



## Defence Determination 1996/19

I, MICHAEL ANTHONY FRAWLEY, Acting Assistant Secretary, Government Authorities Branch, Department of Industrial Relations, acting under a delegation made by the Minister for Industrial Relations under Defence Force Regulation 72A, make the following Determination under section 58B of the *Defence Act 1903*.

Dated 24 May 1996

M.A. FRAWLEY  
Acting Assistant Secretary  
Government Authorities Branch  
Department of Industrial Relations

### 1. Citation

1.1 This Determination may be cited as Defence Determination 1996/19.

[NOTE: This Determination commences on the date on which it is made: see *Defence Act 1903*, subsection 58B(4).]

### 2. Amendment

2.1 Determination 509, Dwelling Purchase or Sale Expenses Allowance, as amended<sup>1</sup>, is amended as set out in this Determination.

### 3. Clause 2 (Definitions)

3.1 Definition of "dwelling":  
Omit the definition, substitute:

"dwelling" means a house in Australia in which -

(a) a member lives while posted to a locality; and

(b) an eligible person has a registered proprietary interest,

and includes a flat or other dwelling forming part of a building, but does not include a caravan or a mobile home;”.

3.2 Definition of “eligible person”:

Omit the definition, substitute:

“‘eligible person’ means a member or the member’s spouse, if the spouse normally lives with the member;”.

3.3 Definition of “family”, paragraph (d):

Omit “an approving authority”, substitute “the Chief of the Defence Force under clause 6”.

3.4 Definition of “long term duty”:

Omit the definition.

3.5 Definition of “married quarters”:

Omit the definition.

3.6 Definition of “member”:

Omit “the termination of a member’s service”, substitute “ceasing to be a member”.

3.7 Definition of “member with a family”:

Omit the definition.

3.8 Definition of “member without a family”:

Omit the definition.

3.9 Definition of “Permanent Force”:

Omit the definition.

3.10 Before the definition of “removal”, insert the following definition:

“‘posting’ means a posting for a period that is intended to be of at least 12 months, and ‘posted’ has a corresponding meaning;”.

3.11 Before the definition of “removal”, insert the following definition:

“‘purchase’, in relation to a dwelling, means a completed purchase of the dwelling;”.

## 3.12 Definition of "removal":

Omit the definition.

## 3.13 Definition of "Reserve Forces":

Omit the definition.

## 3.14 Before the definition of "Service accommodation", insert the following definition:

“‘sale’, in relation to a dwelling, means a completed sale of the dwelling, and ‘sell’ has a corresponding meaning;”.

## 3.15 Definition of "Service accommodation":

Omit the definition.

## 3.16 Definition of "solicitor's fees and disbursements":

Omit "pest control", substitute "pest inspection".

**4. Clause 3 (Interpretation)**

## 4.1 Omit the clause, substitute:

**Locality of posting - member posted to a ship**

“3. In this Determination, a reference to a locality, in relation to a member's posting, includes a location in which a member's family lives while the member is posted to a seagoing ship.”.

**5. New clause 3A**

## 5.1 After clause 3, insert:

**Locality of posting - Category MS member**

“3A. For the purposes of this Determination, a member is taken to be posted -

- (a) while the member is a Category MS member - to the locality in which the member's family is living; and
- (b) when the member ceases to be a Category MS member - to the member's locality of posting on the day the member ceases to be a Category MS member.”.

**6. Clause 5 (Interpretation)**

6.1 Omit "referred to in clause 8 or 9", substitute "referred to in clause 8 or paragraph 9(a)".

6.2 Omit “, in relation to the member,”.

**7. Clause 6 (Approving authorities)**

7.1 Omit the clause, substitute:

**Approval of person as family member**

“6. The Chief of the Defence Force may approve a person as a member of a member’s family, having regard to -

- (a) the financial position of the person;
- (b) the degree of illness or infirmity of the person;
- (c) the degree of dependency of the person on the member;
- (d) the role that the person plays in the member’s household;
- (e) the relationship of the person to the member; and
- (f) any other factor relevant to the relationship between the person and the member.”.

