or 7 days, the amount is 1 week of AWOTE;
(b) for the second or subsequent week of the claim period, if:
   (i) the member is on continuous defence service for a period of 5, 6 or 7 continuous days; and
   (ii) the member was on continuous defence service for a period of 7 continuous days in the week ending immediately before the period mentioned in subparagraph (i);
   the amount is 1 week of AWOTE;
(c) for the second or subsequent week of the claim period, if:
   (i) the member is on continuous defence service for a period of at least 1 day, and not more than 4 days; and
   (ii) the member was on continuous defence service for a period of 7 continuous days in the week ending immediately before the period mentioned in subparagraph (i) —
   the amount is a daily rate of one-fifth of 1 week of AWOTE.

(3) The amount of employer support payment payable for a claim period of 78 or more weeks, in respect of a member in full-time work, is 78 weeks of AWOTE.

(4) A number of days used to work out an amount of employer support under subsection (1), (2) or (3) does not include:
(a) a public holiday:
   (i) that occurs in the place in which the defence service is being undertaken during the claim period; and
   (ii) on which the member did not undertake a whole day of defence service; or
(b) a day on which the member is stood down for the whole day; or
(c) a day on which the member was unable to work for some of the day due to illness or injury, unless the member worked on a part of the day for a period that is mentioned in paragraph (a) or (b) of the definition of day in section 3.
13 Amount of employer support payment — part-time work with 1 employer

(1) The amount of employer support payment payable for a claim period, in respect of a member in part-time work with 1 employer, that occurs immediately after the completion of the qualifying period for a financial year, is as follows:

(a) if:

(i) the length of the claim period is at least 1 day, and not more than 4 days; and

(ii) the total number of days in the period in which the member has been on continuous defence service is at least 5 continuous days —

the amount is:

\[ W \times \frac{H}{35} \times \frac{D}{5} \]

where:

\( W \) is 1 week of AWOTE.

\( H \) is the number of hours worked by the employee each week.

\( D \) is the number of days worked by the employee;

(b) if the length of the claim period is 5, 6 or 7 days, the amount is:

\[ W \times \frac{H}{35} \]

where:

\( W \) is 1 week of AWOTE.

\( H \) is the number of hours worked by the employee each week;

(c) for the second or subsequent week of the claim period, the amount is the amount worked out under paragraph (2) (b) or (c).

(2) The amount of employer support payment payable for any other claim period, in respect of a member in part-time work with 1 employer, is as follows:

(a) for the first week of the period, the amount is:

\[ W \times \frac{H}{35} \]

where:

\( W \) is 1 week of AWOTE.

\( H \) is the number of hours worked by the employee each week;

(b) for the second or subsequent week of the claim period, if:

(i) the member is on continuous defence service for a period of 5, 6 or 7 continuous days; and
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(ii) the member was on continuous defence service for a period of 7 continuous days ending in the week immediately before the period mentioned in subparagraph (i);

the amount is:

\[ W \times \frac{H}{35} \]

where:

\( W \) is 1 week of AWOTE.
\( H \) is the number of hours worked by the employee each week;

(c) for the second or subsequent week of the claim period, if:

(i) the member is on continuous defence service for a period of at least 1 day, and not more than 4 days; and

(ii) the member was on continuous defence service for a period of 7 continuous days in the week ending immediately before the period mentioned in subparagraph (i);

the amount is:

\[ W \times \frac{H}{35} \times \frac{D}{5} \]

where:

\( W \) is 1 week of AWOTE.
\( H \) is the number of hours worked by the employee each week.
\( D \) is the number of days worked by the employee.

(3) The amount of employer support payment payable for a claim period of 78 or more weeks, in respect of a member in part-time work with 1 employer, is:

\[ W \times \frac{H}{35} \times 78 \]

where:

\( W \) is 1 week of AWOTE.
\( H \) is the number of hours worked by the employee each week.

(4) A number of days used to work out an amount of employer support under subsection (1), (2) or (3) does not include:

(a) a public holiday:

(i) that occurs in the place in which the defence service is being undertaken during the claim period; and

(ii) on which the member did not undertake a whole day of defence service; or

(b) a day on which the member is stood down for the whole day; or
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(c) a day on which the member was unable to work for some of the day due to illness or injury, unless the member worked on a part of the day for a period that is mentioned in paragraph (a) or (b) of the definition of day in section 3.

