



DEFENCE FORCE REMUNERATION TRIBUNAL

SIXTEENTH REPORT

2000 – 2001

(Period from 1 July 2000 – 30 June 2001)



DEFENCE FORCE REMUNERATION TRIBUNAL

2 October 2001

The Hon Tony Abbott MP
Minister for Employment, Workplace Relations and Small Business
Parliament House
CANBERRA ACT 2600

My dear Minister

I have great pleasure in presenting to you the Sixteenth Report of the Defence Force Remuneration Tribunal, which covers the period of the Tribunal's operations from 1 July 2000 to 30 June 2001.

Yours sincerely

His Honour Judge F K Cawthorne
President

DEFENCE FORCE REMUNERATION TRIBUNAL

President: His Honour Judge F K Cawthorne

Members: The Honourable Deputy President P L Leary

Air Vice Marshal F D Cox AO (Retd)

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1. INTRODUCTION

The Tribunal was established in 1984 to enable the pay and allowances of members of the Australian Defence Force (ADF) to be determined having regard to the special nature of Defence Force service. The Tribunal has now been operating for over 16 years.

The functions of the Tribunal are set out in section 58H of the Defence Act 1903 (the Act) as follows:

- a. *to inquire into and determine the salaries and relevant allowances to be paid to members of the ADF; and*
- b. *to inquire into and make determinations in respect of prescribed matters that have been referred to the Tribunal.*

In addition, at the request of the Minister for Employment, Workplace Relations and Small Business, the Tribunal shall inquire into and report on relevant matters.

Section 58H also provides that:

“Where a determination of the Tribunal in respect of the salaries and relevant allowances to be paid to members [of the Defence Force] is in force, the Tribunal shall inquire into and make a further determination in respect of those salaries and allowances -

- (a) within 2 years of the first-mentioned determination taking effect; or*
- (b) if the Minister, by notice in writing given to the President, requests the Tribunal to make a further determination in respect of those salaries and allowances within a shorter period of the first-mentioned determination taking effect - within that shorter period.”*

Section 58KD of the Act provides that:

“The Tribunal may, in making a determination, give effect to any agreement reached between the Minister, acting on behalf of the Commonwealth, and the Chief of the Defence Force, acting on behalf of the members of the Australian Defence Force, in relation to a matter to which the determination relates.”

The relevant sections of the Defence Act 1903, as amended, which refer to the functions and powers of the Tribunal are set out in **Appendix 1** to this Report.

The statement required in accordance with section 8 of the Freedom of Information Act 1982 is included as **Appendix 2** to this Report.

2. MEMBERSHIP OF THE TRIBUNAL

The Tribunal consists of three members who are appointed by the Governor General. In accordance with the relevant legislation the President is a presidential member of the Australian Industrial Relations Commission. The other members are a person who is experienced in industrial relations matters and a person who has been a member of the ADF.

The composition of the Tribunal at the time of this Report was:

President:	His Honour Judge F K Cawthorne
Members:	The Honourable Deputy President P L Leary Air Vice Marshal F D Cox AO (Retd)

Judge Frank Cawthorne is a Deputy President of the Australian Industrial Relations Commission. His primary appointment is as a Judge of the Industrial Relations Court of South Australia and Deputy President of the Industrial Relations Commission of South Australia. He has held judicial office in industrial tribunals for over 25 years.

Judge Cawthorne was appointed as President of the Tribunal for one year from 8 March 2000. The Governor General reappointed Judge Cawthorne for a further three years commencing on 8 March 2001.

Deputy President Patricia Leary is a Deputy President of the Australian Industrial Relations Commission and formerly a Senior Executive with Brambles Industries Ltd. She was appointed to the Tribunal on 7 February 1995. The Governor General reappointed Deputy President Leary for a further one year commencing on 5 July 2000 and this period was later extended by one month.

Deputy President Leary's appointment expired on 4 August 2001. Although it is outside the period covered by this Report it is appropriate to record here that Deputy President Leary made a significant contribution to the work of the Tribunal. She was highly respected by all associated with the work of the Tribunal. Deputy President Leary gained a deep understanding of service life and conditions and was committed to fair and reasonable outcomes in the matters before the Tribunal.

Air Vice Marshal Frank Cox was appointed by the Minister as an acting member of the Tribunal from 11 August 1999 and was subsequently appointed by the Governor General as a member for a period of one year commencing on 11 August 2000. Air Vice Marshal Cox was reappointed by the Governor General for the period 11 August 2001 until 7 March 2004.

3. THE PARTIES

The main parties in matters before the Tribunal are the ADF and the Commonwealth. The Returned and Services League of Australia and the Armed Forces Federation of Australia appear as interveners in most matters coming before the Tribunal. The rights of parties to appear before the Tribunal are set out in section 58K of the Defence Act 1903.

The ADF is represented by the Defence Force Advocate whose role and functions are set out in section 58T of the Defence Act 1903 and include:

- . advising the Chief of the Defence Force in relation to matters that have been, or may be, referred to the Tribunal pursuant to sub-section 58H(3);
- . preparing submissions to be made to the Tribunal on behalf of the Defence Force concerning any matter that is being considered by the Tribunal; and
- . representing the Defence Force in proceedings before the Tribunal.

The office of Defence Force Advocate has always been filled by eminent legal practitioners of high calibre. The present Defence Force Advocate is Mr Richard Kenzie QC who was appointed by the Minister for Defence Science and Personnel on 1 June 1996 for a period of three years. He was reappointed by the Minister Assisting the Minister for Defence on 1 June 1999. The Assistant to the Defence Force Advocate during the period of this report was Lieutenant Commander Abigail Bradshaw.

