

**CHIEF OF THE DEFENCE FORCE
CAPABILITY EMPLOYER SUPPORT PAYMENT APPROVAL**

References:

- A. Defence Determination 2012/68 Reserve employer support payments
- B. CDF Health Approval 2009/1100022/1 signed 10 May 16

1. To facilitate the provision of required ADF health services capabilities, I approve capability employer support payments, as authorised by section 53 of *Defence Determination 2012/68 Reserve employer support payments* (Ref A), in accordance with the stated conditions, limitations and restrictions.

Eligible claimants

2. Claimants eligible for capability employer support payments are:
- a. Employers of medical, dental, or allied health officers in the ADF Reserves who are within any of the classes of health specialisation listed in Annex A.
 - b. Employers of nursing officers in the ADF Reserves who are within any of the classes of nursing specialisation listed in Annex A.
 - c. Employers of medical, dental, nursing or allied health officers in the ADF Reserves within other classes of health specialisation, if agreed by a Service Chief (or the Chiefs delegate) after consultation with Surgeon General Australian Defence Force (SGADF) or SGADF's delegate, that this class should be entitled to additional ESPS payments under the authority of this Approval.
 - d. Employers include self-employed Reservists.

Date of Effect

3. This approval is effective from the date of signature of this document.

Transitional provision

4. Service that was commenced before the date of signature of this document and was eligible service under the previous CDF Approval (Ref B) is taken to be eligible service under this approval.

GENERAL PROVISIONS

5. For an employer to be entitled to capability employer support payments in accordance with section 53 of the Determination, the officer must:
- a. have completed a qualifying period of two weeks of continuous Defence service, while employed by the employer and within the current financial year, whether as a single period or in multiple periods of service:

- (1) as long as each period of service comprises a minimum of five consecutive days; or
 - (2) if service is related to pre-deployment training or Aero Medical Evacuation (AME) comprises a minimum of three consecutive days; and
- b. have, while employed by the employer, rendered a period of Defence service as a medical, dental, nursing or allied health officer, either on continuous full-time service or utilising ordinary reserve service days:
- (1) as long as each period of service comprises a minimum of five consecutive days; or
 - (2) if service is related to pre-deployment training or AME comprises a minimum of three consecutive days, and
- c. have provided service which utilises the officer's health qualifications or is of a career development nature:
- (1) on an ADF operation;
 - (2) undertaking pre-deployment training for an ADF operation;
 - (3) related to an AME;
 - (4) on a naval ship at sea (whether an RAN or foreign ship);
 - (5) as part of the Army Aboriginal Community Assistance Program (AACAP);
 - (6) as part of the Post Operation Psychologist Screening (POPS) program, Return to Australia Psychologist Screening (RTAPS) program or other mandated post operational screening program;
 - (7) on a training exercise (whether an ADF exercise or a foreign/combined exercise with ADF participation);
 - (8) on a training course (whether an ADF course or a foreign/combined course with ADF participation), including:
 - (a) as a student, instructor, officer conducting, or
 - (b) as a health officer supporting delivery of the course;
 - (9) as a Health Officer required for duty on an Australian Navy Cadet (ANC), Australian Army Cadet (AAC) or Australian Air Force Cadet (AAFC) camp or training; or
 - (10) rendering civil aid, humanitarian assistance or disaster relief.

6. In addition to service under paragraph 5 c, other service that meets a Service requirement or need may be authorised in writing by a Service Chief (or the Chief's delegate) as eligible service under this Approval. If required, technical health subject matter expert advice may be sought from SGADF or an officer authorised by SGADF.

Note: Examples might include participation, other than as a health officer, on a training exercise; participation in a non-health, non-career development course; or provision of other medical support or duty. The service does not need to utilise the officer's health qualifications or to involve an activity of a career development nature.

