



# **DEFENCE FORCE REMUNERATION TRIBUNAL**

## **EIGHTEENTH REPORT**

**2002 – 2003**

**(Period from 1 July 2002 – 30 June 2003)**



## **DEFENCE FORCE REMUNERATION TRIBUNAL**

10 September 2003

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

My dear Minister

I have great pleasure in presenting to you the Eighteenth Report of the Defence Force Remuneration Tribunal, which covers the period of the Tribunal's operations from 1 July 2002 to 30 June 2003.

Yours sincerely

His Honour Judge F K Cawthorne  
President

***DEFENCE FORCE REMUNERATION TRIBUNAL***

**President: His Honour Judge F K Cawthorne**

**Members: Air Vice Marshal F D Cox AO (Retd)**

**Commissioner A J Dangerfield**

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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 18 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 and Workplace Relations, 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.

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## **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:   | Air Vice Marshal F D Cox AO (Retd)<br>Commissioner A J Dangerfield |

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 27 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.

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.

Commissioner Adrian Dangerfield was appointed as a member of the Tribunal by the Governor General for the period 5 August 2001 until 7 March 2004.

Commissioner Dangerfield is a Commissioner of the Australian Industrial Relations Commission as well as the Industrial Relations Commission of South Australia. He brings to the Tribunal considerable experience in industrial relations matters both from his Commission appointment as well as his previous employment.

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### **3. THE PARTIES**

The main parties in matters before the Tribunal are the ADF and the Commonwealth. The Returned and Services League of Australia, the Armed Forces Federation of Australia and the Regular Defence Force Welfare Association intervene 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 originally appointed by the Minister for Defence Science and Personnel on 1 June 1996 and has been reappointed until 7 March 2004. The Assistant to the Defence Force Advocate is Lieutenant Commander Abigail Bradshaw.

The Commonwealth is represented in proceedings before the Tribunal by the Department of Employment and Workplace Relations. In the period of this report the Commonwealth was represented by Mr Michael Frawley. Mr Frawley retired from the Australian Public Service on 27 June 2003. The Tribunal wishes to express its appreciation for the support that he provided to the Tribunal over the years in particular for his work as the Commonwealth advocate. We wish him well in his retirement.

The Returned and Services League of Australia, the Armed Forces Federation of Australia and the Regular Defence Force Welfare Association 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 and Group Captain Phil Morrall AM, CSC (Ret'd) has represented the Returned and Services League of Australia and the Regular Defence Force Welfare Association.

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

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## **4. THE WORK OF THE TRIBUNAL**

The Tribunal continues to have a significant workload with a number of major matters being dealt with over the period covered by this Report.

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

Various 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 the full Tribunal.

In the period covered by this Report the Tribunal has considered a number of Specialist Officer Career and Salary Structures, allowance reviews and trade restructures including: the Combat Systems (Mine Warfare) Operator trade; the ADF Workplace Remuneration Arrangement: 2002 – 2004; the ADF Star Ranks Remuneration Arrangement: 2002 – 2004; RAAF Airfield Engineering Categories; Chaplains Specialist Officer Career and Salary Structure; RAN Photographic trades restructure; Service Allowance; Electronic Warfare Analyst categories; RAAF Firefighters trade restructure and Dental Officers Specialist Career and Salary structure.

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

### **Service Allowance**

Service Allowance is the major allowance paid to ADF members up to and including Major (and equivalents) for the exigencies of military service. A major review of the allowance was conducted by the Tribunal in July 2003 and a summary of the Tribunal's decision is detailed in Part 5 of this Report.

### **ADF Remuneration Reform Project**

The Remuneration Reform Project (RRP) proposed by the ADF is a three phased plan to implement a contemporary pay system for the ADF that would be based on work value and also allow the Service Chiefs some flexibility to react to market forces.

The stated aim of the RRP Phase 1 was to identify the quanta of each element contained in ADF allowances. A number of allowances have an identified Qualification and Skill element and a Disability element. The ADF sought to further disaggregate the allowance by identifying an Attraction and Retention element.