The Commonwealth is represented in proceedings before the Tribunal by the Department of Employment, Workplace Relations and Small Business. The Commonwealth's advocate in most matters before the Tribunal is Mr Anthony O'Brien.

The Returned and Services League of Australia and the Armed Forces Federation of Australia have been granted leave to intervene in matters before the Tribunal. The Returned and Services League has been represented by Mr John Dainer AM RFD.

The Armed Forces Federation of Australia has been represented by Mr Graham Howatt.

4. THE WORK OF THE TRIBUNAL

The work of the Tribunal is predominantly determined by the matters brought before it by the parties and, in particular, by the ADF. The Tribunal sits as and when required, to deal with these matters. The Tribunal also, under its statutory obligations, must review determinations in respect of salaries and allowances every two years.

In the period covered by this Report the Tribunal has considered a number of allowance reviews and trade restructures including: Paratrooper Allowance, Unpredictable Explosives Allowance, RAN and RAAF Electronic Warfare and Signals Trades and RAAF Airfield Defence Guards. The Tribunal also commenced a review of Submarine Service Allowance and Seagoing Allowance.

Some matters brought to the Tribunal have been dealt with by a single member pursuant to section 58KA of the Defence Act 1903. However the more significant matters continue to be dealt with by all members of the Tribunal.

A summary of each of the matters considered by the Tribunal is given in the next part of this Report. For more detailed information regarding the matters, reference should be made to the reasons published by the Tribunal in each matter and to the determinations made. A list of the determinations made by the Tribunal is included as **Appendix 3** to this Report.

Approach of the Tribunal

In most matters relating to salary and allowances, the ADF and the Department of Employment, Workplace Relations and Small Business undertake extensive discussions in an endeavour to reach agreement. This means that many matters which come before the Tribunal are agreed or substantially agreed between the parties and can be dealt with accordingly. There are however matters where there are areas of disagreement or where the Tribunal has concerns about aspects of matters that are agreed. In these cases the Tribunal is called upon to exercise its decision making role in the usual way.

The Tribunal adopts a flexible approach as to the manner in which matters are dealt with. Where matters are straight-forward the Tribunal may, if appropriate, deal with them on the basis of written material from the parties and interveners and/or through convening conferences. This obviates the need for the Tribunal to conduct formal hearings in relation to some matters.

The process of inquiry and determination by the Tribunal is important because it provides an opportunity for scrutiny of allowances, trade restructures and other proposed changes in order to ensure that the needs of the relevant Service or area of employment are met and that ADF members are treated fairly and equitably. The Tribunal also seeks to ensure that there is consistency in salary and allowance determinations across the ADF and that adequate regard is had to developments in outside industry.

In addition the Tribunal of recent times has adopted a more active role in having matters brought forward for consideration. This has occurred where matters have not been reviewed for a lengthy period; where they have been impacted upon by other reviews and there is a need to consider whether anomalies or inequities have developed; or where significant concerns have been raised by ADF members during visits and inspections. Relevant matters in this regard are Paratrooper Allowance, Special Action Forces Allowance, Submarine Service Allowance, Unpredictable Explosives Allowance and Clearance Diving Allowance. The trade structures of the Special Air Service and Clearance Divers have also been raised by the Tribunal as matters needing review.

Visits to ADF establishments have become a regular part of the Tribunal's work in recent years. The visits allow members of the Tribunal to have discussions with ADF members and their spouses about conditions of service matters generally and, in particular, about pay and allowances. These visits have been warmly welcomed by ADF members. All visits and inspections conducted by the Tribunal are detailed in Parts 6 and 7 of this report.

5. MATTERS CONSIDERED

A. RAN Electronic Warfare and RAAF Signals Operator Trade Restructure

The Australian Defence Force (ADF) sought a restructure and new Pay Groups for Navy and Air Force Electronic Warfare Trades.

The Tribunal undertook inspections between 27 February and 2 March 2001 in the Australian Capital Territory, New South Wales and South Australia. In the course of the inspections the Tribunal was provided with comprehensive briefings and demonstrations of the work of the Electronic Warfare classifications in Navy and Air Force.

The ADF sought to restructure the RAN Electronic Warfare and RAAF Signals Operator trades to reflect the significant changes in the nature of the work performed, the levels of skills used and the increased responsibility of members of the trade. The structures proposed provide a sustainable career structure for attraction and retention purposes.

The Tribunal approved the new structures and introduced the Pay Groups sought by the ADF.

B. Paratrooper Allowance

The ADF sought changes to the structure and rates of Parachutist Allowance and proposed that the allowance be renamed Paratrooper Allowance to reflect the distinction between civilian and military parachuting and to recognise the relationship between the parachuting skill and the role of the soldier.

Parachutist Allowance is paid to members of the ADF in recognition of the stresses and skills associated with parachuting. The allowance is not paid to members who receive the disability element of Special Action Forces Allowance.

Parachutist Allowance was last reviewed by the Tribunal in 1993 and as a result of the review Parachutist Allowance and 3RAR Parachutist Allowance were combined into a single allowance and a four level structure was introduced to reflect the training undertaken by members and the skills and disabilities associated with tactical and non-tactical jumping.

On 15 – 16 November 2000 the Tribunal undertook inspections at the Parachute Training School (PTS), the 3rd Battalion Royal Australian Regiment and the 4th Battalion Royal Australian Regiment (Commando).