7. Service rendered on pre-deployment training or related to an AME is the only exception to the *minimum of five consecutive days* requirement. In these cases the minimum period of service is three consecutive days. For ESPS purposes, a period of five days will count as one week. Days six and seven are also included within the first week (with the second week commencing on day eight). The daily entitlement is determined at a pro-rata rate of 0.2 week for each day, at the relevant amount specified in Annex A, up to a maximum of 1.0 for each week.

Decision-maker

8. The decision-maker for a claim is the member's Service Chief or a delegate to whom the member's Service Chief has delegated determination of claims in accordance with section 5 of the Determination.

Qualifying Period

9. When a Reservist's service ceases before the end of the annual two week qualifying period, the decision-maker may approve a portion of the capability employer support payment to the claimant for the period of service that has been completed. This may only occur in the following situations:

- a. The Reservist dies.
- b. The Reservist becomes medically unfit and cannot complete the period of service because of physical or mental incapacity not within the member's control.
- c. The decision-maker accepts that the Reservist cannot complete the two week qualifying period for reasons not within the member's control.

Amount Payable

10. Once the qualifying period conditions have been satisfied, a claimant is entitled to a capability employer support payment from the first day of the service detailed in paragraphs 5c or 6. The amounts specified in Annex A (as updated annually) are the maximum amounts payable in respect of a full-time employee (unless the claim is submitted on a financial hardship basis). When a medical, dental, nursing or allied health officer is employed on a part time basis, the employer is entitled to a capability employer support payment calculated on a pro-rata basis.

11. The amounts specified in Annex A are to increase each financial year by the same percentage amount as applies to standard Employer Support Payment Scheme (ESPS) payments under Ref A. This will involve an annual increase, based on trend estimates for Average Weekly full-time Ordinary Time Earnings (AWOTE), as released by the Australian Bureau of Statistics each year. The annual increase to the amounts in Annex A will take effect on 01 July of each year. The new amounts for each financial year will be promulgated on the Defence Reserves Support website (www.defencereservessupport.gov.au).

12. Claimants are entitled to be paid in accordance with payment rates detailed in Annex A (as updated annually).

13. Claimants employing Reservists with specialisations not listed at Annex A, if agreed to be eligible by a Service Chief's delegate and SGADF/delegate in accordance with paragraph 2c are entitled to receive payment at a rate agreed by the Service Chief's delegate and SGADF/delegate. In determining a rate, consideration will be given to the professional qualifications and competency level of the health officer and to comparable categories already listed at Annex A of this Approval.

14. Week has the same meaning as it has in Ref A. A period of five days following completion of the qualifying period will count as one week for ESPS purposes. Days six and seven are included within the first week. In the event that the continuous Defence service extends beyond one week, the second week commences on day eight. Eligibility for the full second week's payment is reached on day 12 (ie the fifth day of the second week). The third week commences on day 15 and so on.

15. While a public holiday may be included as a day for the purpose of determining the duration of a period of service, the public holiday is excluded from the calculations for payment unless the Reservist worked a full day on that day. If the Reservist works a full day on a public holiday, that day is eligible for a capability employer support payment.

16. While a sick day or stand-down day may be included as a day for the purpose of determining the duration of a period of service, the sick day or stand-down day is excluded from the calculations for payment unless the Reservist worked on part of that day.

Impact of civil practice support allowance

17. When a medical officer is entitled to a Civil Practice Support Allowance (CPSA) payment for the period of service detailed in paragraphs 5 or 6, the amount payable to the employer under Annex A is to be reduced by the amount of CPSA that is payable. When the medical officer is employed in an employment arrangement where the medical officer is employed by an employer (such as a hospital) but also exercises a right of private practice, then the reduction is to be applied only to that payment that is payable to the medical officer. Should such a reduction reduce the amount payable to the medical officer to a negative figure, then the negative figure is to be disregarded and the amount payable to the medical officer is taken to be zero.