**8. Clause 7 (Approving authorities)**

8.1 Omit the clause.

**9. Clause 7A (Approving authorities)**

9.1 Omit the clause.

**10. Clause 8 (Allowance payable for initial purchase of dwelling)**

10.1 Omit the clause, substitute:

“8. A member who is on a posting is entitled to an allowance for the purchase of a dwelling, if an eligible person incurs costs associated with the purchase and the member has not previously received an allowance under this Determination.”.

**11. Clause 9 (Allowance payable for purchase or sale of dwelling)**

11.1 Omit the clause, substitute:

“9. A member is entitled to an allowance -

- (a) for the purchase of a dwelling if an eligible person incurs costs associated with the purchase as a consequence of the member’s posting to another locality, and the previous allowance to which a member was entitled under this Determination was a sale allowance; or

- (b) for the sale of a dwelling if an eligible person incurs costs associated with the sale as a consequence of the member's posting to another locality, and the previous allowance to which a member was entitled under this Determination was a purchase allowance.”.

**12. Clause 10 (Allowance payable for sale on ceasing to be a member)**

12.1 Omit the clause, substitute:

“10. A member who ceases to be a member is entitled to an allowance for the sale of a dwelling at the final locality of posting, if -

- (a) an eligible person incurs costs associated with the sale;
- (b) the member moves to another locality on ceasing to be a member; and
- (c) the previous allowance to which a member was entitled under this Determination was a purchase allowance.”.

**13. Clause 11 (Allowance payable on sale of dwelling)**

13.1 Omit the clause.

**14. Clause 12 (Conditions relating to allowance on purchase)**

14.1 Omit the clause.

**15. Clause 13 (Conditions relating to allowance on purchase)**

15.1 Omit the clause.

**16. Clause 14 (Conditions relating to allowance on purchase)**

16.1 Omit the clause.

**17. Clause 15 (Conditions relating to allowance on purchase)**

17.1 Omit the clause.

**18. Clause 16 (Conditions relating to allowance on purchase)**

18.1 Omit the clause.

**19. Clause 17 (Conditions relating to allowance on purchase)**

19.1 Omit the clause.

**20. Clause 18 (Conditions relating to allowance on purchase)**

20.1 Omit the clause, substitute:

## Dual entitlement

“18. If a member and the member’s spouse are both members, only one of those members is entitled to an allowance for the purchase or sale of a dwelling.”.

**21. Clause 19 (Conditions relating to allowance on sale)**

21.1 Omit the clause.

**22. Clause 19A (Conditions relating to allowance on sale)**

22.1 Omit the clause.

**23. Clause 20 (Conditions relating to allowance on sale)**

23.1 Omit the clause.

**24. Clause 21 (Conditions relating to allowance on sale)**

24.1 Omit the clause.

**25. Clause 22 (Conditions relating to allowance on sale)**

25.1 Omit the clause.

**26. Clause 23 (Posting back to locality of previous posting)**

26.1 Omit the clause, substitute:

“23.1 If -

- (a) a member is or has been entitled to an allowance for the purchase of a dwelling in a locality (the first locality);
- (b) on the member’s next posting, an eligible person makes a contract to purchase a dwelling in another locality (the second locality), and intends to sell a dwelling in the first locality; and
- (c) the member is posted back to the first locality within the time limit specified in paragraph 27.1(b) for the sale of a dwelling in that locality,

the member is entitled to an allowance for -

- (d) the sale of the dwelling in the second locality; and
- (e) costs incurred by an eligible person in connection with the sale of the dwelling in the first locality and purchase of the dwelling in the second locality, if -

- (i) the contract for the sale or purchase, as the case requires, is made, but not necessarily completed, before written notification of the posting back to the first locality is issued; and
- (ii) the costs are incurred before written notification of the posting back to the first locality is issued.