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The Tribunal suggested that the matter be progressed by means of a test case. On 19 – 20 February 2003 a case based on Submarine Service Allowance and Seagoing Allowance was presented to the Tribunal.

On 20 February 2003 the Tribunal released a statement in regard to the test case. The Tribunal stated that “Having read the papers before it, having regard to the extensive opening submissions from the ADF and having had the benefit of wide-ranging discussions in conference, the Tribunal indicates that as presently informed, it has difficulties with the disaggregation of a so-called ‘attraction and retention’ element from Submarine Service and Seagoing allowances”.

The Tribunal went on to say “In the meantime, while the ADF considers options for moving forward with the Remuneration Reform Project in the matters discussed at conference, it should do so confident in the knowledge that the Tribunal is strongly supportive of the aims of the Remuneration Reform Project. To this end the Tribunal encourages further developments of the Remuneration Reform Project and will do what it reasonably can to assist the ADF in achieving and implementing Phase 3 of the project”.

Further conferences and proceedings on the RRP have been listed for the second half of 2003.

### **Approach of the Tribunal**

The Tribunal adopts a flexible approach to the way in which matters are dealt with. Where matters are straightforward 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.

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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. The visit program during the period of this report has not been as extensive as in past years. This has primarily been due to the large number and complexity of the matters considered by the Tribunal. The Tribunal intends to increase the number of visits to ships, establishments and units in the next reporting period. All visits and inspections conducted by the Tribunal are detailed in Parts 6 and 7 of this report.

The Tribunal continues to be impressed by the hard work and dedication of members of the ADF in particular at a time of unprecedented operational activity.

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## **5. MATTERS CONSIDERED**

### **A. Royal Australian Navy Combat System Operator Mine Warfare**

The Australian Defence Force (ADF) sought a restructure and revised Pay Groups for the Royal Australian Navy (RAN) Combat Systems Operator Mine Warfare (CSOMW) category.

The CSOMW category performs the following tasks: laying and recovering of sea mines; Mine Counter Measures including: mine hunting; mine sweeping and sea route surveillance; the monitoring of surface and air contacts; Electronic Counter Measures; seamanship duties and gunnery.

The Tribunal undertook an inspection at HMAS WATERHEN in Sydney on 22 August 2002.

The ADF sought a four tiered structure of the category on work value grounds on the basis that the introduction of the Mine Hunter Coastal (MHC) is a larger, more complex and far more capable vessel than the Mine Hunter Inshore. The combined effect of the introduction of the MHC and the change of focus to mine hunting is that the category requires a higher standard of operator who has acquired a wider range of competencies on a greater range of sensors and combat systems.

The Commonwealth, the Returned and Services League of Australia and the Armed Forces Federation of Australia supported the ADF proposal.

The Tribunal approved the ADF proposal noting that the structure recognises the evolution that has occurred in CSOMW training courses and that the placement of the tiers accords with points at which there is a significant increase in work value rather than an increase in authority solely through rank.

### **B. Specialist Operations Allowance**

In April 2002 the ADF sought the introduction of a Specialist Operations Allowance. The allowance sought encompasses members involved in the search for and rendering safe of unpredictable explosives, members of the Incident Response Regiment; members of the 4<sup>th</sup> Battalion Royal Australian Regiment (Commando), members of a second Tactical Assault Group and Clearance Divers.

The Tribunal had previously inspected the work of the Incident Response Regiment and Commandos. During the period covered by the Report the Tribunal conducted further inspections of the work of the Clearance Divers and members in receipt of Unpredictable Explosives Allowance.