14 Amount of employer support payment — part-time work with 2 or more employers

(1) The amount of employer support payment payable to an employer (the claimant), in respect of a member in part-time work with 2 or more employers, for a claim period that occurs immediately after the completion of the qualifying period for a financial year, is as follows:

(a) if:
   (i) the length of the claim period is at least 1 day, and not more than 4 days; and
   (ii) the total number of days in the period in which the member has been on continuous defence service is at least 5 continuous days —

the amount is:

\[ W \times \frac{H}{T} \times \frac{D}{5} \]

where:
- \(H\) is the number of hours the employee works each week for the claimant.
- \(T\) is:
  (a) the total number of hours the member works each week; or
  (b) if the member works 35 hours or less each week — 35.
- \(W\) is 1 week of AWOTE.
- \(D\) is the number of days worked by the employee;

(b) if the length of the claim period is 5, 6 or 7 days, the amount is:

\[ W \times \frac{H}{T} \]

where:
- \(H\) is the number of hours the employee works each week for the claimant.
- \(T\) is:
  (a) the total number of hours the member works each week; or
  (b) if the member works 35 hours or less each week — 35.
- \(W\) is 1 week of AWOTE;

(c) for the second or subsequent week of the claim period, the amount is the amount worked out under paragraph (2) (b) or (c).
(2) The amount of employer support payment payable to a claimant for any other claim period, in respect of a member in part-time work with 2 or more employers, is as follows:

(a) for the first week of the period, the amount is:

\[ W \times \frac{H}{T} \]

where:

- \( H \) is the number of hours the employee works each week for the claimant.
- \( T \) is:
  - (a) the total number of hours the member works each week; or
  - (b) if the member works 35 hours or less each week — 35.
- \( W \) is 1 week of AWOTE;

(b) for the second or subsequent week of the claim period, if:

- (i) the member is on continuous defence service for a period of 5, 6 or 7 continuous days; and
- (ii) the member was on continuous defence service for a period of 7 continuous days ending in the week immediately before the period mentioned in subparagraph (i);

the amount is:

\[ W \times \frac{H}{T} \]

where:

- \( H \) is the number of hours the employee works each week for the claimant.
- \( T \) is:
  - (a) the total number of hours the member works each week; or
  - (b) if the member works 35 hours or less each week — 35.
- \( W \) is 1 week of AWOTE;

(c) for the second or subsequent week of the claim period, if:

- (i) the member is on continuous defence service for a period of at least 1 day, and not more than 4 days; and
- (ii) the member was on continuous defence service for a period of 7 continuous days in the week ending immediately before the period mentioned in subparagraph (i);

the amount is:

\[ W \times \frac{H}{T} \times \frac{D}{5} \]
where:
\( W \) is 1 week of AWOTE.
\( H \) is the number of hours worked by the employee each week.
\( T \) is:
(a) the total number of hours the member works each week; or
(b) if the member works 35 hours or less each week — 35.
\( D \) is the number of days worked by the employee.

(3) The amount of employer support payment payable to an employer (the claimant) for a claim period of 78 or more weeks, in respect of a member in part-time work with 2 or more employers, is:

\[ W \times \frac{H}{T} \times 78 \]

where:
\( W \) is 1 week of AWOTE.
\( T \) is:
(a) the total number of hours the member works each week; or
(b) if the member works 35 hours or less each week — 35.
\( H \) is the number of hours the employee works each week for the claimant.

(4) A number of days used to work out an amount of employer support under subsection (1), (2) or (3) does not include:
(a) a public holiday:
   (i) that occurs in the place in which the defence service is being undertaken during the claim period; and
   (ii) on which the member did not undertake a whole day of defence service; or
(b) a day on which the member is stood down for the whole day; or
(c) a day on which the member was unable to work for some of the day due to illness or injury, unless the member worked on a part of the day for a period that is mentioned in paragraph (a) or (b) of the definition of day in section 3.

