Defence Determination 1998/39

I, MAL PEARCE, Director General Personnel Policy and Employment 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 2 December 1998

M. PEARCE
Director General
Personnel Policy and Employment Conditions
Defence Personnel Executive
PART A - Preliminary

1. Citation
1.1 This Determination may be cited as Defence Determination 1998/39, Education Assistance (Defence Determinations 1996/16 and 1996/37 - Amendment).

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

PART B – Amendment of Defence Determination 1996/16

2. Amendment
2.1 Defence Determination 1996/16, as amended¹, is amended as set out in this Part.

3. Clause 18 (Education assistance - cost limits and member contributions)
3.1 Add at the end:

“18.3 For the purpose of subclause 16.2 of the Determination, the maximum amount of reimbursement is $110 a week.”.

4. Schedule 11 (Education Assistance)
4.1 Part B (Education assistance at locality other than locality of posting):
Item 4, column 2:
Omit “Child who boards privately”, substitute “Child who boards or is accommodated privately”.

PART C - Amendment of Defence Determination 1996/37

5. Amendment
5.1 Defence Determination 1996/37, as amended², is amended as set out in this Part.

6. Clause 3 (Definitions)
6.1 Definition of “housekeeper”:
Omit the definition.

6.2 After the definition of “compulsory tuition fees”, insert:

“‘locality of residence’ means that area surrounding a residence that is not in excess of:

(a) a distance traversable in 150 minutes travelling time return journey, door to door, from the member’s normal place of residence by the most appropriate and useable means of public transport; or

(b) a distance of 30 kilometres each way by public road,
whichever is the lesser;”.

7. **Clause 4 (Eligibility of a child)**
   7.1 Paragraph 4.1(b):
   Omit “or the member’s spouse or housekeeper”, substitute “or an adult dependant of the member”.

8. **Clause 14 (Rate of education assistance - other locality)**
   8.1 Subparagraph 14.1(b)(ii):
   Omit “if the child boards privately - the cost of board”, substitute “if the child boards or is accommodated privately - the cost of board or accommodation (as the case requires)”.

9. **Clause 15 (Period of assistance - other locality)**
   9.1 Paragraph 15.6(b):
   Omit “or the member’s spouse or housekeeper is living at the child’s locality of schooling”, substitute “or an adult dependant of the member is living within the child’s locality of residence”.

10. **Clause 16 (Reimbursement for accommodation costs - tertiary students)**
    10.1 Omit the clause, substitute:

    “16.1 In this clause, ‘child’ includes a child under 25.

    “16.2 If a member:

    (a) has a child who:

    (i) is undertaking a full-time undergraduate course of tertiary education at an institution within Australia, other than an institution within the member’s locality of residence;

    (ii) is unable to undertake that or another full-time undergraduate course of tertiary education, selected by the child, at an institution within the member’s locality of residence; and

    (iii) is not eligible for a youth allowance at the rate payable under the Social Security Act 1991 to an independent full-time student living away from home; and

    (b) incurs a cost for the child’s accommodation,

    the member is entitled to be reimbursed for the cost incurred (up to the limit specified in subclause 18.3 of Defence Determination 1996/16) for the period beginning on the day the member’s child begins the tertiary education, and ending on the day that:

    (c) the member ceases to be entitled to assistance under this clause for the child;

    (d) the child fulfils the minimum requirements for completion of the course of tertiary education; or
(e) the child completes 6 semesters in aggregate of tertiary education for which the member received assistance, whichever occurs first.

“16.3 If a member is not entitled to assistance under this clause only because the member’s child does not comply with subparagraph 16.2(a)(ii), the member is entitled to assistance under this clause if the CDF so approves, having regard to the general criteria.

“16.4 A member is not entitled to be reimbursed for the costs incurred for a child’s accommodation if the costs are incurred:

(a) during a semester break; or

(b) while the member or an adult dependant of the member is living within the child’s locality of residence,

unless the CDF considers it necessary to incur the costs, having regard to the general criteria (excluding paragraphs 6.1(b) and (c)).”.

PART D - Transitional

11. Transitional - education assistance for tertiary students

11.1 In this clause, “relevant period” means the period beginning on 1 July 1998 and ending on the day immediately before this Determination commences.

11.2 A member is entitled, for the relevant period, to the amount of education assistance (if any) that the member would have been entitled to receive for a child for that period under Defence Determination 1996/37 if the AUSTUDY Regulations, as in force on 30 June 1998, had been in force in the period.

11.3 In addition, the member is entitled to the amount of education assistance (if any) by which the amount that the member would have been entitled to receive for a child for that period if this Determination had commenced on 1 July 1998 exceeds the amount that the member is entitled to under subclause 11.2.

NOTES

1. 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, 31, 32, 33, 37 and 38 of 1998.
2. Defence Determination 1996/37, as amended to date. For previous amendments see Note to Defence Determination No. 32 of 1998 and see also Determination No. 32 of 1998.
EXPLANATORY STATEMENT

Defence Determination 1998/39

Defence Act 1903

This Determination amends the following Defence Determinations (DDs) made under section 58B of the Defence Act 1903 (the Act):

- 1996/16 - Rates of various allowances and member contributions; and
- 1996/37 - Education assistance.