The ADF proposed a nine tier structure as follows: Tier 1 for Free Fall Instructors at PTS, Tier 2 for Parachute Jump Instructors at PTS, Tier 3 for Parachute Jump Instructors at a unit conducting parachute operations, Tier 4 for Parachute Jump Masters and Free Fallers, Tier 5 for a Paratrooper conducting tactical jumps, Tier 6 for a Paratrooper conducting non-tactical jumps, Tier 7 for on-occurrence parachute jumps, Tier 8 for Free Fall Instructors and Parachute Jump Instructors not posted to a parachute unit and Tier 9 for High Altitude Parachute Operations.

The Commonwealth supported the majority of the restructure and rates proposed by the ADF but sought some minor changes.

The Returned and Services League of Australian and the Armed Forces Federation of Australia fully supported the ADF proposal.

The Tribunal approved the restructure and rates as sought by the ADF with the exception of the two rates sought for High Altitude Parachute Operations (HAPO) as it was of the view that any allowance for HAPO should be encompassed in a single payment.

The Tribunal in coming to its decision had two concerns which were raised in the course of proceedings. The first concern related to Special Action Forces Allowance (SAFA) in that members of the Special Air Service Regiment (SASR) are not entitled to receive Paratrooper Allowance because paratrooping skills are reflected in SAFA. The Tribunal considered that SAFA should be reviewed without delay to ensure that members of SASR are not disadvantaged. The second concern related to Unpredictable Explosives Allowance which in the view of the Tribunal should be considered to ensure that members in receipt of the allowance are being treated equitably.

Subsequent to its decision the Tribunal relisted Paratrooper Allowance for hearing on 15 May 2001 when the ADF sought an all encompassing allowance for members conducting HAPO jumps. The Tribunal approved the rates as sought.

C. Unpredictable Explosives Allowance

The ADF sought a permanent extension of Unpredictable Explosives Allowance (UEA) to members of the Chemical Biological and Radiological Response Squadron.

Unpredictable Explosives Allowance is paid for the hazards and consequent stress associated with dealing with unpredictable explosives.

On 24 August 2000 the ADF sought the extension of Unpredictable Explosives Allowance to members of the Joint Incident Response Unit (JIRU). At that time the extension was to be on an interim basis for the period of the Sydney Olympic Games, the Centenary of Federation Celebrations and the Commonwealth Heads of Government meeting.

The Tribunal approved the extension until 31 March 2001 and directed that the ADF present further submissions prior to that date if the entitlement was to be extended.

In November 2000 JIRU was disbanded and replaced by the Chemical, Biological and Radiological Response Squadron employed in either decontamination or medical roles.

On 23 March 2001 the Tribunal approved the continued payment but noted that UEA had not been fundamentally reviewed since 1993 and was of the view that a complete review is necessary to ensure that other members in receipt of the allowance are being treated equitably.

D. Separation Allowance

Separation Allowance is paid to compensate for the effects on members separated from dependants due to the requirements of their employment. It recognises both the intangible effects of separation and the additional expenses incurred by the member, such as the need to maintain contact with family and the requirement for some household tasks, normally done by the member, to be carried out on a commercial basis.

In December 1990 the Tribunal adjusted the rates of Separation Allowance in accordance with an application by the parties. In its Reasons for Decision the Tribunal noted that the ADF considered that aspects of the structure of the allowance required a further review.

In November 1991 the ADF sought the abolition of the continuous rate of Separation Allowance and the reduction of the qualifying period of the on-occurrence rate from 14 days to periods in excess of 72 hours with entitlement to payment from the first day. The Tribunal did not accept the submission and requested that the parties re-examine the basis of the joint submission.

On 17 October 2000 it was submitted by the ADF that changes to conditions of service such as the substantial reduction in the costs incurred for maintenance of contact with dependents, the substantial increase in conditions and facilities made available to service members, improvement in the standard and maintenance to Defence married quarters and the abolition of rations charges have meant that the quanta and structure of Separation Allowance are still current. The Tribunal accepted the submissions of the parties.

E. Airfield Defence Guards

The ADF sought the introduction of a new structure and Pay Groups for the Royal Australian Air Force (RAAF) Airfield Defence Guard (ADG) mustering.

The role of the ADG is to provide the specialist ground defence force required to protect air power assets from the effects of hostile ground action and to instruct other RAAF personnel in relevant ground defence techniques.

The responsibility of the ADG is to protect facilities, equipment and personnel that are critical to air operations through the implementation of mustering specific ground defence and specialist skills.

The Airfield Defence Wing was formed in 1992 and consists of a headquarters element and three Airfield Defence Squadrons. The mustering has a permanent Air Force Constrained Establishment of 450 positions and a reserve force of 312.

On 20 June 2000 the Tribunal undertook an inspection of the work of the ADG at the Airfield Defence wing at RAAF Base Amberley.

The ADF submitted that a new structure and pay groups for the ADG mustering were required to meet the operational needs of the RAAF for the following reasons: there had been significant change in the nature of the roles, skills and responsibilities of all ADGs; there had been an increase in work value not recognised under the existing structure; there was a need to create employment categories reflecting trade progression, work value and actual roles and responsibilities and there was a requirement to standardise trade training to produce a multi-skilled ADG to conform with the requirements of the 1995 Concept of Operations.

The Commonwealth, the Armed Forces Federation of Australia and the Returned and Services League of Australia support the proposed new structure.

The Tribunal was satisfied that there had been a significant increase in the work value of members of the mustering and the levels of responsibility had been devolved to the more junior members of the trade. The Tribunal approved the new structure and pay groups sought by the ADF and supported by the parties.

In reaching its decision the Tribunal had regard to the structure and pay group placements of other ADF trades, in particular those of the Army Infantry and Commando trades.