15 Application or claim for additional amount of employer support payment

(1) If:
(a) an employer (the claimant) believes that he or she has suffered, or will suffer, substantial financial hardship or substantial financial loss because of the absence of an employee on continuous defence service; and
(b) the amount of the employer support payment paid to the claimant under section 12, 13 or 14 in relation to a particular claim period is insufficient to prevent substantial financial hardship or substantial financial loss; and
(c) a sessional fee is not payable in relation to the claimant’s defence service;

the claimant may apply, in writing, to the Director for an additional amount of employer support payment.

(1A) If:

(a) a self-employed member (the claimant) believes that he or she has suffered, or will suffer, substantial financial hardship or substantial financial loss because of the absence of the claimant on continuous defence service; and

(b) the amount of the employer support payment paid to the claimant under section 12, 13 or 14 in relation to a particular claim period is insufficient to prevent substantial financial hardship or substantial financial loss; and

(c) a sessional fee is not payable in relation to the claimant’s or an employee’s defence service;

the claimant may apply, in writing, to the relevant service chief for an additional amount of employer support payment.

Note: A service chief is the only decision-maker for a claim for employer support payment made by a self-employed member who is a member of the chief’s service.

(1B) An application or claim may relate to any number of claim periods.

(2) An application or claim under subsection (1) must be made as soon as reasonably practicable after the first day of the claim period to which the application or claim relates.

(3) After receiving an application or claim:

(a) the Director, Deputy Director, Assistant Director or service chief must, in writing:

(i) approve the application or claim and specify the amount of additional employer support payment, if the claimant has satisfied the Director, Deputy Director, Assistant Director or service chief that the claimant has suffered, or will suffer, substantial financial hardship or substantial financial loss because of the absence of the claimant, or the claimant’s employee, on continuous defence service during the claim period; or

(ii) refuse to approve the application or claim; or

(b) the Director, Deputy Director, Assistant Director or service chief may, in writing, ask the claimant to give him or her further information about the application or claim.

(4) If the Director, Deputy Director, Assistant Director or service chief asks the claimant to give him or her further information under paragraph (3) (b):

(a) the claimant must give him or her the information within 30 days after the day on which the request was made; and

(b) he or she must not approve, or refuse to approve, the application or claim until the earlier of:

(i) the day he or she receives the information; and

(ii) the day after the period mentioned in paragraph (a) expires.
(5) The employer support payment must be paid to the claimant as soon as possible after the application or claim is approved.

(6) A claimant has suffered, or will suffer substantial financial hardship or substantial financial loss in respect of a claim period if the claimant satisfies the Director, Deputy Director, Assistant Director or service chief that:
   (a) it was not possible in the circumstances for the claimant to make adequate arrangements to avoid substantial financial hardship or substantial financial loss caused by the absence of the claimant’s employee during the claim period; and
   (b) the claimant has made, or is making, a reasonable effort to avoid or limit substantial financial hardship or substantial financial loss; and
   (c) any allowances the claimant has received, or is eligible to receive, under any other Determination made under section 58B of the Act are insufficient to avoid substantial financial hardship or substantial financial loss; and
   (d) the claimant applied for the additional payment as soon as reasonably practicable after becoming aware that he or she would suffer substantial financial hardship or substantial financial loss because of the employee’s absence during the claim period.

(7) For this section, a substantial financial loss:
   (a) must be a financial loss that is, or will be, incurred in the ordinary course of the business of an employer or self-employed member because of the absence of a member on defence service; and
   (b) does not include:
      (i) a loss of a remote, speculative or indirect kind; or
      (ii) a loss that has not yet occurred, and is not certain to occur; or
      (iii) a loss of a personal nature or incurred in a personal capacity; or
      (iv) a loss that is incurred, or that may be incurred, otherwise than in the prudent and reasonable conduct of the business.

(8) If the Director, Deputy Director, Assistant Director or service chief rejects an application or claim for an additional amount under subparagraph (3) (a) (ii), he or she must, within 7 days after the decision is made, give the claimant written notice of:
   (a) the decision; and
   (b) the reasons for rejecting the application or claim; and
   (c) if the claimant is an employer and the Director did not make the decision—the claimant’s right to have the decision reconsidered by the Director under section 15D; and
   (d) if the Director made the decision—the claimant’s right to have the decision reviewed by the AAT.