“23.2 If a member is entitled to an allowance under subclause 23.1, the allowance is disregarded for the purpose of clause 9 in establishing the previous allowance to which a member was entitled under this Determination.”.

**27. Clause 24 (Conditions relating to posting back to locality of previous posting)**

27.1 Omit the clause.

**28. Clause 25 (Time limit on purchase of dwelling)**

28.1 Omit the clause, substitute:

“25. A member is not entitled to an allowance for the purchase of a dwelling at a locality unless -

- (a) at the time the contract for the purchase is made, it is intended that the member serve in the locality for a further period of at least 12 months (or, in the case of a Category MS member, it is intended that the member will remain a Category MS member for a further period of at least 12 months); and
- (b) the contract is made within a period beginning when written notification of posting to the locality is issued and ending four years after the member commences service at the locality.”.

**29. Clause 26 (Time limit on purchase or sale of dwelling)**

29.1 Omit the clause.

**30. Clause 27 (Time limit on sale of dwelling)**

30.1 Omit the clause, substitute:

“27.1 A member is not entitled to an allowance for the sale of a dwelling at a locality unless the contract for the sale is made -

- (a) in the case of sale on the member’s ceasing to be a member - within a period of two years beginning 12 months before the date cessation occurred; and

- (b) in any other case - before the day two years after written notification of a posting to another locality is issued.

“27.2 For the purposes of paragraph 27.1(b), a posting to -

- (a) an overseas locality;
- (b) a locality where the member is required to occupy Service accommodation;
- (c) a locality adjacent to that in which the dwelling is situated; or
- (d) a specified locality,

is to be disregarded.

“27.3 For the purposes of paragraph 27.2(d), a specified locality is a locality specified in the following table -

<b>New South Wales</b>	<b>Queensland</b>	<b>Western Australia</b>	<b>South Australia</b>
Bogan Gate	Atherton	Bindoon	Clare
Macksville	Biloela	Derby	Gladstone
Myambat	Bowen	Exmouth including	Woomera
Tenterfield	Charters Towers	Learmonth	Port Wakefield
	Chinchilla	Karratha	
	Ingham	Katanning	<b>Northern Territory</b>
	Macrossan	Newman	
	Roma	Northam	
	Stanthorpe	Rottnest Island	Katherine
	Tully	Spring Hill	Nhulunbuy
	Wallangarra	Tom Price	
	Wide Bay		

“27.4 If a member is posted to a locality other than a locality specified in subclause 27.3, the Chief of the Defence Force may approve the locality as a specified locality for the purposes of paragraph 27.2(d), if the Chief of the Defence Force is satisfied that it would be unreasonable to expect an eligible person to purchase a dwelling at the locality, having regard to -

- (a) the remoteness and isolation of the locality;

(b) the quantity and standard of housing available for purchase in the locality;  
and

(c) any other factor relevant to the locality.”.

**31. Clause 28 (Time limit on purchase or sale of dwelling)**

31.1 Omit the clause.

**32. Clause 28A (Time limit on purchase or sale of dwelling)**

32.1 Omit the clause.

**33. Clause 28B (Time limit on purchase or sale of dwelling)**

33.1 Omit the clause.

**34. Clause 29 (Allowance payable in special circumstances)**

34.1 Omit the clause.

**35. Clause 30 (Allowance payable in special circumstances)**

35.1 Omit “, in relation to a member.”.

35.2 Omit “the approving authority”, substitute “the Chief of the Defence Force, having regard to the factors set out in subclause 30.2.”.

35.3 Add at the end:

“30.2 The factors for the purpose of subclause 30.1 are -

- (a) whether the purchase or sale of a dwelling is practicable given the circumstances of the posting or the member’s family circumstances;
- (b) the timing of the purchase or sale and the effect of Service requirements on this timing;
- (c) whether the feasibility of purchase at a locality has changed during the posting;
- (d) whether the costs borne by the eligible person are attributable to the member’s service and are unavoidable; and
- (e) any other factor relevant to the purchase or sale.”.