F. RAAF Surface Finisher

On 25 September 2000, the ADF wrote to the Tribunal requesting that the title of RAAF Surface Finisher be changed to Aircraft Surface Finisher to better reflect the role of the category.

Surface Finishers were responsible for corrosion control and painting of metallic and composite surfaces of aircraft, motor vehicles, ground support equipment, marine craft and furnishings.

The category was last reviewed by the Tribunal as part of the RAAF Technical Non-Aircraft Trades Restructure in 1993. At that time the ADF advised that the category was under consideration for disbandment as part of the outsourcing activity associated with the Commercial Support Program. A subsequent review identified the need to retain the in-house capability for aircraft surface finishing because of the limited availability of such specialist skills in civil industry.

The Tribunal approved the change in title as sought by the ADF.

G. Recognition of Previous Naval Sea Service

The ADF requested that the Tribunal introduce a provision that allows members with previous sea service in a Defence Force other than the ADF to count that service for tiering purposes.

The Tribunal determined that if a member has rendered naval sea service in another Defence Force, this service may be deemed to be service with the ADF at the discretion of the CDF.

H. Consolidated Rates of Pay – Reserve Force Appointment as Director General of Cadets

The ADF advised that in response to a request by Government and in recognition of the new Australian Defence Force Cadets Scheme, the Secretary of Department of Defence and the Chief of the Defence Force had agreed to establish the position of Director General of Cadets.

The Tribunal set the salary for the position as that of a Major General of the Reserves on a consolidated rate.

6. INSPECTIONS

Inspections are carried out by the Tribunal in order to inform itself about matters before it.

These inspections are normally at the request of the parties and demonstrate changes in the work being performed by members or show the conditions being experienced by members.

The inspections carried out by members of the Tribunal in the period of this report were as follows:

As part of its consideration of the Navy Electronic Warfare and RAAF Signals Operator Trades the Tribunal inspected the work of these categories in the period 27 February to 2 March 2001. The Tribunal was briefed on developments in the roles of the trades and changes to their work value and responsibility.

On 15 and 16 November, as part of its review of Paratrooper Allowance the Tribunal undertook inspections at the Parachute Training School, the 3rd Battalion Royal Australian Regiment and the 4th Battalion Royal Australian Regiment (Commando). The Tribunal was provided with briefings on the courses, roles and responsibilities of each unit and was provided with practical demonstrations of the loads carried. The Tribunal also witnessed a number of static displays.

As part of its consideration of the extension of Unpredictable Explosives Allowance the Tribunal undertook an inspection on 23 March 2001 of work of the members of the Chemical, Biological and Radiological Response Squadron at Majura Range, ACT. During the inspection the Tribunal was provided with briefings on the roles and responsibilities of members of the Squadron and the disabilities associated with the role. The Tribunal also witnessed a static display of protective clothing and equipment used by the Squadron.

On 17 April 2001, as part of the review of Submarine Service Allowance, the Tribunal inspected the work of the Trials Crew at the Australian Submarine Corporation in Adelaide. The members of the Trials Crew made formal presentations to the Tribunal and this was followed by inspections of two Collins Class submarines: HMAS FARNCOMB AND HMAS RANKIN.

On 19 April 2001 the Tribunal inspected HMAS WALLER in Sydney. The Tribunal was briefed by members of the crew on working and living conditions on board a Collins Class submarine. The Tribunal then participated in a sea ride on HMAS WALLER.

As part of its inquiry into Seagoing Allowance the Tribunal inspected the work of sailors on a number of ships in the Eastern Exercise Area. On 6 June 2001 the Tribunal undertook a sea ride on HMAS MELBOURNE, on 7 June 2001 it embarked on HMAS WARRAMUNGA, it spent the night of 7 June 2001 on HMAS MANOORA, and on 8 June 2001 it participated in a sea ride on HMAS BENDIGO. On 8 June 2000 the Tribunal also visited HMAS TOBRUK which was in refit at Garden Island. During the inspections at sea and at Garden Island the Tribunal viewed the living and working conditions on the ships and was provided with practical demonstrations of the work of the crews on the ships.

7. VISITS

The Tribunal regularly carries out familiarisation visits to gain an understanding of the living and working conditions experienced by members of the ADF as well as programmed visits to units and establishments.

During the period covered by this Report the Tribunal carried out further visits to ADF units and establishments in order to ascertain an understanding of the conditions of service issues that are of concern to ADF members and spouses. In addition to providing a forum for members to discuss matters of concern these visits provide members and spouses with an opportunity to meet the members of the Tribunal and discuss its role and work.

The visits comprise a series of open forums with groups of personnel and spouses with each meeting including a presentation about the role and function of the Tribunal and the matters that are presently before it. The presentations are followed by a discussion period in which the ADF members and spouses participating have the opportunity to ask questions or raise issues. The meetings are informal so as to encourage the exchange of ideas and information.

The members of the Tribunal are accompanied on the visits by representatives of the Defence Personnel Executive and the Department of Employment, Workplace Relations and Small Business. A representative from the Armed Forces Federation of Australia has also attended the sessions.

Units and establishments visited in the period covered by this Report were as follows:

On 28 November 2000 the Tribunal visited HMAS CAIRNS at Cairns, Queensland and in the evening visited 51 Far North Queensland Regiment, also in the Cairns area.

On 29 November 2000 the Tribunal visited Laverack Barracks, a major Army establishment at Townsville, Queensland.

RAAF Townsville was visited by the Tribunal on 30 November 2000.

Such visits are very valuable and continue to be an integral part of the work of the Tribunal and are warmly received by ADF members. The President of the Tribunal has written to the Chief of the Defence Force in regard to the issues raised during the visits. The Tribunal appreciates the support provided by the ADF.