Note Subsection 3AA (3) provides that a Deputy Director or an Assistant Director must not be below the rank of Lieutenant Commander in the Australian Navy, or equivalent, or APS Level 6, as the case may be.
Section 15A

**Availability of supplementary employer support payments**

(1) The Head Cadet, Reserve and Employer Support Division may recommend to the Chief of the Defence Force that an employer support payment should be payable:

(a) in circumstances in which:

(i) an employer support payment is payable in accordance with section 9; or

(ii) an employer support payment is not payable in accordance with section 9 because a sessional fee is payable in relation to defence service; and

(b) to facilitate the provision of a capability that is required by the Defence Force (whether or not for a specified period) and that involves:

(i) a specified part or parts of the Reserves; or

(ii) a specified class or classes of members in the Reserves; or

(iii) a specified member or members of the Reserves.

Note Employer support payment to which this section applies is in addition to any employer support payment permitted under section 9 or 15.

(1A) The Head Cadet, Reserve and Employer Support Division may also recommend to the Chief of the Defence Force that an employer support payment should be payable:

(a) in circumstances in which an employer support payment is not payable in accordance with section 9 because a condition, limitation or restriction in this Determination that is specified in the recommendation cannot be met; or

(b) in order to meet the needs of the Defence Force, in circumstances in which an employer support payment is not payable in accordance with section 9 because a condition, limitation or restriction in this Determination that is specified in the recommendation has not been met; or

(c) to facilitate the provision of a capability that is required by the Defence Force (whether or not for a specified period) and that involves:

(i) a specified part or parts of the Reserves; or

(ii) a specified class or classes of members in the Reserves; or

(iii) a specified member or members of the Reserves; or

(d) as if the condition, limitation or restriction that has not or cannot be met:

(i) did not apply; or

(ii) were modified or replaced in a way specified in the recommendation.

Example

A condition, limitation or restriction may relate to the member’s principal source of income or a business related to the member.
Section 15A

(2) The Chief of the Defence Force may approve the recommendation.

(3) If the Chief of the Defence Force approves a recommendation:
   (a) the Chief of the Defence Force must specify in the approval:
      (i) the part of the Reserves to which the additional payment relates; or
      (ii) the class of members in the Reserves to which the additional payment relates; or
      (iii) the particular member of the Reserves to whom the additional payment relates; and
   (b) for an approval under subsection (1A):
      (i) the Chief of the Defence Force must specify in the approval the conditions, limitations, or restrictions that are taken:
          (A) not to apply; or
          (B) to apply with specified modifications; or
          (C) to have been replaced in a specified way;
          in accordance with the recommendation; and
      (ii) this Determination applies, in relation to:
          (A) the part of the Reserves to which the additional payment relates; or
          (B) the class of members in the Reserves to which the additional payment relates; or
          (C) the particular member of the Reserves to whom the additional payment relates;
          as if those conditions, limitations, or restrictions did not apply, or applied with the specified modifications, or were replaced in the specified way; and
   (c) for any approval — the Chief of the Defence Force may specify in the approval conditions, limitations, or restrictions to which the additional payment is subject, including conditions, limitations or restrictions relating to:
      (i) the period in which additional employer support payment is payable; or
      (ii) a maximum amount of employer support payment in relation to any claim; or
      (iii) the number of claims that may be made in relation to a part, class or member specified under paragraph (a); and
   (d) the Chief of the Defence Force must give a copy of the approval to the Minister.

Note The effect of paragraph (b) is that a self-employed member or the employer of a member is provided with an additional avenue to gain access to a supplementary payment (because the relevant conditions, limitations or restrictions have been changed).
15B Revocation or variation of supplementary employer support payments

(1) The Head Cadet, Reserve and Employer Support Division may recommend to the Chief of the Defence Force that conditions, limitations, or restrictions made under paragraph 15A (3) (b) should be revoked or varied.

(2) A recommendation may propose that the conditions, limitations, or restrictions should be revoked or varied with effect from a date on or after the date of revocation.

(3) The Chief of the Defence Force may approve the recommendation.

