Defence Determination 1998/32

I, NICHOLAS JEFFERSON FORD, Director General Financial Conditions, Defence Personnel Executive, acting under a delegation made by the Minister for Defence under regulation 72A of the Defence Force Regulations, make the following Determination under section 58B of the Defence Act 1903.

Dated 18 August 1998

N.J. FORD
Air Commodore
Director General Financial Conditions
Defence Personnel Executive
PART A – Preliminary

1. Citation
1.1 This Determination may be cited as Defence Determination 1998/32, Definitions and Interpretation of Dependants (Amendment).

2. Commencement
2.1 This Determination commences on 3 September 1998.

PART B – Amendment of Determination 0202

3. Amendment
3.1 Determination 0202, Separation Allowance, as amended, is amended as set out in this Part.

4. Clause 3 (Interpretation)
4.1 Omit the clause, substitute:

Interpretation

“3. In this Determination, a reference in clause 4 to a day includes a reference to a part of a day.”.

5. Clause 4 (Separation Allowance)
5.1 Paragraph 4.1(a):
Omit “category MS member” (twice occurring), substitute “member with dependants (separated)”.

5.2 Paragraph 4.1(b):
Omit “a member who is a category M member or a category MS member and who -”, substitute “a member who is a member with dependants or a member with dependants (separated) and who:”.

PART C – Amendment of Determination 0301

6. Amendment
6.1 Determination 0301, District Allowance, as amended, is amended as set out in this Part.

7. Clause 6 (Application)
7.1 Omit “member living out whose dependants reside with him or her”, substitute “member with dependants”.

7.2 Omit “and”.
8. Clause 7 (Application)
8.1 Omit “a member who lives out in an isolated district and -”, substitute “a member in an isolated district:”.

8.2 Paragraph 7(a):
Omit the paragraph, substitute:

“(a) who lives out and who is a member without dependants or a member with dependants (separated):”.

8.3 Paragraph 7(b):
Omit “whose dependants reside with him or her in that district and one or more of whom are”, substitute “who is a member with dependants, and one or more of those dependants are”.

8.4 Paragraph 7(c):
Omit “whose dependants reside with him or her in that district and each”, substitute “who is a member with dependants, and each”.

8.5 Paragraph 7(c):
Add at the end “or”.

8.6 Paragraph 7(d):
Omit the paragraph, substitute:

“(d) whose spouse lives with the member in the isolated district and is employed by the Commonwealth.”.

8.7 Paragraph 7(e):
Omit the paragraph.

9. Clause 12 (Absence on temporary duty)
9.1 Subparagraph 12(b)(i):
Omit “family remains”, substitute “dependants remain”.

9.2 Subparagraph 12(b)(ii):
Omit “classified as a Category MS member”, substitute “a member with dependants (separated)”.

10. Clause 16 (Member posted from district)
10.1 Omit “family remains” (twice occurring), substitute “dependants remain”.

10.2 Paragraph 16(c):
Omit “classified as a Category MS member”, substitute “a member with dependants (separated)”.

11. Clause 21 (Member posted while on temporary duty)
11.1 Paragraph 21(b):
Omit “family”, substitute “dependants”.

12. Clause 22 (Member serving in a seagoing ship)
12.1 Paragraph 22(a): Omit “member whose dependants reside in that isolated district -”, substitute “member with dependants –”.

PART D – Amendment of Determination 0302

13. Amendment
13.1 Determination 0302, Woomera Allowance, as amended³, is amended as set out in this Part.

14. Clause 6 (Rates of Allowance)
14.1 Paragraph 6(a): Omit “a category M member”, substitute “a member with dependants”.

15. Clause 7 (Rates of Allowance)
15.1 Omit “a category M member”, substitute “a member with dependants”.

16. Clause 14 (Temporary absence from the Woomera locality)
16.1 Subparagraph 14(a)(i): Omit “family remains”, substitute “dependants remain”.