**36. Clause 31 (Entitlement on change in family status)**

36.1 Omit the clause.

**37. Clause 32 (Amount of allowance)**

37.1 Omit “, in relation to the member,”.

**38. Clause 34 (Limit of allowance)**

38.1 Subparagraph 34(d)(i):

Omit “member”, substitute “eligible person”.

**39. Clause 35 (Limit of allowance)**

39.1 Omit “in relation to the member,”.

**40. Transitional**

40.1 If an eligible person made a contract to purchase or sell a dwelling on or after 10 December 1995, the Principal Determination, as amended by this Determination, is taken to apply to the purchase or sale as if this Determination had commenced on that day.

40.2 If -

- (a) a member was not entitled to a purchase allowance under the Principal Determination before the day on which this Determination commences; and
- (b) the member would have been entitled to such an allowance on or after that day if the relevant time limit in paragraph 25(b) of the Principal Determination, as amended by this Determination, had not expired,

the member is taken to have been posted to the member’s current locality of posting on that day.

40.3 In this clause -

“eligible person” has the same meaning as in the Principal Determination;

“the Principal Determination” means Determination 509, Dwelling Purchase and Sale Expenses Allowance.

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**NOTES**

- 1. Determination 509, as amended to date. For previous amendments see Note to Determination 10 of 1996 and see also Determination No. 10 of 1996.

## EXPLANATORY STATEMENT

### Defence Determination 1996/19

#### *Defence Act 1903*

#### **Introduction**

Determination 509, Dwelling Purchase or Sale Expenses Allowance (DPSEA), provides for payment of an allowance where members of the Australian Defence Force (ADF) or their spouses incur expenses while purchasing or selling a home in which the member lives while posted to a locality.

Most of the amendments contained in this Determination are necessary to implement changes in DPSEA eligibility announced by the then Minister for Defence Science and Personnel on 10 December 1995. The effect of the changes is to align entitlement to the allowance for members with family and members without family. The amendments made by this Determination therefore repeal all provisions of Determination 509 dealing with eligibility for DPSEA on the basis of family status.

In other respects, the amendments made by this Determination simplify the structure and expression of entitlements without substantively changing their effect.

The opportunity has also been taken to substitute the Chief of the Defence Force (CDF) for existing approving authorities in certain discretionary provisions. Criteria are provided for the exercise of discretions, and adverse decisions are subject to the ADF redress of grievance processes, including appeal to the Defence Force Ombudsman.

This Determination commences on the day on which it is made, as provided by subsection 58B(4) of the *Defence Act 1903*.

#### **Definitions and interpretation**

Clause 3 of this Determination amends Determination 509 by simplifying the definitions of "dwelling", "eligible person" and "member". An existing discretion in the definition of "family" to approve persons as family members is amended by substituting the CDF for the former approving authorities. The definitions of "long term duty", "married quarters", "member with a family", "member without a family", "Permanent Force", "removal", "Reserve Forces" and "Service accommodation" are now redundant and are omitted.

Clause 3 also inserts new definitions of "posting", "purchase" and "sale". These definitions are necessary to the interpretation of new clauses inserted by this Determination. A minor amendment is made to the wording of the definition of "solicitor's fees and disbursements".

Clause 4 revises an existing interpretation provision by omitting a redundant paragraph and updating a provision designed to extend eligibility for DPSEA to members who are posted to seagoing ships, by admitting localities where their families live during the posting.

Clause 5 inserts a new interpretation clause into Determination 509 dealing with the situation of ADF members who are classed as Category MS ("Married Separated") while required to live temporarily away from their families for operational and other reasons approved by the CDF. The clause subsumes certain conditions formerly included in operative provisions of Determination 509. It entitles such members to DPSEA only at the location in which their family lives while they remain Category MS members.

Clause 6 amends clause 5 of Determination 509 by making necessary changes to clause references and deleting redundant words referring to an "eligible person" (ie the member or co-resident spouse).