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In regard to Unpredictable Explosives Allowance (UEA) the Tribunal, in a statement, drew attention to deficiencies it perceived in aspects of the UEA case. The ADF subsequently sought to amend its submission in relation to the structure and rates of the allowance based primarily on call out requirements. In its decision the Tribunal noted that the UEA element of the allowance did not contain a qualification and skill element. The ADF advised that the ADF was conducting a review of Army and RAAF categories involved in explosive ordnance disposal. In a statement the Tribunal directed that the ADF report back to the Tribunal on progress with the trade reviews after which it may be appropriate to reassess the need for a qualification and skill element for UEA.

The Commonwealth, Returned and Services League of Australia and the Armed Forces Federation of Australia substantially supported the structure and rates as proposed by the ADF.

The Tribunal approved the new allowance and structure as it provided an appropriate hierarchy for specific groups within the ADF which undertake employment characterised as specialist operations.

### **C. RAN Clearance Diver Category Restructure**

The ADF sought the introduction of a new structure and the determination of appropriate pay groups for the Navy Clearance Diver category. Clearance Divers undertake duties involving Mine Counter Measures, Maritime Tactical Operations, Under Water Battle Damage Repair and Explosive Ordnance Disposal. All Clearance Divers are qualified to operate recompression chambers, perform underwater welding, conduct advanced demolition and are trained in underwater medicine and initial diagnosis of diving related illnesses. Clearance Divers undertake military diving to 60 metres but may be required to dive to depths of 90 metres when embarked on Mine Hunter vessels.

The proposed restructure sought to reflect the transition from the basic operator level through the supervisory level to the highly skilled Advanced Clearance Diver. It also sought to provide structured training throughout a member's career linking competency attainment with skill level and career development requirements.

The Commonwealth, Returned and Services League of Australia and the Armed Forces Federation of Australia supported the structure and pay groups sought by the ADF.

The Tribunal approved the new structure for Clearance Divers.

### **D. ADF Workplace Remuneration Arrangement: 2002 – 2004**

On 1 November 2002 the Tribunal considered an application by the ADF and the Commonwealth for the introduction of the ADF Workplace Remuneration Arrangement: 2002 – 2004.

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The ADF and the Commonwealth developed and agreed a remuneration package which it was said “recognises the continuing and significant program of workplace reform within the ADF under the Defence White Paper and related initiatives” and “acknowledges the commitment of ADF members to ensuring the effective implementation of those reforms”.

It was proposed that the arrangement operate for an eighteen month period, from 7 November 2002 to 6 May 2004, and provide the following salary adjustments for ADF Permanent and Reserve Force members up to and including Colonel (and equivalent):

- an increase of 3% with effect from 7 November 2002; and
- an increase of 3% with effect from 3 July 2003.

The ADF and the Commonwealth also sought that these increases apply to pay related allowances for all members of the ADF.

The Tribunal noted that the proposed Arrangement overlapped the Defence Employees Certified Agreement by over four months. The Tribunal considered that given the emphasis on common outcomes for all members of the Defence organisation the time difference should be kept to the minimum practicable and the parties should ensure that this difference does not extend further for future arrangements.

Having regard to the content of the Arrangement and the submissions of the parties the Tribunal was prepared to make determinations to give effect to the salary increases and adjustments to pay related allowances provided in the Arrangement.

#### **E. ADF Star Ranks Remuneration Arrangement: 2002 – 2004**

On 18 November 2002, the Tribunal considered an application by the ADF and the Commonwealth for the introduction of an ADF Star Ranks Remuneration Arrangement: 2002 – 2004. The Arrangement applies to approximately 150 Officers in the ranks of Brigadier (and equivalent) and Major General (and equivalent).

The ADF and the Commonwealth agreed upon a package which it was submitted “recognises the continuing and significant program of workplace reform within the ADF under the Defence White Paper and related initiatives” and “acknowledges the commitment of ADF Star Rank officers to ensuring effective implementation of those reforms”.

The Arrangement is to operate for a period of eighteen months from 21 November 2002 to 6 May 2004 and provides the following salary increases:

- an increase of 3% with effect from 7 November 2002; and
- an increase of 3% with effect from 3 July 2003.