16.2 Subparagraph 14(a)(ii): Omit “classified as a Category MS member”, substitute “a member with dependants (separated)”.

17. Clause 19 (Discretion to extend period of payment of Allowance)
17.1 Paragraph 19(a): Omit “the member’s family circumstances;”, substitute “the circumstances of the member’s dependants;”.

17.2 Paragraph 19(c): Omit “family”, substitute “dependants”.

PART E – Amendment of Determination 0307

18. Amendment
18.1 Determination 0307, Bindoon Allowance, as amended³, is amended as set out in this Part.

19. Clause 11 (Absence on temporary duty)
19.1 Subparagraph 11(a)(i): Omit “family remains”, substitute “dependants remain”.

19.2 Subparagraph 11(a)(ii): Omit “classified as a Category MS member”, substitute “a member with dependants (separated)”.

PART F – Amendment of Determination 0401

20. Amendment
20.1 Determination 0401, Travelling Allowance, as amended, is amended as set out in this Part.

21. **Clause 2 (Definitions)**
21.1 Definition of “category O member”:
Omit the definition.

22. **Clause 22 (Travelling Allowance payable after 21 days)**
22.1 Paragraph 22(a):
Omit “and marital status”.

23. **Clause 28 (Member living in)**
23.1 Omit “category O member”, substitute “member without dependants”.

### PART G – Amendment of Determination 0402

24. **Amendment**
24.1 Determination 0402, Vehicle Allowance, as amended, is amended as set out in this Part.

25. **Clause 2 (Definitions)**
25.1 Definition of “privately owned vehicle”, paragraph (b):
Omit “or a member of his family”, substitute “or one of the member’s dependants”.

25.2 Definition of “privately owned vehicle”, paragraph (b):
Omit “or by a member of his family”, substitute “or dependant”.

25.3 Definition of “removal”:
Omit the definition.

26. **Clause 7 (Travel on removal)**
26.1 Subparagraph 7.1(a)(iii):
Omit “family”, substitute “dependants”.

26.2 Paragraph 7.2(b):
Omit “family, if any,”, substitute “any dependants”.

27. **Clause 7A (Travel on removal)**
27.1 Omit “his or her family” (twice occurring), substitute “the member’s dependants”.

27.2 Paragraph 7A(b):
Omit “the family’s accommodation”, substitute “accommodation for the member and dependants”.

28. **Clause 7C (Accommodation and meal costs)**
28.1 Omit “family”, substitute “dependants”.

28.2 Paragraph 7C(a):
Omit “member of the family -”, substitute “dependant:”.

28.3 Subparagraph 7C(a)(i):  
Omit “family member”, substitute “dependant”.

28.4 Paragraph 7C(b):  
Omit “member of the family -”, substitute “dependant:”.

28.5 Subparagraph 7C(b)(ii):  
Omit “family member”, substitute “dependant”.

29. Clause 8 (Dependant of member driving vehicle on removal)  
29.1 Omit “member of the member’s family”, substitute “dependant”.

30. Clause 9 (Removal of second vehicle)  
30.1 Omit “family”, substitute “dependants”.

31. Clause 19 (Limitation of Vehicle Allowance)  
31.1 Subparagraph 19(b)(i):  
Omit “family”, substitute “dependants”.

PART H – Amendment of Determination 0405

32. Amendment  
32.1 Determination 0405, Allowance Payable For Travel on Termination of Service, as amended, is amended as set out in this Part.

33. Clause 2 (Definition)  
33.1 Definition of “motor vehicle”:  
Omit “or the member’s family”, substitute “or a dependant”.

34. Clause 5 (Allowance payable where the member’s service is terminated)  
34.1 Subsubparagraph 5(a)(ii)(B):  
Omit “his family”, substitute “the member’s dependants”.

