

AUSTRALIA

Defence Determination 1997/29

I, BRUCE VINCENT FENN CLARK, Assistant Secretary, Workplace Relations Branch, Australian Government Employment Group, Department of Industrial Relations, acting under a delegation made by the Minister for Industrial Relations under section 58E of the Defence Act 1903, make the following Determination under section 58B of the Defence Act 1903.

Dated 17 July 1997

B.V. CLARK
Assistant Secretary
Workplace Relations Branch
Australian Government Employment Group
Department of Industrial Relations

1. Citation

1.1 This Determination may be cited as Defence Determination 1997/29.

[NOTE: This Determination commences on the day 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, is amended as set out in this Determination.

3. New Clause 1A

3.1 After clause 1, insert

Purpose

“1A. The purpose of this Determination is to authorise reimbursement of legal and other costs reasonably incurred by members or their families in purchasing or selling dwelling used by them as a residence (instead of accommodation provided by the Defence Force) during a posting within Australia”.

4. Clause 30 (Discretion to approve cases in special circumstances)

4.1 Delete the clause, substitute:

“30. If a member does not qualify for an allowance under this Determination because the member does not meet one or more of the criteria for qualification, and the Chief of the Defence Force is satisfied that:

- (a) it is consistent with the objects of providing that allowance generally that it be provided in the particular circumstances; and
- (b) the member does not qualify because of circumstances beyond the reasonable control of the member,

the Chief of the Defence Force may approve payment to the member of an amount that is reasonable in the circumstances, not exceeding the amount that would have been payable if the member had been entitled to the allowance.”.

NOTE

1. Determination 509, as amended to date. For previous amendments see Note to Determination 16 of 1997 and see also Determination Nos. 16 and 21 of 1997.

EXPLANATORY STATEMENT

Defence Determination 1997/29

Defence Act 1903

Determination 509, Dwelling Purchase or Sale Expenses Allowance (the principal Determination) authorises reimbursement of legal and other costs reasonably incurred by members or their families in purchasing or selling a dwelling used by them as a residence (instead of accommodation provided by the Australian Defence Force) during a posting within Australia.

This Determination amends the Principal Determination by:

- inserting a provision setting out the purpose of the Principal Determination, to assist with its interpretation in relation to individual cases; and
- replacing an existing general discretion with a provision of authorising the Chief of the Defence force to approve reimbursement to a member up to a reasonable amount, within the specified limit, in special circumstances that are consistent with the objects of the Principal Determination but not otherwise provided for. The provision follows a model developed by the Office of Legislative Drafting, Attorney-General's Department, for use in Defence determinations.

Criteria are provided for the exercise of the discretion, and adverse decisions are subject to grievance processes including appeal to the Defence Force Ombudsman.

This Determination arises from an enquiry by the Senate Standing Committee on Regulations and Ordinances about Defence Determination 1997/16, in relation to reimbursement of the costs of advertising a home for sale where a member has to employ a second agent to make the sale as a result of unusual circumstances such as the death or bankruptcy of the first agent engaged.

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

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