The Tribunal intends to carry out further visits as appropriate.

8. FINANCIAL MATTERS

The Tribunal's financial requirements are met through the Department of Employment, Workplace Relations and Small Business, sub-program 2.2.7 Defence Force Remuneration Tribunal. There is no separate form of accounts applicable to the Tribunal.

Budget funds, allocated through the Departmental process, may be expended by the authority of the Tribunal under the headings of: salaries to the authorised staffing level, including holders of public office; and administrative and incidental expenditure.

9. INDUSTRIAL DEMOCRACY

The Tribunal has a strong commitment to the adoption of participative practices involving staff in decision-making. This can be achieved through structures and processes which involve the sharing of information, authority and responsibility in the workplace.

10. OCCUPATIONAL HEALTH AND SAFETY

The obligations of the Tribunal under the provisions of the Occupational Health and Safety (Commonwealth Employment) Act 1991 are met by the Department of Employment, Workplace Relations and Small Business on behalf of the Tribunal.

11. ENERGY MANAGEMENT

The Tribunal occupies space in the CFM Centre. In relation to those energy matters which are within the control of the Tribunal, such as lighting, every effort is made to reduce energy consumption consistent with the requirements for every day administration.

12. ADVERTISING AND MARKET RESEARCH

The Tribunal does not have a requirement to advertise or conduct market research.

13. DISCRETIONARY GRANTS

There are no discretionary grants administered by the Tribunal.

14. ACCOMMODATION

In addition to the use of the premises for the operations of the Tribunal, the Hearing and Advocates' rooms continue to be used by the Departments of Defence; Employment, Workplace Relations and Small Business and other Government Departments; and by the Australian Industrial Relations Commission and other Tribunals. The facilities are made available subject to the Tribunal's own requirements.

15. WEB SITE

The Defence Force Remuneration Tribunal released its Web Site in November 1999. The Web Site includes the role and operation of the Tribunal, current membership and contains decisions and determinations made in the matters that have come before it and matters scheduled for hearing. The Tribunal's Annual Report is also available on the site.

Along with the visits to ADF establishments detailed in Part 7 of this Report, the Web Site provides an important opportunity to familiarise ADF members with the role, operations and decisions of the Tribunal.

EXTRACT FROM THE DEFENCE ACT 1903
SECTIONS 58F TO 58Q

Division 2 - The Defence Force Remuneration Tribunal

Interpretation

58F.

In this Division, unless the contrary intention appears -

"President" means the President of the Tribunal appointed under section 58G;

"Commission" means the Australian Industrial Relations Commission established by section 8 of the *Industrial Relations Act 1988*;

"Defence Force Advocate" means the Defence Force Advocate appointed under section 58S;

"Member of the Tribunal" means a member of the Tribunal appointed under section 58G, and includes the President;

"Presidential member of the Commission" means the President of the Commission or the Vice President, a Senior Deputy President or a Deputy President of the Commission appointed under section 9 of the *Industrial Relations Act 1988*;

"Relevant allowances", in relation to a member, means allowances by way of remuneration payable to the member and, without limiting the generality of the foregoing, includes any allowance payable to the member -

- (a) in respect of the service of the member on a ship or aircraft;
 - (b) as general compensation for the disadvantages of rendering naval, military or air force service;
 - (c) in respect of particular skills or qualifications possessed by the member;
- or
- (d) as compensation for the hazardous nature of the duties that the member is required to perform or for the conditions under which the member is required to perform his duties;

"Remuneration Tribunal" means the Remuneration Tribunal established by sub-section 4(1) of the *Remuneration Tribunals Act 1973*;

"Salary" includes pay;

"Single member" means a member of the Tribunal specified in a direction made under subsection 58KA(1);

"Tribunal" means the Defence Force Remuneration Tribunal established by section 58G.

58G.

- (1) There is established by this section a Defence Force Remuneration Tribunal.
- (2) The Tribunal shall consist of -
 - (a) a President;
 - (b) a person who is experienced in industrial relations matters; and
 - (c) a person who has been a member.
- (3) The members of the Tribunal shall be appointed by the Governor-General on a part-time basis.
- (4) The person appointed as President shall be a presidential member of the Commission.
- (5) A person shall not be appointed as a member of the Tribunal if he has at any time during the year preceding his appointment been a member.
- (6) The performance of the duties and functions and the exercise of the powers of the Tribunal are not affected by reason only of there being one vacancy in the membership of the Tribunal.

58H.

- (1) The functions of the Tribunal are to inquire into and determine, in accordance with this section, the matters referred to in sub-section (2).
- (2) The Tribunal shall, as provided for by this section -
 - (a) inquire into and determine the salaries and relevant allowances to be paid to members; and
 - (b) inquire into and make determinations in respect of prescribed matters that have been referred to the Tribunal.