34.2 Subparagraph 5(a)(iv):  
Omit “family”, substitute “dependants”.

34.3 Subparagraph 5(b)(i):  
Omit “his family”, substitute “the member’s dependants”.

34.4 Subparagraph 5(b)(iv):  
Omit “family”, substitute “dependants”.

34.5 Subparagraph 5(b)(v):  
Omit “his family”, substitute “the member’s dependants”.


35. **Clause 7 (Allowance payable where member dies)**

35.1 Omit “his family is to travel”, substitute “the member’s dependants are to travel”.

35.2 Omit “family”, substitute “dependants”.

35.3 Omit “member of his family”, substitute “dependant”.

35.4 Subsubparagraph 7(a)(ii)B:
Omit “his family”, substitute “the dependants”.

35.5 Subparagraph 7(a)(iii):
Omit “the member’s family”, substitute “the dependants”.

35.6 Subparagraph 7(b)(i):
Omit “his family”, substitute “the dependants”.

35.7 Subparagraph 7(b)(iii):
Omit “the member’s family”, substitute “the dependants”.

35.8 Subparagraph 7(b)(iv):
Omit “the member’s family”, substitute “the dependants”.

35.9 Paragraph 7(b):
Omit “as if the member’s family were travelling”, substitute “as if the dependants were travelling”.

36. **Clause 8 (Accommodation and meal costs)**

36.1 Omit “family”, substitute “dependants”.

36.2 Paragraph 8(a):
Omit “member of the family”, substitute “dependant”.

36.3 Subparagraph 8(a)(i):
Omit “family member”, substitute “dependant”.

36.4 Paragraph 8(b):
Omit “member of the family”, substitute “dependant”.

36.5 Subparagraph 8(b)(i):
Omit “child”, substitute “dependant”.

36.6 Subparagraph 8(b)(ii):
Omit “family member”, substitute “dependant”.

37. **Clause 10 (Payment of additional amount)**

37.1 Omit “a member of his family”, substitute “a dependant of the member”.

37.2 Omit “or his family is”, substitute “or dependants are”.
37.3 Omit “his service”, substitute “the member’s service”.

37.4 Omit “the member of his family”, substitute “dependant”.

37.5 Paragraph 10(a):
Omit “his family”, substitute “dependant”.

PART I – Amendment of Determination 0510

38. Amendment
38.1 Determination 0510, Child Care Reimbursement Allowance, as amended\(^8\), is amended as set out in this Part.

39. Clause 3 (Eligible child)
39.1 Omit the clause, substitute:

“3. A member is not entitled to Child Care Reimbursement Allowance for a child during a removal unless the child is a dependant of the member and is under 11 at the time of the removal.”.

40. Clause 5 (Child Care Reimbursement Allowance)
40.1 Paragraph 5.1(b):
Omit “adult member of the member’s family”, substitute “adult dependant”.

40.2 Subparagraph 5.1(b)(i):
Omit “adult members in his or her family”, substitute “adult dependants”.

40.3 Subparagraph 5.1(b)(ii):
Omit “, the member’s spouse or other adult members of the member’s family are absent -”, substitute “or other adult dependants are absent:”.

40.4 Paragraph 5.2(a):
Omit “the member’s family circumstances”, substitute “the circumstances of the member and dependants”.

40.5 Paragraph 5.2(b):
Omit the paragraph.

40.6 Paragraph 5.2(d):
Omit “or family member”, substitute “or dependants”.

PART J – Amendment of Determination 0805

41. Amendment
41.1 Determination 0805, Detention Allowance, as amended\(^9\), is amended as set out in this Part.
42. Clause 8 (Amount of Allowance)
   42.1 Subparagraph 8(b)(ii):
   Omit “category M member”, substitute “member with dependants”.

   42.2 Subsubparagraph 8(f)(ii)B:
   Omit “the spouse or the family of the member reside”, substitute “the spouse or any other dependant of the member lives”.

PART K – Amendment of Determination 1504

43. Amendment
   43.1 Determination 1504, Charges for Improper Use of Travel Documents, as amended, is amended as set out in this Part.