Having considered the Arrangement and the submissions of the ADF and Commonwealth the Tribunal was prepared to give effect to the Arrangement and to make determinations in relation to the salary increases.

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## **F. RAAF Airfield Engineering Musterings Restructure**

The ADF sought a restructure and revised pay groups for the RAAF Airfield Engineering musterings. The musterings consist of personnel employed in the provision of airfield infrastructure at permanent and temporary RAAF bases. The musterings consist of carpenters, electricians, plumbers, general hands, plant operators and work supervisors. The combined establishment of the musterings is 142 positions, ranging in rank from Aircraftsman/Woman to Warrant Officer.

The ADF sought a revised structure to:

- establish a four-graded, five-tiered Plant Operator mustering from suitably qualified General Hand members;
- replace the single grade structure of the Carpenter, Electrician and Plumber musterings with a two-tiered structure;
- recognise Carpenter, Electrician, Plumber and Plant Operator Grades 3 as feeder trades for the Work Supervisor mustering; and
- replace the single graded structure of the Work Supervisor mustering with a two-tiered structure.

In a written submission to the Tribunal the ADF submitted that the restructure was based on the following work value changes: increased training requirements for all musterings; significant changes to the roles and nature of duties; the introduction of new and sophisticated equipment and changed comparative work value compared to similar Army Construction Engineer trades.

On 13 November 2002 the Tribunal inspected the work of the Airfield Engineering musterings at No.1 Combat Logistic Squadron at RAAF Garbutt in Townsville.

At the conclusion of the inspection, the Tribunal indicated that in view of the comprehensive briefings and demonstrations provided, the matter could be considered forthwith, without the need for a formal hearing. This approach was agreed by the ADF and the parties.

A formal conference was subsequently convened at RAAF Garbutt at which the ADF position was stated. The Commonwealth and the Armed Forces Federation of Australia supported the structure and pay groups as sought by the ADF. The Tribunal approved the ADF proposal.

## **G. Chaplains Specialist Officer Career and Salary Structure**

The ADF sought the introduction of a specialist structure for Chaplains. This was the second new specialist officer structure that the ADF has asked the Tribunal to approve, the first being the Legal Officers Specialist Structure introduced in February 2000. The primary role of Chaplains is to provide religious and pastoral care to all Service personnel and their dependants.

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The ADF submitted that there was a requirement for a new career structure due to problems with lateral recruiting, rank blockage, career development and inappropriate remuneration. It was stated that the inherent problems with the existing structure include: career progression and salaries are based on rank rather than professional competencies and that there was no competency structure to recognise and reward additional skills required by Chaplains to meet role expectations and requirements.

In addressing the work value of Chaplains it was said that there had been a decline in the number of ADF members and an increase in operational deployments since 1990 and that this had led to higher levels of stress and extended separation from home and family. This, in turn, had led to higher demands on Chaplains in the areas of pastoral care and mental health counselling. Chaplains are trained in Critical Stress Management and accordingly have become key players in operational support.

Chaplains are posted to units, ships' companies and formations and experience the impact of incidents and deployments and are therefore uniquely placed to minister to service personnel in a manner in which welfare workers and psychologists are not. They are on call 24 hours a day and are available to Commanders to provide counselling support to members and their families both individually and collectively.

It was submitted that there were significant attraction and retention concerns and that the existing salary structure had contributed to recruiting difficulties because the commencing salary was not competitive with salary paid to civilian clergy. The removal of emphasis on rank would enable the ADF to directly recruit Chaplains and remunerate them appropriately.

The Commonwealth, the Returned and Services League of Australia and the Armed Forces Federation of Australia supported the structure and rates as proposed by the ADF.

Having regard to the submissions and evidence and the strong support of the parties the Tribunal approved the new career and remuneration structure for Chaplains noting that the structure would be reviewed within two years.

## **H. RAN Photographer**

The ADF sought a restructure and revised pay groups for the RAN Photographer category.