Example: LTCOL A is a General Surgeon with a full-time functioning civil medical practice. He undertakes a 71 day (10.2 week) operational deployment to the Middle East Region. This Approval provides a payment rate of \$8,340.92 per week (for FY 2015/16) for a full-time General Surgeon. However, LTCOL A is also entitled to CPSA for his deployment and his total ESPS benefit must be reduced by his total CPSA benefit. LTCOL A entitlement for the deployment should be calculated as follows:

- \$85,077.38 in ESPS payments ($\$8,340.92 \times 10.2$ weeks) reduced by
- \$16,228.57 in CPSA payments (71 days \times \$228.5714). See note 2

- \$68,848.81 payable in ESPS payments.

Notes:

1. The CPSA is administered by the relevant Service authorities as identified on the CPSA claim form (AD 387). It is not administered by the ESPS Directorate.
2. CPSA payments may be taxable. When taxable, the Defence Force Pay Accounting Centre will deduct a component of the payment to meet the tax liability (so, in these cases, the member will not get \$1,600 per week CPSA payment in their bank account).
3. ESPS payments are always taxable. However, the claimant is responsible to declare the ESPS payment on their business tax return; no component of the payment is deducted to meet the tax liability.

Impact of standard Employer Support Payment

18. Any capability employer support payment at the rate listed in Annex A includes any entitlement to standard ESPS payments. When the employer of a medical, dental, nursing or allied health officer is entitled to claim standard ESPS payments for the period of service detailed in paragraphs 5 or 6, the amount payable to the employer under Annex A is to be reduced by the amount of standard ESPS payment that has been paid.

Part time employment

19. When a medical, dental, nursing or allied health officer is employed on a part time basis and works less than 35 hours per week, any capability employer support payment is calculated on a pro-rata basis using 35 hours as the ordinary hours for a full-time employee.

Example: Dr X's a Public Health Physician who works 25 hours per week in a public hospital. During a deployment, the public hospital is entitled to 25/35 of the weekly payment rate (25/35 x \$6,749.56 per week).

Multiple employment arrangements

20. When a medical, dental, nursing or allied health officer is employed in more than one employment arrangement (e.g. a medical officer who is employed within the public health sector but also exercises a right of private practice), then:

- a. the capability employer support payments will be calculated having regard to the number of hours worked for each employer;
- b. the capability employer support payments will be treated as separate payments and not apportioned between the employers; and
- c. the limitation on both full-time and part-time employers receiving ESPS payments will not apply.

Example: Dr X's a General Surgeon who works 50 hours per week. Of this, 35 hours is for a public hospital and 15 hours is in private practice. During a deployment, the public hospital is entitled to payment at the weekly payment rate (\$8,340.92 per week) on a full-time basis and Dr X's entitled to 15/35 of the weekly payment rate (15/35 x \$8,340.92 per week).

If Dr X's eligible to receive CPSA, Dr X's entitlement should be reduced by the amount of the CPSA. If the CPSA exceeds the amount of Dr X's entitlement, then the ESPS amount payable to or by Dr X's zero. The payment to the public hospital is unaffected.

Restrictions

21. An employer is not entitled to more than one capability employer support payment in respect of a single medical, dental, nursing or allied health officer. Should an officer match the description of more than one class as detailed in Annex A, the employer will only be entitled to a capability employer support payment in respect of the class that is the predominant civilian occupation of the officer.

Eligibility

22. In addition to meeting the conditions detailed in paragraphs 5 and 6, claimants must meet specific eligibility criteria and provide a fully completed ESPS claim form with supporting documentation. Different criteria and documentation requirements apply to self-employed Reservist claimants.

EMPLOYER CLAIMS

23. For an employer to be eligible for a capability employer support payment:

- a. The Reservist must be a bona fide employee of the employer.
- b. The Reservist must have been employed by the employer for at least three months before the start of the period of absence on Defence service to which the claim relates.
- c. The employer must have released the employee to undertake the Defence service.
- d. The Reservist must not undertake the Defence service on annual leave, long service leave or any form of accrued leave entitlement.