44. Clause 3 (Charges for improper use of travel documents)
   44.1 Omit “or the member of the family of a member”, substitute “or the dependant of the member”.

PART L – Amendment of Determination 1613

45. Amendment
   45.1 Determination 1613, Accompanied Travel Within Australia, as amended, is amended as set out in this Part.

46. Clause 2 (Interpretation – dependants of member)
   46.1 Subclause 2.1:
   Omit “family”, substitute “dependants”.

   46.2 Subclause 2.2:
   Omit “family member” (twice occurring), substitute “dependant”.

47. Clause 5 (Accompanied travel on duty)
   47.1 Omit “family member” (twice occurring), substitute “dependant”.

   47.2 Paragraph 5(e):
   Omit “the member’s family circumstances”, substitute “the circumstances of the member and dependants”.

PART M – Amendment of Determination 1904

48. Amendment
   48.1 Determination 1904, Allowance for Loss on Sale of Furniture and Effects, as amended, is amended as set out in this Part.
49. Clause 6 (Allowance for Loss on Sale of Furniture and Effects)
49.1 Paragraph 6(a):
Omit “member of his or her family”, substitute “dependant of the member”.

49.2 Omit “family member” (twice occurring), substitute “dependant”.

PART N – Amendment of Determination 1906

50. Amendment
50.1 Determination 1906, Insurance on Removal of Urgently Required Household Items, as amended, is amended as set out in this Part.

51. Clause 6 (Insurance on removal of urgently required household items)
51.1 Paragraph 6(a):
Omit “a member of his or her family”, substitute “a dependant of the member”.

51.2 Paragraph 6(a):
Omit “for his or her use or the use of a member of his or her family”, substitute “for the use of the member or dependant”.

51.3 Paragraph 6(b):
Omit “that member’s residence or that family’s residence”, substitute “the member’s or the dependants’ residence”.

51.4 Paragraph 6(c):
Omit “that member or that member of his or her family”, substitute “the member or dependant”.

51.5 Omit “that member or that member of his or her family”, substitute “the member or dependant”.

PART O – Amendment of Determination 1907

52. Amendment
52.1 Determination 1907, Pet Relocation Expenses Allowance, as amended, is amended as set out in this Part.

53. Clause 2 (Definitions)
53.1 Definition of “pet”:
Omit “family”, substitute “dependants”.

53.2 Definition of “pet”:
Omit “purposes;”, substitute “purposes.”.

53.3 Definition of “removal”: 
Omit the definition.

54. Clause 3 (Pet Relocation Expenses Allowance)
54.1 Omit “family” (wherever occurring), substitute “dependants”.

PART P – Amendment of Determination 2610

55. Amendment
55.1 Determination 2610, Reunion Travel, as amended\textsuperscript{15}, is amended as set out in this Part.

56. Clause 5 (Person taken to be dependant of member)
56.1 Omit the clause.

57. Clause 6 (Dependant of member – eligibility)
57.1 Omit the clause.

PART Q – Amendment of Defence Determination 1991/22

58. Amendment
58.1 Defence Determination 1991/22 is amended as set out in this Part.

59. Clause 3 (Payment for enlistment)
59.1 Paragraph 3.4(b):
Omit “of the member or member’s family”, substitute “of the member or dependants”.

PART R – Amendment of Defence Determination 1991/45

60. Amendment
60.1 Defence Determination 1991/45, as amended\textsuperscript{16}, is amended as set out in this Part.

61. Clause 3 (Meaning of certain words)
61.1 Definition of “category M member”:
Omit the definition.

61.2 Definition of “dependant”:
Omit the definition.

61.3 After the definition of “married quarters”, insert:

“‘member with dependants’ means a member who maintains a home for dependants and
lives in the home with one or more of the dependants;

‘member with dependants (separated)’ has the meaning given by clause 7;
‘member without dependants’ means a member other than a member with dependants or a member with dependants (separated);”.