(4) If the Chief of the Defence Force approves a recommendation, the Chief of the Defence Force must:
   (a) specify in the approval the date of effect of the revocation or variation; and
   (b) give a copy of the approval to the Minister.

15C Application or claim for supplementary amount of employer support payment

(1) If an employer or self-employed member believes that the employer or self-employed member is entitled to an employer support payment in accordance with arrangements made under section 15A, the employer or self-employed member may apply, in writing, to the Director for an amount of employer support payment.

(2) An application or claim may relate to any number of claim periods.

(3) An application or claim under subsection (1) must be made as soon as reasonably practicable after the first day of the claim period to which the application or claim relates.

(4) After receiving an application or claim, the Director, Deputy Director, Assistant Director or service chief must, in writing:
   (a) approve the application or claim, and specify the amount of employer support payment (which must not exceed any specified maximum amount), if the claimant has satisfied him or her that:
      (i) the claimant is eligible for an additional amount of employer support payment under an approval given under the previous paragraph; and
      (ii) the conditions, limitations or restrictions to which the employer support payment is subject have been met; or
   (b) refuse to approve the application or claim; or
   (c) ask the claimant to give him or her further information about the application or claim.

(5) If the Director, Deputy Director, Assistant Director or service chief asks the claimant to give him or her further information under paragraph (4) (c):
   (a) the claimant must give him or her the information within 30 days after the day on which the request was made; and
(b) he or she must not approve, or refuse to approve, the application or claim until the earlier of:
   (i) the day he or she receives the information; and
   (ii) the day after the period mentioned in paragraph (a) expires.

(6) The employer support payment must be paid to the claimant as soon as possible after the application or claim is approved.

(7) The employer, self-employed member, business or company is liable for any income tax payable in respect of the employer support payment under the *Income Tax Assessment Act 1936* or the *Income Tax Assessment Act 1997*.

(8) If the Director, Deputy Director, Assistant Director or service chief rejects an application or claim for a supplementary amount under subsection (4), he or she must, within 7 days after the decision is made, give the claimant written notice of:
   (a) the decision; and
   (b) the reasons for rejecting the application or claim; and
   (c) if the Director or service chief did not make the decision—the claimant’s right to have the decision reconsidered by the Director or service chief under section 15D; and
   (d) if the Director or service chief made the decision—the claimant’s right to have the decision reviewed by the AAT.

*Note* Subsection 3AA (3) provides that a Deputy Director or an Assistant Director must not be below the rank of Lieutenant Commander in the Australian Navy, or equivalent, or APS Level 6, as the case may be.
Part 5  

Review

15CA  Death on defence service

(1) If a member dies while on defence service, an amount of employer support payment that may be claimed in relation to the member’s service is an amount equal to the employer support payment that would have been payable for defence service undertaken by the member for a period of 4 weeks.

(2) The amount under subsection (1) is in addition to any entitlement to other payments of employer support payment that had been established under this Determination in relation to the member’s service at the time of the member’s death.

Note  If a member dies, his or her employment terminates and any prospective entitlement to employer support payment for the period after the date of death ceases, except for the payment mentioned in subsection (1).

(3) For subsection (1), it is assumed that the period of 4 weeks would not be subject to any interruptions, restrictions or limitations mentioned in this Determination that would affect the amount of employer support payment to be worked out.

15D  Reconsideration of decisions—employers

(1) This section applies if an employer that is an applicant or claimant is dissatisfied with a decision made by a decision-maker (other than a service chief or the Director) under a provision in the table.

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<td>12</td>
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</table>

(2) The employer may, by notice in writing to the Director, request the Director to reconsider the decision.

(3) The employer must give the request to the Director within:
Section 15E

(a) 30 days after the day on which the employer first receives notice of the decision; or
(b) any further period that the Director allows.

(4) The employer must set out in the request the reasons for the reconsideration.

(5) The Director may ask, in writing, the employer to give him or her further information about the application or claim.

(6) If the Director asks the employer to give him or her further information under subsection (5):
   (a) the employer must give the Director the information within 30 days after the day on which the request was made; and
   (b) the Director must not approve, or refuse to approve, the application or claim until the earlier of the following days:
       (i) the day the Director receives the information;
       (ii) the day after the period mentioned in paragraph (a) expires.