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- (3) The Minister or, subject to sub-section (4), the Secretary or the Chief of the Defence Force may, by notice in writing given to the President, refer a prescribed matter to the Tribunal.
 - (4) The Secretary or the Chief of the Defence Force shall not, without the approval in writing of the Minister, refer a prescribed matter to the Tribunal pursuant to sub-section (3) if -
 - (a) at any time during the preceding 12 months, the Minister has made a determination under section 58B that relates, in whole or in part, to that matter; or
 - (b) the Secretary or the Chief of the Defence Force is aware that, at any time during the preceding 12 months, submissions have been made to the Minister requesting the Minister to make a determination that relates, in whole or in part, to that matter and the Minister has not made such a determination.
 - (5) The Tribunal shall, within 2 years of the commencement of this section or within such shorter period as the Minister, by notice in writing given to the President, determines, inquire into and make a determination in respect of the salaries and relevant allowances to be paid to members.
 - (6) Where a determination of the Tribunal in respect of the salaries and relevant allowances to be paid to members is in force, the Tribunal shall inquire into and make a further determination in respect of those salaries and allowances-
 - (a) within 2 years of the first-mentioned determination taking effect; or
 - (b) if the Minister, by notice in writing given to the President, requests the Tribunal to make a further determination in respect of those salaries and allowances within a shorter period of the first-mentioned determination taking effect - within that shorter period.
 - (7) A determination of the Tribunal shall be in writing and shall take effect, or shall be deemed to have taken effect, on such day as the Tribunal specifies for the purpose in the determination.
 - (8) The Tribunal shall not specify as the day on which a determination of the Tribunal takes effect a day earlier than the day on which the determination is made in any case where, if the determination so took effect -
 - (a) the rights of a person (other than the Commonwealth) which existed immediately before the last-mentioned day would be affected in a manner prejudicial to that person; or

-
- (b) liabilities would be imposed on a person (other than the Commonwealth) in respect of anything done or omitted to be done before that last-mentioned day, and where, in a determination of the Tribunal, any provision is made in contravention of this sub-section, that provision shall be of no effect.
- (9) The President shall give a copy of each determination made by the Tribunal to the Minister, to the Secretary and to the Chief of the Defence Force.
- (10) Where the Tribunal has made a determination (not being a determination made pursuant to sub-section (12)), the Minister, the Secretary or the Chief of the Defence Force may, by notice in writing given to the President within 28 days of the determination being made, request the Tribunal to reconsider the determination.
- (11) A notice of request under sub-section (10) shall set out the grounds on which the reconsideration is being sought.
- (12) As soon as practicable after a request is made under sub-section (10) for reconsideration of a determination, the Tribunal shall reconsider the determination and shall make a further determination affirming, varying or replacing the first-mentioned determination.
- (13) The Minister shall cause a copy of each determination of the Tribunal to be laid before each House of the Parliament within 15 sitting days of that House after the determination is received by him.
- (14) Any regulation made under this Act, the *Air Force Act 1923* or the *Naval Defence Act 1910*, and any determination made under section 58B of this Act, has no effect to the extent that it is inconsistent with any determination of the Tribunal.
- (15) In this section, "prescribed matter" means a matter in relation to which the Minister may make determinations under section 58B, not being a matter referred to in paragraph (2)(a).

Hearings in relation to discriminatory determinations

58HA.

- (1) If a determination is referred to the Tribunal under section 50E of the *Sex Discrimination Act 1984*, the Tribunal must hold a hearing to review the determination.
- (2) Unless the hearing takes place before a single member of the Tribunal, sub-sections 58K(1) to (6) apply to the hearing as if it were a meeting of the Tribunal.
- (3) The Tribunal must decide whether or not the hearing is to be held in public.

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- (4) If the Tribunal decides that the hearing is not to be held in public, then, subject to sub-section (5) and sub-sections 58K(9) and 58KB(5), the Tribunal may decide the people who may be present.
- (5) The Sex Discrimination Commissioner is entitled to notice of, and to be present at, the hearing and may make submissions to the Tribunal.
- (6) In this section:

Determination includes a variation to a determination.

Tribunal includes a single member conducting the Tribunal's business under a direction under sub-section 58KA(1).

Review of discriminatory determinations

58HB.

- (1) If:
- (a) a determination has been referred to the Tribunal under section 50E of the *Sex Discrimination Act 1984*; and
 - (b) the Tribunal considers that the determination is a discriminatory determination;
- the Tribunal must take the necessary action to remove the discrimination, by setting aside the determination, setting aside terms of the determination or varying the determination.

- (2) In this section:

Determination has the same meaning as in section 58HA.

Discriminatory determination means a determination that:

- (a) has been referred to the Tribunal under section 50E of the *Sex Discrimination Act 1984*; and
- (b) requires a person to do an act that would be unlawful under Part II of the *Sex Discrimination Act 1984* except for the fact that the act would be done in direct compliance with the determination.

Tribunal has the same meaning as in section 58HA.

- (3) For the purposes of the definition of *discriminatory determination* in sub-section (2), the fact that an act is done in direct compliance with the determination does not of itself mean that the act is reasonable.

58J.

- (1) The Minister may, by notice in writing given to the President, request the Tribunal to inquire into and report to the Minister on a matter specified in the notice, being a

matter in relation to which the Tribunal may make a determination pursuant to section 58H.

- (2) When a request is made under sub-section (1), the Tribunal shall inquire into the matter concerned and give to the Minister a report in writing on the matter.

58K.

- (1) The President shall convene such meetings of the Tribunal as he considers necessary for the efficient performance of its functions.
- (2) Meetings of the Tribunal shall be held at such places as the President determines.
- (3) The President shall preside at all meetings of the Tribunal at which he is present.
- (4) If the President is not present at a meeting of the Tribunal, another member of the Tribunal nominated by the President shall preside at the meeting.
- (5) The Tribunal shall keep records of its meetings.
- (6) At a meeting of the Tribunal -
- (a) 2 members of the Tribunal constitute a quorum;
 - (b) all questions shall be decided by a majority of votes of the members of the Tribunal present and voting; and
 - (c) the member of the Tribunal presiding has a deliberative vote and, in the event of an equality of votes, also has a casting vote.
- (7) The Tribunal shall, in making a determination, have regard to any decision of, or principles established by, the Commission that is or are, in the opinion of the Tribunal, relevant to the making of that determination.
- (8) In the performance of the functions of the Tribunal -
- (a) the Tribunal may regulate the conduct of its proceedings as it thinks fit and is not bound to act in a formal manner; and
 - (b) the Tribunal may inform itself on any matter in such manner as it thinks fit and is not bound by the rules of evidence.
- (9) The Defence Force Advocate and a person representing the Commonwealth are entitled to be present, and to make submissions to the Tribunal, during any proceedings before the Tribunal.
- (10) Where the Tribunal thinks that a person or body should be heard in relation to a matter that is being, or is to be, considered by the Tribunal, the Tribunal may permit the person or body to be present, and to make submissions to the Tribunal, during proceedings before the Tribunal in relation to that matter.