61.4 After the definition of “seagoing ship”, insert:

“‘special need’, in relation to:

(a) any dependant of a member – means a physical, intellectual or behavioural disability; and

(b) a dependant who is a child – includes an academic gift that is certified under paragraph 9.1(f) of Defence Determination 1996/37;”.

62. Clause 3A (Family of member)
62.1 Omit the clause, substitute:

Dependant of member

“3A.1 In a determination, a reference to a dependant, in relation to a member, is a reference to one or more of the following persons who normally live with the member:

(a) the member’s spouse;

(b) a child;

(c) a person acting as a guardian or housekeeper to a child, if:

(i) the member has no spouse; or

(ii) the member’s spouse is an invalid or is a member serving at a locality other than the member’s locality of posting; and

(d) any other person approved by the CDF, if the CDF is satisfied, having regard to the factors set out in subclause 3A.2, that there are extraordinary and exceptional grounds for treating the person as a dependant of the member.

“3A.2 The factors for the purpose of paragraph 3A.1(d) are:

(a) the relationship of the person to the member;

(b) the reason the person needs to live with the member;

(c) the degree of dependency of the person on the member, including any financial, medical or compassionate considerations;

(d) the circumstances giving rise to that dependency, and its expected duration;
(e) the role the person plays in the member’s household; and

(f) any other special circumstance bearing on the member’s relationship to the person.”.

63. **New clause 3AA**

63.1 After clause 3A, insert:

**Child taken to normally live with member in certain circumstances**

“3AA.1 In a determination, a reference to a child who normally lives with a member includes a reference to a child who, during a period of posting of the member:

(a) is absent from the home by reason only of pursuing a full-time course of primary, secondary or undergraduate tertiary education; or

(b) is or is expected to be provided with overnight care in the member’s home for a total period of:

(i) 90 or more nights a year; or

(ii) less than 90 nights a year, if the CDF is satisfied, having regard to the factors set out in subclause 3AA.2, that the child lives or is expected to live with the member on a frequent and regular basis.

“3AA.2 The factors for the purpose of subparagraph 3AA.1(b)(ii) are:

(a) the arrangements for the custody or residence of the child;

(b) the extent of access to or contact with the child normally exercised by the member;

(c) the distance and available transport arrangements between the locality at which the child otherwise lives and the member’s locality of posting;

(d) the nature and extent of the member’s duty commitments; and

(e) any other factor relevant to the relationship between the child and the member.”.

64. **Clause 7 (Category MS member)**

64.1 Omit the clause, substitute:

**Member with dependants (separated)**

“7.1 The purpose of this clause is to grant a special status, leading eventually to eligibility for certain additional conditions of service entitlements as specified in other determinations, to members with dependants who are required to live temporarily away from their dependants as a result of Service requirements or for reasons that are recognised as relevant to the member’s service.

“7.2 In this clause, a reference to a posting to a locality, in relation to a member, includes a reference to any other requirement for the member to perform duty at the locality."
7.3 In a determination, a reference to a member with dependants (separated) is a reference to a member with dependants who:

(a) is required to:

(i) live in; or

(ii) perform duty for no longer than a year at a locality other than the locality where the member maintains a home for the member’s dependants;

(b) is posted to a new locality of posting, maintains a home for dependants at the losing locality, but is unable to live with the dependants at the new locality because:

(i) the member’s spouse is a member and cannot, for service reasons, also be posted to the new locality;

(ii) suitable accommodation for the member and dependants is not available at the new locality;

(iii) a child of the member is undertaking secondary or tertiary education (including an apprenticeship) at the losing locality and elects to continue the education at that locality; or

(iv) the member’s spouse is in employment at the losing locality and elects to continue the employment at that locality;

or for one or more of the following reasons that the CDF accepts, having regard to the factors in subclause 7.4, as relevant to the member’s service:

(v) a dependant is unable to be removed to the locality owing to illness or infirmity;

(vi) removal of the dependants to the new locality would interrupt the secondary or tertiary education that the member’s spouse is undertaking at the losing locality at the time of posting; or

(vii) the member has a dependant with a special need (other than a child to whom subparagraph 7.3(b)(iii) applies).