Note: If the Reservist undertakes part or all of the Defence service on annual leave, long service leave or any form of accrued leave entitlement, then no capability employer support payment is payable in respect of those days during the period of Defence service when these forms of leave were utilised.

- e. The Reservist must not perform work for the business during the period of Defence service (except work in an emergency situation or work authorised in writing by the Reservist's commanding officer or branch head).

Notes:

1. If the Reservist performs work for the business during the period of Defence service (other than work in an emergency situation or work that has been authorised in writing by the Reservist's commanding officer or branch head), no capability employer support payment is payable in respect of those days during the period of Defence service when this work occurred.
 2. Any written approval from the Reservist's commanding officer or branch head must specify what work the member is authorised to perform and that the days on which the member performs such work may be counted towards a period of absence on Defence service for the purpose of eligibility for employer support payments.
- f. If the Reservist is undertaking unprotected voluntary continuous full-time service, the employer must have provided an undertaking to the Reservist to comply with the requirements of the *Defence Reserve Service (Protection) Act 2001* as if the service being rendered was protected service.
24. An employed Reservist is deemed, by virtue of being a medical, dental, nursing or allied health officer, to satisfy the requirement in section 36 of the Determination that the payment is a cost-effective means of delivering the required capability.

Documentation requirements - Employer claims

25. The following documentation must be provided with the first ESPS claim form for the financial year:
- a. Evidence of the Reservist's employment (e.g. payment summary, payroll slip, group certificate, employment contract or other similar evidence) immediately prior to the first period of claimed Defence service in the relevant financial year.
 - b. Evidence of the Reservist's normal weekly hours of work for the employer.

SELF-EMPLOYED RESERVIST CLAIMS

26. A Reservist is classed as self-employed if the Reservist conducts a recognised profession or bona fide business as:
- a. a sole trader; or
 - b. a partner in a partnership; or
 - c. a trustee of a trust; or
 - d. a director of a company; or
 - e. an employee of a family member who is a sole trader; or
 - f. an employee of a company in which the Reservist has a controlling interest.
27. A Reservist is deemed to have a controlling interest in a company if the member, the member's relatives, or the member and the member's relatives collectively:

- a. control more than 20% of the voting power of the company, or
- b. receive more than 20% of the dividends of the company, or
- c. have the right to receive more than 20% of any distribution of the capital of the company.

28. If the Reservist is not, and never has been, a director of the company, has never owned a significant shareholding in the company and is not in a position to control the direction of the company, the Reservist does not have a controlling interest in the company.

29. A self-employed Reservist is deemed, by virtue of being a medical, dental, nursing or allied health officer, to satisfy the requirement in section 36 of the Determination that the payment is a cost-effective means of delivering the required capability.

30. For a self-employed Reservist to be eligible for a capability employer support payment:

- a. the self-employed Reservist must
 - (1) have a bona fide functioning medical, dental or allied health practice; or
 - (2) be contracting as a registered health practitioner to a bona fide functioning professional medical, dental or allied health practice; or
 - (3) conduct a recognised business; and
 - (a) the business must be bona fide and operating; and
 - (b) the business must provide the Reservist's principal source of income (PSI) and have done so for a continuous period of at least the previous twelve months prior to the period of continuous Defence service being used to establish eligibility; or
 - (c) the business must provide the Reservist's principal source of employment (PSE) and have done so for a continuous period of at least the previous twelve months prior to the period of continuous Defence service being used to establish eligibility.

31. A bona fide functioning professional medical, dental or allied health practice is a properly established practice in which a registered health practitioner or practitioners clinically attend to patients on a part-time or full-time basis.

Documentation requirements - Self-employed Reservist claims

32. Different documentation requirements apply for self-employed Reservists depending on whether or not they have a bona fide functioning medical, dental or allied health practice or are contracting to a bona fide functioning medical, dental or allied health practice.