### **Approving authorities**

Clauses 7, 8 and 9 omit provisions setting out approving authorities and factors to be taken into account in exercising certain discretions elsewhere in Determination 509. Clause 7 preserves a provision specifying the factors that the CDF is to take into account in approving persons as family members. The other sets of factors have been relocated to the substantive clauses containing the related discretion.

### **Eligibility for allowance**

Clauses 10 to 13 inclusive omit provisions setting out the circumstances in which a member was eligible for DPSEA according to whether the member had a family or not. They substitute simplified eligibility provisions which are applicable to all members, regardless of family status.

There are three situations in which a member may be eligible for an allowance. The first arm of eligibility (new clause 8 of Determination 509) provides that a member is entitled to an allowance for costs associated with the purchase of a dwelling where the member has not been entitled to DPSEA previously.

The second arm of eligibility entitles members reimbursement for costs incurred where they are relocated for service-related reasons. New clause 9 provides that a

member may be paid DPSEA where an eligible person incurs costs following the member's posting to a new locality.

The third arm of eligibility (new clause 10) provides a DPSEA entitlement to members who leave the ADF and move to a different location on ceasing service.

### **Conditions relating to allowance**

Clauses 14 to 25 inclusive repeal redundant provisions dealing with conditions of eligibility for DPSEA in relation to purchase and sale of dwellings. These conditions are preserved, to the extent necessary, in a simplified form in new clauses 8, 9 and 10. Clause 20 of this Determination maintains a provision dealing with cases in which the members' spouse is also a member.

Clauses 26 and 27 simplify two provisions setting out special conditions for payment in cases where a member is posted to another locality, purchases a dwelling there, and is then posted back to the former locality.

### **Time limits on purchase or sale of dwelling**

Clauses 28 to 33 inclusive simplify provisions setting out time limits for eligibility for DPSEA. The former provisions (clauses 25 to 28B, inclusive, of Determination 509) are repealed and replaced by new clauses 25 and 27 dealing with the time limits for eligibility in relation to purchase and sale respectively.

Clause 28 substitutes new clause 25 dealing with the time limit on purchase of a dwelling.

Clause 30 substitutes new clause 27 dealing with the time limit on sale of a dwelling. The new clause maintains the effect of former provisions which in effect suspend the operation of the time limit in the event of certain kinds of postings. These include postings to localities specified in the table, where it is not considered reasonable to expect members to purchase a dwelling. An existing discretion is maintained to approve unlisted localities for that purpose; the CDF is substituted for the former approving authorities.

### **Allowance payable in special circumstances**

Clause 34 repeals a redundant provision restricting eligibility for DPSEA in relation to members relocating within a capital city. This aspect is now dealt with by new clauses 8 and 9 in conjunction with the existing definition of "locality".

Clause 35 amends an existing discretion to consider cases in special circumstances by:

- . deleting redundant words referring to an "eligible person" (ie the member or co-resident spouse);
- . substituting the CDF for the former approving authority; and
- . including, with minor revision, the existing criteria for decision-making from the former clause 7 of Determination 509.

Clause 36 repeals a redundant provision dealing with special cases arising from changes in family status during the course of a posting.

#### **Amount of allowance**

Clauses 37 to 39 inclusive make minor amendments to references relating to an "eligible person".

#### **Transitional**

Clause 40 sets out transitional provisions relating to the broadened eligibility arrangements for DPSEA which are not based on consideration of family status.

Subclause 40.1 provides for the new eligibility and related conditions to apply to purchase or sale of dwellings on or after the date from which the then Minister announced that the change would be effective.

Subclause 40.2 extends the time limit for purchase allowance for members whose time limit for a purchase made after this Determination commences would otherwise have expired, owing to the length of time from the date on which they were posted to their current localities.

Subclause 40.3 defines certain terms used in the transitional provisions.

Authority: Section 58B of the  
*Defence Act 1903*