7.4 The factors for the purpose of subparagraphs 7.3(b)(v), 7.3(b)(vi) and 7.3(b)(vii) are:

(a) in the case of a member to whom subparagraph 7.3(b)(v) applies:

(i) the nature and degree of illness or infirmity;

(ii) any advice from a registered medical practitioner; and
(iii) whether appropriate treatment and related arrangements are available at the new locality of posting;

(b) in the case of a member to whom subparagraph 7.3(b)(vi) applies:

(i) the nature of the education being undertaken by the spouse;

(ii) whether the education could be undertaken at the new locality; and

(iii) the arrangements that could reasonably be made to allow the spouse to continue with education without undue interference;

(c) in the case of a member to whom subparagraph 7.3(b)(vii) applies:

(i) the nature and extent of the dependant’s special need;

(ii) any special accommodation requirements in relation to the special need;

(iii) the availability of special facilities or rehabilitation centres at the new locality that offer similar services, facilities or programs to those at the losing locality; and

(iv) the arrangements that could reasonably be made to allow the dependant to continue attending such a facility or centre without undue disruption; and

(d) in all cases:

(i) the extent to which the member’s service as distinct from the personal choice of either the member or dependants prevents the member from living with the dependants;

(ii) the duration of the member’s period of posting;

(iii) the interests and operational capability of the Defence Force; and

(iv) any other factor relevant to the member’s duty or the circumstances of the member’s dependants.

“7.5 If a member:

(a) has a spouse who is also a member;

(b) maintains a home for dependants jointly with the spouse and lives in the home with one or more of the dependants;

(c) is posted to a new locality of posting away from the locality at which the spouse continues to maintain a home for dependants; and
(d) maintains a separate home for dependants at the new locality of posting and lives in the home with one or more of the dependants,

the member is a member with dependants (separated) instead of a member with dependants.

“7.6 If:

(a) a member does not qualify for the status of member with dependants (separated) under this clause because the member does not meet 1 or more of the criteria for qualification; and

(b) the CDF is satisfied that:

(i) it is consistent with the objects of the clause generally that the member should have that status in the particular circumstances; and

(ii) the member does not qualify because of circumstances beyond the reasonable control of the member,

the CDF may grant that status to the member.”.

65. Clause 9 (Return of service obligation)
65.1 Subparagraph 9(a)(ii):
Omit “family’s”, substitute “dependants’”.

PART S – Amendment of Defence Determination 1996/16

66. Amendment
66.1 Defence Determination 1996/16, as amended17, is amended as set out in this Part.

67. Clause 17 (Rates of Disturbance Allowance)
67.1 Omit “family”, substitute “dependants”.

68. Schedule 3 (Rates of remote locality allowances)
68.1 Part 2, column 1:
Omit “Category M member”, substitute “Member with dependants”.

PART T – Amendment of Defence Determination 1996/32

69. Amendment
69.1 Defence Determination 1996/32, as amended18, is amended as set out in this Part.

70. Clause 3 (Definition)
70.1 Omit “family” (twice occurring), substitute “dependants”.
71. Clause 5 (Disturbance Allowance)
71.1 Subclause 5.1:
Omit “family” (twice occurring), substitute “dependants”.