33. **Reservists with a functioning medical, dental or allied health practice or who are contracting to a functioning medical, dental or allied health practice.** The Reservist does not have to provide evidence that the practice is legitimate, trading or operating, and provides the Reservist's principal source of income. Nor does the Reservist have to provide evidence of the Reservist's normal weekly hours of work. In these cases, the Reservist must provide a fully completed ESPS claim form. Annually (with the first claim of each financial year), certification is required from the appropriate Service Chief, or their delegate, covering the following points:

- a. that the self-employed Reservist has a functioning medical, dental or allied health practice or is contracting as a registered health practitioner to a functioning medical, dental or allied health practice;
- b. what the predominant medical speciality or discipline of the Reservist is and, if this speciality or discipline is not listed at Annex A, what other medical speciality or discipline (if any) the Reservist would be classified as having;
- c. whether the Reservist practices in the medical, dental or allied health practice on a full-time (35 hours or more per week) or part-time (less than 35 hours per week) basis; and
- d. in the case of a Reservist who practices on a part-time basis, the number of hours per week the Reservist practices in the medical, dental or allied health practice (if known).

34. Certification of the points detailed in paragraph 33 may also be provided by accessing information on a Defence Health Data Base, which has been certified in writing by SGADF as suitable for this purpose.

35. When an ESPS claim is received, if there has been a change in the Reservist's regular pattern of employment, the ESPS decision-maker is required to consider whether the member's employment in the business remains on a full-time or part-time basis, or may even be classified as casual work. Extended absences from the Reservist's practice may require substantiation of working hours and other documentation may also be requested by the decision-maker.

36. In order to determine eligibility for ESPS payments at the rate sought on the claim form, the decision-maker may request further documentation relating to the Reservist's working hours within their employment arrangement and may apply the Working Hours test in the ESPS Defence Determination. Based on the results of the Working Hours test, the decision-maker may determine whether to approve payment at the rate claimed or whether the ESPS payment rate should be reduced. If the employment is classified as casual work, the claim must be rejected.

Example. MAJ B is a psychologist who submits a claim on the basis of working full-time hours in her psychology practice. Over the preceding 26 week period prior to the claim dates, MAJ B was regularly away from her practice; she only worked in her practice for a few weeks over this period, averaging 10 hours per week in her practice over the 26 week period. The ESPS decision-maker approves her claim at the part-time (10 hours per week) rate.

37. When a self-employed Reservist operates a medical, dental or allied health practice or is contracting to a medical, dental or allied health practice on a part-time basis

and Service Chief or their delegate (or a database certified by SGADF) cannot certify the Reservist's working hours, then the decision-maker will require evidence of normal work hours be provided in order to determine the entitlement to additional ESPS payments.

38. **Reservists without a medical, dental or allied health practice or who are not contracting to a medical, dental or allied health practice.** The self-employed Reservist may submit a claim under the PSI or PSE provisions of Ref A.

39. Any claim for a capability employer support payment, submitted under the PSI or PSE provisions, must provide the standard supporting documentation required by Ref A and must meet the specific criteria detailed in Ref A for approval of those claims. This includes providing evidence of the Reservist's normal weekly hours of work with the first ESPS claim form for the financial year.

Note: Under Ref A approval of PSE claims is limited to a maximum total period of two years, unless exceptional circumstances apply.

INJURY OR ILLNESS ON DEFENCE SERVICE

40. When a medical, dental, nursing or allied health officer, within any of the classes of health specialisation listed in Annex A (or as agreed to be eligible by a Service Chief/delegate and SGADF/delegate):

- a. suffers an injury or illness as a result of the officer's service on a period of Defence service as detailed in paragraphs 5 or 6; and
- b. the injury or illness:
 - (1) prevents the officer from returning to work for at least five continuous days; or
 - (2) prevents the officer from continuing at work for at least five continuous days; or
 - (3) prevents the officer from performing full duties at work for at least five continuous days;

then the decision-maker may approve capability employer support payments in respect of the injury or illness.