58KA

- (1) Subject to sub-section (2), the President may:
 - (a) if a person referred to in sub-section 58K(9) requests the President to do so and the President considers it appropriate; or
 - (b) in any case, on the President's initiative;direct, in writing, that a member of the Tribunal specified in the direction is to conduct the Tribunal's business in relation to any matter that is specified in the direction, being a matter that is being, or is to be, dealt with by the Tribunal.
- (2) The President must not, in a direction made under sub-section (1), direct that a single member is to deal with a request made under sub-section 58KC(1).
- (3) The President may, at any time, in writing, terminate a direction made under sub-section (1).
- (4) Where a single member is conducting the Tribunal's business in relation to a matter:
 - (a) the single member may exercise any powers or perform any functions of the Tribunal in relation to that matter; and
 - (b) any act of the single member in relation to that matter is taken to be an act of the Tribunal.
- (4) In this section, a reference to a matter that is being, or is to be, dealt with by the Tribunal includes a reference to any part of such a matter.

58KB.

- (1) Where a single member is conducting the Tribunal's business:
 - (a) section 58K does not apply to the single member's conduct of such business; and
 - (b) the following provisions apply.
- (2) The single member may conduct such proceedings relating to the matter to which the direction relates as he or she considers necessary.
- (3) In the conduct of the Tribunal's business"
 - (a) the single member is not bound to act in a formal manner; and
 - (b) the single member may inform himself or herself on any matter in such manner as he or she thinks fit and is not bound by the rules of evidence.

-
- (4) The single member must, in making a determination, have regard to any decisions of, or principles established by, the Commission that is or are, in the opinion of the single member, relevant to the making of that determination.
 - (5) The Defence Force Advocate and a person representing the Commonwealth are entitled to be present, and to make submissions to the single member, during any proceedings conducted by the single member.
 - (6) Where the single member thinks that a person or body would be heard in relation to a matter that is being, or is to be, considered by him or her, the single member may permit the person or body to be present, and to make submissions to the single member, during proceedings conducted by the single member in relation to that matter.

58KC.

- (1) Where:
 - (a) a single member is conducting the Tribunal's business in relation to a matter; and
 - (b) in dealing with the matter, the single member exercises a power or performs a function of the Tribunal;

the Minister, the Secretary or the Chief of the Defence Force may, by notice in writing given to the President within 28 days after the single member has completed his or her conduct of that business, request the Tribunal to reconsider the exercise of the power or performance of the function.

- (2) The notice must specify the exercise of the power or the performance of the function requested to be reconsidered and the grounds for seeking the reconsideration.
- (3) As soon as practicable after the request is made, the Tribunal must:
 - (a) reconsider the exercise of the power or performance of the function specified in the request; and
 - (b) make a determination affirming, varying or replacing anything done by the single member in exercising that power or performing that function.

58KD.

The Tribunal may, in making a determination, give effect to any agreement reached between the Minister, acting on behalf of the Commonwealth, and the Chief of the

Defence Force, acting on behalf of the members of the Australian Defence Force, in relation to a matter to which the determination relates.

58L.

- (1) Subject to this Division, a member of the Tribunal holds office for such period, not exceeding 5 years, as is specified in his or her instrument of appointment, but is eligible for re-appointment.
- (2) A person shall not continue to hold office as a member of the Tribunal if -
 - (a) he becomes a member of the Defence Force;
 - (b) he becomes the Defence Force Advocate; or
 - (c) in the case of the President, he ceases to be a presidential member of the Commission.

58M.

A member of the Tribunal may resign his office by writing signed by him and delivered to the Governor-General.

58N.

The Governor-General may terminate the appointment of a member of the Tribunal by reason of misbehaviour or physical or mental incapacity.

58P.

- (1) The Minister may appoint a person to act as a member (including the President) of the Tribunal -
 - (a) during a vacancy in the office of that member; or
 - (b) during a period, or during all periods, when the member is absent from duty or from Australia or is, for any other reason (including the reason that, in the case of a member not being the President, he is acting as President), unable to perform the duties of his office,but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.
- (2) While a person is acting as President or as a member of the Tribunal other than the President, he has and may exercise all the powers, and shall perform all the functions, of the President or that member, as the case may be.
- (3) An appointment of a person under sub-section (1) may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.

-
- (4) The Minister may -
- (a) determine the terms and conditions of appointment, including fees and allowances, of a person acting as a member of the Tribunal; and
 - (b) terminate such an appointment at any time.
- (5) Where a person is acting as a member of the Tribunal in accordance with paragraph (1)(b) and that office becomes vacant while that person is so acting, then, subject to sub-section (3), that person may continue so to act until the Minister otherwise directs, the vacancy is filled or a period of 12 months from the date on which the vacancy occurred expires, whichever first happens.
- (6) The appointment of a person to act as a member of the Tribunal ceases to have effect if the resigns his appointment by writing signed by him and delivered to the Minister.
- (7) The validity of anything done by a person purporting to act under this section shall not be called in question on the ground that the occasion for his appointment had not arisen, that there was a defect or irregularity in or in connection with his appointment, that the appointment had ceased to have effect or that the occasion for him to act had not arisen or had ceased.
- (8) A reference is section 58H, 58J, or 58K to the President or to a member of the Tribunal shall be read as including a reference to a person acting as the President or as a member of the Tribunal, as the case may be.