In 1996 the Tribunal approved an increase in the pay groups for the Army Photographer Public Relations from Pay Group 4 to Pay Group 5. In 1999 the Tribunal approved a restructure of the RAAF Photographer category which moved from a single level in Pay Group 4 to a graded structure in Pay Groups 4 to 6.

On 27 February 2003 the Tribunal carried out an inspection of the work of Navy Photographers at the Navy Imagery Unit East, Garden Island in Sydney.

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The ADF submitted that the roles of the RAN Photographer category had developed significantly and that there had been a corresponding advance in technology training and equipment. The category carries out three distinct roles: Imagery Intelligence; Combat Imagery and Naval General Imagery.

The ADF sought a two-tiered structure that: removed an anomaly in relation to inadequate skill recognition; eliminated the salary inequity between service photographers and recognised the progressive changes in skill and competency levels.

The Commonwealth and the Armed Forces Federation of Australia supported the proposed structure and pay groups.

The Tribunal approved the ADF proposal noting that the new structure would provide an improved career path and recognise the significant increases in work value and responsibility.

## **I. Service Allowance**

The ADF sought a review of Service Allowance. It sought to retain the existing structure of the allowance and its basis for payment and an increase of twenty per cent.

Service Allowance is paid in recognition of the special features of employment which are unique to the Armed Forces. The allowance is not directed toward specific instances of disability but generally reflects the onerous nature of ADF service and recognises the distinction between the Service and civilian environments. It has historically been expressed as being paid for:

- The requirement to be on call and the liability to work long and irregular hours including weekends and public holidays and shifts;
- The turbulence in posting caused by the liability to be moved frequently, and often at short notice, to meet the needs of the Service and the effects of this on the member and the member's family;
- The requirement to submit to discipline and control in personal and employment matters in which a civilian has some freedom of choice; and
- The requirement at times to live and work in uncomfortable conditions.

The allowance was originally listed for hearing in September 2002 but was deferred at the request of the ADF.

The ADF sought an increase of twenty per cent which would result in an annual rate of \$8785. This amount was said to include some recognition of delays in reviewing the allowance. No change was sought to the structure and no flow-on was sought for Lieutenant Colonels and Colonels (and equivalents).

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The Commonwealth agreed that some increase in the allowance was warranted but submitted that an increase of around ten per cent was all that could be justified. It supported the proposal that there be no change to the structure of Service Allowance and that there be no flow-on to Lieutenant Colonels and Colonels (and equivalents).

The Returned and Services League of Australia and the Regular Defence Force Welfare Association of Australia generally supported the ADF position. The Armed Forces Federation of Australia supported the twenty per cent increase proposed by the ADF but sought retrospective application of the allowance or the payment of a lump sum in recognition of the delay in bringing the matter forward. In the alternative the Federation proposed a tiered structure for the allowance. It also supported the flow-on of any increase to Lieutenant Colonels and Colonels (and equivalents).

The specific areas of change relied on by the ADF to justify the increase sought was stated to be:

- “• A reduction in the overall number of Service personnel;
- The civilianisation (including outsourcing) of non-combat functions;
- The redistribution of existing uniformed positions into combat functions;
- The increase in numbers of northern-based personnel and subsequent decrease in southern-based positions;
- A significant increase in operational deployments and numbers involved in operational deployments (and consequential increase in support roles within Australia);
- An increase in the intensity of work that is not expected to be relieved or modified in the foreseeable future;
- An increased range of tasks (including non-conventional tasks) in which ADF personnel have and will continue to be involved;
- A new emphasis on readiness, mobility and deployability;
- The implementation of technology in the workplace effecting a higher personnel tempo; and
- Shifts in societal and sociological expectations and standards”.

The Tribunal considered that the changes established by the evidence were significant and justified an increase in Service Allowance.

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Following its initial deliberations and consideration of the submissions and evidence the Tribunal decided that it would be assisted by the parties making further submissions in writing on the matter of the date of operation of any increase granted and in particular whether some amount of retrospectivity should be awarded.