71.2 Paragraph 5.1(a):
Omit “family”, substitute “dependants”.

71.3 Subclause 5.4:
Omit “family”, substitute “dependants”.

71.4 Subclause 5.5:
Omit “family is” (twice occurring), substitute “dependants are”.

72. Clause 7 (Motor vehicle transfer costs)
72.1 Omit “family”, substitute “dependant”.

73. Schedule (Amount of Disturbance Allowance)
73.1 Omit “family” (twice occurring), substitute “dependants”.

PART U – Amendment of Defence Determination 1996/37

74. Amendment
74.1 Defence Determination 1996/37, as amended, is amended as set out in this Part.

75. Clause 3 (Definitions)
75.1 Definition of “child with a special need”:
Omit the definition.

76. Clause 9 (Certification by principal of child’s school at member’s locality of posting)
76.1 Paragraph 9.1(f):
Omit “is academically gifted”, substitute “has an academic gift”.

PART V – Amendment of Defence Determination 1996/44

77. Amendment
77.1 Defence Determination 1996/44, as amended, is amended as set out in this Part.

78. Clause 5 (Absence on temporary duty)
78.1 Subparagraph 5.1(a)(i):
Omit “family remains”, substitute “dependants remain”.

78.2 Subparagraph 5.1(a)(ii):
Omit “classified as a Category MS member”, substitute “a member with dependants (separated)”.

___________________________________________________________________________
NOTES


2. Determination 0301, as amended to date. For previous amendments see Note to Determination No. 10 of 1998 and see also Determination Nos. 10, 25 and 27 of 1998.

3. Determination 0302, as amended to date. For previous amendments see Note to Determination No. 25 of 1998 and see also Determination No. 25 of 1998.

4. Determination 0307, as amended to date. For previous amendments see Note to Determination No. 25 of 1998 and see also Determination No. 25 of 1998.

5. Determination 0401, as amended to date. For previous amendments see Note to Determination No. 25 of 1998 and see also Determination Nos. 25 and 31 of 1998.

6. Determination 0402, as amended to date. For previous amendments see Note to Determination No. 25 of 1998 and see also Determination Nos. 25 and 31 of 1998.


8. Determination 0510, as amended to date. For previous amendments see Note to Determination No. 25 of 1998 and see also Determination No. 25 of 1998.

9. Determination 0805, as amended to date. For previous amendments see Note to Determination No. 31 of 1998 and see also Determination No. 31 of 1998.

10. Determination 1504 was made by Determination No. 72 of 1984 and has been amended by Determination No. 39 of 1996.

11. Determination 1613 was made by Determination No. 176 of 1989 and has been amended by Determination Nos. 123 of 1990; 31 of 1995 and 20 of 1997.

12. Determination 1904, as amended to date. For previous amendments see Note to Determination No. 12 of 1998 and see also Determination Nos. 12 and 25 of 1998.


14. Determination 1907 was made by Determination No. 10 of 1990 and has been amended by Determination Nos. 117 of 1991; 38 of 1993; 31 of 1994; 1 and 35 of 1995 and 39 and 41 of 1996.

15. Determination 2610 was made by Determination No. 10 of 1988 and has been amended by Determination Nos. 17, 24 and 46 of 1988; 210 of 1989; 37 of 1995; 10 of 1996 and 21 of 1997.

16. Defence Determination 1991/45, as amended to date. For previous amendments see Note to Determination 23 of 1998 and see also Determination Nos. 23 and 31 of 1998.

17. Defence Determination 1996/16, as amended to date. For previous amendments see Note to Defence Determination No. 1 of 1998 and see also Nos. 1, 13, 17, 19, 20, 23, 24, 25, 27, 28 and 31 of 1998.

18. Determination 1996/32 has been amended by Determination No. 41 of 1996.
19. Determination 1996/37 has been amended by Determination No. 28 of 1997.

20. Determination 1996/44 has been amended by Determination No. 45 of 1997.
EXPLANATORY STATEMENT

Defence Determination 1998/32

Defence Act 1903

In connection with the implementation of new housing-related entitlements for members of Australian Defence Force (ADF) by Defence Determination (DD) 1998/30, Housing Assistance, this Determination implements new terminology and certain revised provisions relating to the recognition of members’ dependants for the purposes of housing assistance and other conditions of service generally. The amendments provide greater equity, clarity and certainty in this area, without substantially affecting members’ entitlements.