58Q.

- (1) A member of the Tribunal shall be paid fees and allowances as the Remuneration Tribunal determines.
- (2) The appointment of the holder of a prescribed office as a member of the Tribunal, or service by the holder of a prescribed office as such a member, does not affect his tenure of that prescribed office or his rank, title, status, precedence, salary, annual or other allowances, or other rights or privileges as the holder of that prescribed office and, for all purposes, his service as a member of the Tribunal shall be taken to be service as the holder of the prescribed office.
- (3) This section has effect subject to the *Remuneration Tribunals Act 1973*.
- (4) In this section, "prescribed office" means an office, appointment or other employment which is referred to in sub-section 7(11) of the *Remuneration Tribunals Act 1973* as an office, appointment or other employment or a full-time basis or a judicial office referred to in sub-section 7(12) of that Act.

FREEDOM OF INFORMATION

Establishment

The Tribunal was established in 1984 under Part IIIA, Division 2, of the Defence Act 1903.

Organisation

The Tribunal comprises three part-time members. One of whom, the President, is required to be a presidential member of the Australian Industrial Relations Commission.

Functions

The functions of the Tribunal are:

- a. to inquire into and determine the salaries and relevant allowances to be paid to members of the Australian Defence Force; and
- b. to inquire into and make determinations in respect of prescribed matters that have been referred to the Tribunal.

In addition, at the request of the Minister, the Tribunal shall inquire into and report on relevant matters.

Power

The Tribunal makes determinations in respect of salaries and relevant allowances to be paid to members of the Australian Defence Force. Where a determination of the Tribunal in respect of the salaries and relevant allowances to be paid to members is in force, the Tribunal shall inquire into and make a further determination in respect of those salaries and allowances within 2 years of the first-mentioned determination taking effect or within a shorter period if requested to do so by the Minister.

Categories of documents

Documents maintained by the Tribunal include:

- submissions from interested parties, including the public;
- transcripts of Tribunal hearings;
- determinations made by the Tribunal, including reasons for decisions; and
- files dealing with matters that have been referred to the Tribunal.

FOI procedures and initial contact points

Persons wishing to gain access to documents held by the Tribunal should write to or contact the Secretary of the Tribunal at the following address:

Defence Force Remuneration Tribunal
GPO Box 2761
CANBERRA ACT 2601

Telephone: (02) 6257 3855

Inquiries

The Tribunal has not received any inquiries for access to its documents in the period covered by this Report.

<i>LIST OF DETERMINATIONS</i>

Determination	Subject	Date of Effect
8 of 2000	ADF Enterprise Productivity Arrangement: 1999 – 2002	6 July 2000
9 of 2000	Crew Attendant	1 July 2000
10 of 2000	Application of Recreation Leave Bonus	2 July 2000
11 of 2000	Repeal of Redundant Salary Non-Reduction Categories	29 June 2000
12 of 2000	Repeal of Redundant Salary Non-Reduction Categories – Navy	10 July 2000
13 of 2000	Airfield Defence Guards	20 July 2000
14 of 2000	ADF Enterprise Productivity Arrangement: 1999 – 2002 (Amendment)	6 July 2000
15 of 2000	Flying Allowance	26 July 2000
16 of 2000	Payment to Rear Admiral R Lamacraft	26 July 2000
17 of 2000	Salaries of Legal Officers	16 March 2000
18 of 2000	Salary of Lt General and Equivalentents – Reserve Forces	6 July 2000
19 of 2000	Entitlement to Unpredictable Explosives Allowance	1 April 2000
20 of 2000	Aircraft Surface Finisher	17 October 2000

Determination	Subject	Date of Effect
1 of 2001	Parachutist Allowance Repeal	1 February 2001
2 of 2001	Paratrooper Allowance	1 February 2001
3 of 2001	ADF Enterprise Productivity Arrangement: 1999 – 2002	1 March 2001
4 of 2001	Salary of Officer Trainees (RAAF Ground Defence Officer)	1 March 2001
5 of 2001	Unpredictable Explosives Allowance	23 March 2001
6 of 2001	Paratrooper Allowance – Consequential Amendments	18 April 2001
7 of 2001	Consolidated Rates of Pay – Reserve Force Appointment Director General of Cadets	14 May 2001
8 of 2001	RAN and RAAF Electronic Warfare and Signals Trades	14 May 2001
9 of 2001	Recognition of Previous Naval Sea Service	29 May 2001
10 of 2001	Paratrooper Allowance – High Altitude Parachute Operations	1 February 2001

SECRETARIAT

Secretary: Ian Hueston

Chief Executive Officer: Chris J Wallace

Administrative Officer: Samantha Beer

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CANBERRA ACT 2601

Web Site Address: www.dfrt.gov.au

All members of the Secretariat are full-time, permanent officers of the Australian Public Service.

It follows from the fact that because the appointed members of the Tribunal meet their commitments on a part time basis the contribution of the Secretariat is vital to its effective functioning. The Tribunal is extremely fortunate in having a committed, professional, hard-working and knowledgeable Secretariat which enhances its ability to deal effectively with its busy workload. The Tribunal records its sincere appreciation to the members of the Secretariat for their unstinting support and assistance over the reporting period.

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