Having given the matter further detailed consideration in the light of the parties responses, the Tribunal considered that whilst there was much to be said for the Armed Forces Federation's submission on the matter of retrospectivity, on balance, and given in particular the firm position of the ADF, that there should be no retrospective operation of any increase.

The Tribunal recognised that an assessment of the compensation for a range of disparate and intangible factors involves a significant element of informed judgement. Having regard to the material and evidence the Tribunal determined that the rate of Service Allowance should be increased to \$8525 per annum. The Tribunal also decided that there be no change to the structure of the allowance and the increase would not flow-on to Lieutenant Colonels and Colonels (and equivalents).

## **J. Electronic Warfare Analyst Category**

The ADF sought to establish a structure and pay groups for a new Electronic Warfare Analyst (EWA) category in the RAN Submarine Arm. The roles of the EWA category are submarine safety and threat avoidance, early warning, tactical picture compilation and intelligence. The category also has a range of non-electronic warfare responsibilities.

On 27 March 2003 the Tribunal inspected the work of the EWA category at HMAS STIRLING in Western Australia.

The ADF submitted that there had been a significant increase in the complexity and range of equipment operated by the EWA and this had been accompanied by substantial increases in training. The current EWA undertakes 131 weeks of training up to the supervisor level while the EWA supervisor on the Oberon submarine undertook 44 weeks of training.

The Commonwealth and the Armed Forces Federation of Australia supported the introduction of the new structure and pay groups. The Commonwealth submitted that the proposed structure would better reflect the contemporary circumstances of the EWA, with skills and responsibilities being appropriately recognised. The Armed Forces Federation of Australia submitted the proposed structure was consistent with other ADF Electronic Warfare structures.

The Tribunal approved the new structure noting that there had been an increase in the roles and responsibilities of the EWA which had resulted from the acquisition of the Collins Class submarine and that there had been an expansion of both the tactical and strategic roles of the category.

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## **K. ADF Dental Officers Specialist Career and Salary Structure**

The ADF sought the introduction of a specialist career and salary structure for ADF Dentists. This was the third specialist officer structure that the ADF had asked the Tribunal to approve, the first being the Legal Officers structure introduced in February 2000 and the second being the Chaplains Specialist structure approved in February 2003.

Salaries for Dental Officers have been aligned with those of Medical Officers since 1948. In 1990 the Medical/Dental nexus was retained by agreement between the ADF and the Commonwealth. The structure approved by the Tribunal was rank based and did not take account of the value of work performed or levels of skill and competencies attained.

The ADF submitted that the nature of medical and dental practice had diverged to such an extent that it was no longer appropriate to deal with them together. The differences in work value are demonstrated by the fact that graduate dental salaries are significantly higher than graduate medical equivalents, whereas senior medical practitioners receive, on average, significantly higher incomes. The practice of dentistry is focussed on the general clinician, whereas the medical equivalent is now a specialist General Practitioner.

The ADF sought a career structure based on undergraduate qualifications, four competency levels and a management stratum that requires a minimum competency level prior to entry. The career progression for Permanent Force Dental Officers is through three of the four competency levels based on completion of clinical undergraduate and diploma courses. Reserve Dental Officers who hold a clinical masters degree will primarily fill the fourth competency level.

The Commonwealth supported the new structure and submitted that it would address a range of circumstances impacting on recruitment, retention and career progression. The Armed Forces Federation of Australia also supported the ADF proposal.

The Tribunal approved the new structure noting that it was competency based with a rank overlay, provided for well defined career progression and enhanced the ability of the ADF to attract and retain dedicated and experienced Dental Officers. The Tribunal was also satisfied that the structure was consistent with those for Legal Officers and Chaplains previously approved by the Tribunal.