The main purposes of this Determination are to:

- broaden the range of circumstances under which education assistance is payable to a member in relation to a child who is a full-time tertiary student;
- make minor but related amendments to the provisions authorising assistance to a member in relation to a child undertaking primary or secondary education; and
- substitute references to Youth Allowance arrangements for references to AUSTUDY arrangements.

Part A deals with preliminary matters.

Part B amends DD 1996/16 by:

- inserting a provision authorising the upper limit of reimbursement for costs incurred by a member for a child’s accommodation, where the member’s child is undertaking tertiary studies at a locality other than the member’s locality of posting; and
- amending an item in Schedule 11, which sets out the limits of education assistance, by broadening the range of allowable accommodation arrangements in relation to a member’s child who is undertaking primary or secondary education at a locality other than the member’s locality of posting.

The amended provisions are used in conjunction with DD 1996/37. The upper limit of reimbursement for accommodation costs now represents the notional accommodation component of the youth allowance payable under the Social Security Act 1991 from 1 July 1998 (the date the youth allowance arrangements were introduced) to an independent full-time student living away from home. DD 1996/37 formerly authorised reimbursement on the basis of the “reasonable accommodation costs” incurred by a member for the child. Administrative practice was to interpret this as equal to the notional accommodation component of the independent living allowance under the former AUSTUDY arrangements ($110 a week). In that respect, the level of assistance to members has not changed.

Part C amends DD 1996/37, which authorises financial assistance with costs necessarily incurred by members of the ADF in minimising disruption to their children’s education caused by ADF postings.
within Australia.

Subclause 6.1 omits a definition which is no longer required for the proper interpretation of the determination, in view of the amendments made by clauses 7, 9 and 10.

Subclause 6.2 inserts a definition that sets out the limits of an area that can be considered to be within the locality of a residence. A member is not entitled to education assistance for a child undertaking tertiary education at an institution within the member’s locality of residence; or, where a child is undertaking primary, secondary or tertiary education at an institute in a locality other than the member’s posting locality, during any period the member or an adult dependant of the member is living within the child’s locality of residence.

Clause 7 amends a provision setting out an interpretation of an “eligible child” by substituting a reference to an adult dependant of the member for a reference to the member’s spouse or housekeeper. (The term “dependant” in relation to a member is to be interpreted in conjunction with subclause 3A.1 of DD 1991/45.)

Clause 8 broadens the range of allowable accommodation arrangements in a provision that authorises assistance where a member’s child is in primary or secondary education at a locality other than the member’s locality of posting.

Clause 9 amends a provision specifying the period a member is eligible for education assistance for a child undertaking primary or secondary education, by:

- substituting a reference to an adult dependant of the member for a reference to the member’s spouse or housekeeper; and
- substituting a reference to a child’s locality of residence for the child’s locality of schooling.

This provision is now consistent with a provision applying to a member receiving assistance for a child undertaking tertiary education.

Clause 10 substitutes a revised provision specifying the circumstances under which a member is entitled to education assistance for a child undertaking tertiary education.

New subclause 16.1 inserts a provision that recognises a child under 25 for the purposes of this clause. This aligns with the relevant eligibility criteria under the youth allowance arrangements.

New subclause 16.2, which formerly restricted education assistance to a member where the member’s child was undertaking tertiary studies at the member’s former posting locality and the child remained at that locality following the posting of the member, has been amended by:

- removing the prerequisite that the member’s child had to be studying at the member’s former posting locality;
- recognising a child’s study at any tertiary institute at a locality other than the member’s locality of residence; and
incorporating modified provisions which:

- apply a limit to the amount that may be reimbursed to a member by referring to the provision in Determination 1996/16 that specifies that limit; and

- extend the period a member may be entitled to education assistance for a child, by including eligibility for assistance for a period of up to 6 semesters in aggregate for which the member has received assistance.

New subclause 16.3 provides the Chief of the Defence Force with a discretion to approve payment of education assistance where the member’s child is studying within the member’s locality of residence. Criteria are provided for the exercise of the discretion, with adverse decisions subject to grievance procedures including appeal to the Defence Force Ombudsman.

New subclause 16.4 modifies the circumstances under which education assistance of this kind is not to be paid, by:

- including a provision that prevents payment during a semester break;

- substituting a reference to an adult dependant of the member for a reference to the member’s spouse or housekeeper; and

- substituting a reference to the child’s locality of residence for the child’s locality of schooling.

This is consistent with a provision applying to a member receiving assistance for a child undertaking primary or secondary education.

Part D sets out a transitional provision which authorises, during the period from 1 July 1998 (the date the youth allowance arrangements were introduced) to the day before this Determination commences:

- the education assistance to which members would have been entitled under DD 1996/37 if the AUSTUDY regulations (as in force on 30 June 1998) had continued in force for that period; and

- any additional education assistance to which members would have been entitled for the period if this Determination had been in place during the period.

Steps have been taken to avoid the need for lengthy transitional arrangements of this kind by identifying as early as possible amendments that are required as a result of changes to other Commonwealth legislation from a particular date.

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