41. When the injury or illness prevents the officer from returning to work or continuing to work, the decision-maker may approve capability employer support payment at the payment rates detailed in paragraph 12. When the injury or illness prevents the officer from performing full duties at work, the decision-maker may approve payment of capability employer support payments at a rate which is less than the payment rates detailed in paragraph 12.

42. Any payment authorised under paragraph 41 is to cease at the earliest of:
- a. when the officer returns to work or is reasonably able to return to work; or
 - b. when the officer's claim is rejected (after any appeals are finalised) by the

Department of Veterans' Affairs (OVA); or

- c. if the officer is an employee - when the officer ceases to receive medical treatment from JHC and ceases to be entitled to compensation payments from DVA; or
- d. if the officer is a self-employed Reservist who is a partner in a partnership that is not a family partnership - when the officer ceases to receive medical treatment from JHC and ceases to be entitled to compensation payments from DVA; or
- e. if the officer is a self-employed Reservist who is a director of a company and does not have a controlling interest in that company - when the officer ceases to receive medical treatment from JHC and ceases to be entitled to compensation payments from DVA; or
- f. if the officer is a self-employed Reservist (other than as detailed in sub-para d and e above) - when the officer ceases to receive medical treatment from JHC and commences to receive compensation payments from DVA; or
- g. when payments (including any payments made in relation to the period of Defence service) reach the maximum payment period of 52 weeks.

SUBSTANTIAL FINANCIAL HARDSHIP

43. If a claimant believes that they have suffered, or will suffer, substantial financial hardship because of the absence of the medical, dental, nursing or allied health officer on continuous Defence service and the amount of any capability employer support payment to the claimant under this approval is insufficient to prevent substantial financial hardship; then the claimant may apply, in writing, for an additional ESPS amount.
44. The decision-maker may approve or refuse the claim.
45. A claimant has suffered, or will suffer substantial financial hardship in respect of a claim period if the claimant satisfies the decision-maker that:
- a. the claimant has suffered, or will suffer, substantial financial hardship caused by the absence of the claimant's employee on defence service (or caused by absence due to injury or illness resulting from the member's defence service) during the claim period; and
 - b. it was not possible in the circumstances for the claimant to make adequate arrangements to avoid substantial financial hardship caused by the absence of the claimant's employee during the claim period; and
 - c. the claimant has made, or is making, a reasonable effort to avoid or limit substantial financial hardship; and
 - d. any allowances the claimant has received, or is eligible to receive, including any ESPS payment at the normal level, are insufficient to avoid substantial financial hardship; and
 - e. the claimant applied for the additional payment as soon as reasonably practicable after becoming aware that he or she would suffer substantial financial hardship

because of the employee's absence during the claim period.

46. Eligibility to receive CPSA does not affect eligibility to apply for an additional ESPS payment on a hardship basis.

CLAIMS FOR STANDARD PAYMENTS

47. When a claimant submits a claim for multiple periods of service and at least one claim period is for a period of service as detailed in paragraphs 5 or 6, then any other claim period on the claim form that is not for a period of service as detailed in paragraphs 5 or 6 may be determined by a decision-maker as detailed in paragraph 8 under the arrangements specified in this approval.

48. Only the periods of service as detailed in paragraphs 5 or 6 are eligible for capability employer support payments at the payment rates as specified in paragraph 12.

49. Any claim period that is not for a period of service as detailed in paragraphs 5 or 6 is not eligible for a capability employer support payment at the payment rates as specified in paragraph 12. Such claim periods, if approved, are to be paid at the standard ESPS payment rate as detailed in Ref A.


SUBMISSION OF CLAIMS

50. Applications for payment under the ESPS must be lodged online using the Online Claim System.

51. The Online Claim System is found at www.defencereservessupport.gov.au

PREVIOUS DETERMINATION

52. For service commenced on or after this document was signed, the previous CDF Approval (Ref B) is revoked with effect from the below date.



Angus J Campbell, AO, DSC
General
Chief of the Defence Force

3 April 2020

Annex:

A. Classes of health specialisation and payment rates