(7) The Director must reconsider the application or claim and the decision to refuse to approve the application or claim and must, in writing:
   (a) confirm the decision; or
   (b) substitute a new decision.

15E Reconsideration of decisions—self-employed member

(1) This section applies if a self-employed member that is an applicant or claimant is dissatisfied with a decision made by a decision-maker (other than the relevant service chief) under a provision in the table.

   Note: A service chief is the only decision-maker for a claim for employer support payment made by a self-employed member who is a member of the chief’s service.

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</table>

(2) The self-employed member may, by notice in writing to the relevant service chief, request the service chief to reconsider the decision.

(3) The self-employed member must give the request to the service chief within:
   (a) 30 days after the day on which the self-employed member first receives notice of the decision; or
   (b) any further period that the service chief allows.
(4) The self-employed member must set out in the request the reasons for the reconsideration.

(5) The service chief may ask, in writing, the self-employed member to give him or her further information about the application or claim.

(6) If the service chief asks the self-employed member to give him or her further information under subsection (5):
   (a) the self-employed member must give the service chief the information within 30 days after the day on which the request was made; and
   (b) the service chief must not approve, or refuse to approve, the application or claim until the earlier of the following days:
       (i) the day the service chief receives the information;
       (ii) the day after the period mentioned in paragraph (a) expires.

(7) The service chief must reconsider the application or claim and the decision to refuse to approve the application or claim and must, in writing:
   (a) confirm the decision; or
   (b) substitute a new decision.

16 Review by AAT of decisions

Application may be made to the Administrative Appeals Tribunal for review of a decision made by the Director under:
   (a) a provision mentioned in the table in subsection 15D (1); or
   (b) subsection 15D (7).
Notes to the Defence (Employer Support Payments) Determination 2005

Note 1

The Defence (Employer Support Payments) Determination 2005 (in force under subsection 58B (1) of the Defence Act 1903) as shown in this compilation is amended as indicated in the Tables below.

For all relevant information pertaining to application, saving or transitional provisions see Table A.

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Note 2

Section 8—Schedule 1 [items 37 and 63] of the Defence (Employer Support Payments) Amendment Determination 2012 (No. 1) provides as follows:

[37] Paragraph 8 (4B) (c)

substitute

(c) if the Director or service chief did not make the decision—the claimant’s right to have the decision reconsidered by the Director or service chief under section 15D; and

(d) if the Director or service chief made the decision—the claimant’s right to have the decision reviewed by the AAT.

[63] Further amendments

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The proposed amendments are misdescribed and are not incorporated in this compilation.
Table A  

Application, saving or transitional provisions

**Defence Determination 2003 (Employer Support Payments) Amendment Determination 2003 (No. 1)**

4  **Transitional**

The amendments made by this Determination apply only in relation to a claim for employer support payment:
(a) made on or after 1 July 2003; and
(b) relating to a period of defence service the first day of which is on or after 1 July 2003.

**Defence Determination 2002 (Employer Support Payments) Amendment Determination 2005 (No. 1)**

4  **Transitional**

The amendments made by Schedule 1 apply in relation to a claim for employer support payment:
(a) made on or after 1 September 2005; and
(b) that relates to a period of defence service the first day of which is on or after 1 September 2005.

**Defence (Employer Support Payments) Amendment Determination 2012 (No. 1)**

4  **Transitional**

(1) The amendments made by Schedule 1 apply in relation to a claim for employer support payment:
(a) made on or after 1 July 2012; and
(b) that relates to a period of defence service the first day of which is on or after 1 July 2012.

(2) However, if, immediately before 1 July 2012:
(a) a person had been required by subsection 3B (6) of the Defence (Employer Support Payments) Determination 2005 to update information at the end of the period of 3 years after the last time the information was current; and
Table A

(b) the period of 3 years had not ended;
subsection 3P (5) of that Determination, inserted by Schedule 1, does not apply in relation to the person for the remainder of that period of 3 years.

Note: The former subsection 3B (6) required a person to update information within a period of 3 years. That subsection has been replaced by a new subsection 3P (5) which requires a person to update information within a shorter period.