Former references in determinations to a member’s ‘family’ are replaced by references to ‘dependants’, and the opportunity is taken to remove gender-specific language where possible. References to ADF-specific categorisations of members in relation to dependants (‘Category M’ [ie Married], ‘member with family’, ‘Category MS’ [ie Married Separated], ‘Category O’ [ie Other] and ‘member without family’) are also replaced with up-to-date plain English terminology: ‘member with dependants’, ‘member with dependants (separated)’ and ‘member without dependants’.

Part A deals with preliminary matters and provides for this Determination to commence on 3 September 1998, the same day as DD 1998/30.

The remainder of Parts B to Q (inclusive) and Parts S to V (inclusive) of this Determination make minor amendments to other principal determinations made under section 58B of the Defence Act 1903 (the Act) that contain references to dependants. The amendments align such references with the new terminology implemented by Part R. They also delete any provisions that are no longer required for the interpretation of those determinations in the light of the consolidated definitions and interpretations established by Part R.

Part R amends DD 1991/45, which sets out general definitions and interpretation for use with other determinations under section 58B of the Act. The effect of the amendments is as follows:

- clause 61 inserts the new standard definitions of terms dealing with members’ status in relation to recognition of dependants for conditions of service purposes, and deletes two redundant definitions. The opportunity is taken to insert a definition of “special need” in relation to dependants, based on a similar definition that is deleted by Part U from DD 1996/37;

- clause 62 substitutes a revised provision dealing with the identification of persons as dependants of a member (replacing a similar provision referring to the ‘family’ of a member). As before, a discretion is provided for the CDF to approve persons who normally live with a member but who do not come within the three specified categories of persons who qualify as dependants;

- clause 63 inserts a new provision that expands the interpretation relating to a child who normally lives with a member, by specifying certain cases in which a child is taken to meet that test for the
purpose of status as a dependant. These cases deal with a child who is absent only because of full-time educational commitments, and a child for whom the member provides overnight care to the specified extent (for example, under a custody agreement with the other parent of the child). If such care is not provided to the extent of the number of nights stipulated in the provision in certain circumstances, the CDF may exercise a discretion resulting in recognition of the child as a dependant;

- clause 64 omits a former provision dealing with the status of a member as ‘Category MS’. It substitutes an updated and restructured provision setting out the circumstances in which a member acquires the status of ‘member with dependants (separated)’ for the purposes of certain special conditions of service (for example Separation Allowance). The elements of the new provision are as follows:
  - subclause 7.1 sets out the purpose of the provision;
  - subclause 7.2 provides an interpretation of references in the provision to a member’s posting;
  - subclause 7.3 deals with the circumstances in which a member becomes a member with dependants (separated). The status is granted as a non-discretionary entitlement where the separation from dependants is imposed as a Service requirement or in a limited number of personal circumstances relating to children’s education or the spouse’s employment at the member’s former locality of posting. It may be granted at the CDF’s discretion on grounds involving illness or a special need of a dependant, or the spouse’s education;
  - subclause 7.4 sets out the criteria for consideration of each of the discretionary grounds;
  - subclause 7.5 establishes the status of a member as a member with dependants (separated) in certain cases where the spouse is also a member and other conditions are met in relation to each member separately maintaining a home for dependants at different localities. (In conjunction with clause B.4 of Annex B to DD 1998/30, this has the effect that the members jointly are not liable to pay more than one rent contribution.); and
  - subclause 7.6 provides a general discretion for the CDF to approve ‘member with dependants (separated)’ status in special circumstances that are in keeping with the purpose of the clause but are not otherwise provided for; and

- clause 65 makes a minor amendment to an interpretation provision.

Where provisions include processes for approval at the discretion of the CDF, criteria are provided for the exercise of the discretion and adverse decisions are subject to a redress of grievance process including appeal to the Defence Force Ombudsman.

Authority: Section 58B of the
Defence Act 1903