## **L. Army Mechanic Recovery Restructure**

The ADF sought the introduction of a new structure and the determination of appropriate pay groups for the Army Mechanic Recovery trade. The category is part of the Royal Australian Electrical and Mechanical Engineers (RAEME) Corps. The Mechanic Recovery operates and manages recovery vehicles and is responsible for the recovery of damaged vehicles and equipment and transporting them to the nearest maintenance facility.

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On 30 October 2002 the Tribunal inspected the work of the mechanic Recovery at Robertson Barracks. The Tribunal was provided with detailed briefings on the roles and responsibilities of members of the trade and viewed demonstrations of the range of work carried out by members.

The ADF submitted that there had been an increase in the skills and responsibilities of the Mechanic Recovery including: meeting National certification requirements for operating lifts/cranes, dogging operations and dangerous good/cargo requirement; having an understanding of Bulk Fuel Liquid conveyance systems; the conduct of minor repairs to mechanical and electrical faults in wheeled and armoured vehicles and being capable of cutting metal with oxygen and acetylene equipment.

The Commonwealth, the Returned and Services League of Australia and the Armed Forces Federation of Australia supported the ADF proposal.

The Tribunal approved the new structure and pay groups sought by the ADF.

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## **6. INSPECTIONS**

The Tribunal regularly carries out inspections in order to inform itself about matters before it.

These inspections are generally made in response to a request by the parties in order to demonstrate the work performed by ADF members and/or the conditions under which the work is done.

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

On 22 August 2002, as part of the RAN Combat System Operator Mine Warfare category restructure, the Tribunal inspected the work of the category at HMAS WATERHEN in Sydney. The Tribunal was provided with briefings, demonstrations and static displays of the equipment used by members of the trade. The Tribunal inspected Mine Sweeper Auxiliary Broilga and HMAS GASGOYNE, a Mine Hunter Coastal. A practical demonstration of the Double Eagle mine disposal vehicle was also provided.

As part of its review of Specialist Operations Allowance the Tribunal undertook inspections of the work of Clearance Divers at HMAS STIRLING, Australian Clearance Diving Team 4 on 9 September 2002. The Tribunal was provided with presentations which included the roles, responsibilities and tasking of Clearance Divers. The Tribunal also viewed a deployed Clearance Diving task Unit and witnessed a number of practical demonstrations on various clearance operations.

An inspection of the work carried out by Army and RAAF members entitled to Unpredictable Explosives Allowance was undertaken by the Tribunal at Orchard Hills, New South Wales, on 23 August 2002. The Tribunal was provided with presentations and practical demonstrations of explosive ordnance detection, handling and destruction.

On 13 November 2002 the Tribunal inspected the work of the Airfield Engineering musterings at No.1 Combat Logistic Squadron at RAAF Garbutt in Townsville. The Tribunal was briefed on the work of Carpenters, Electricians, Plumbers, Plant Operators and Work Supervisors. The unit also conducted a demonstration on the construction of an airfield in the field.

As part of its consideration of the RAN Photographer category the Tribunal undertook an inspection of the work of the Photographer at the Navy Imagery Unit East, Garden Island in Sydney on 27 February 2003. The Tribunal was provided with comprehensive briefings and demonstrations by members of the unit on Imagery Intelligence, Combat Imagery and Naval General Imagery.

On 27 March 2003 the Tribunal inspected the work of the Electronic Warfare Analyst category at HMAS STIRLING in Western Australia. During the course of the inspection the Tribunal was briefed by members of the category, witnessed members at work on the Collins Class Submarine HMAS SHEEHAN and demonstrations at the Submarine Training Facility.

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## **7. VISITS**

As part of its statutory obligation to inform itself on matters the Tribunal undertakes visits to ADF units, establishments and ships. The visits comprise open forums with groups of ADF personnel at all rank levels and with spouses. The meetings are informal and include a short presentation on the role and function of the Tribunal followed by a discussion period in which ADF personnel and spouses have the opportunity to raise issues or ask questions.

At the conclusion of visits the President of the Tribunal writes to the Chief of the Defence Force outlining the nature of the issues raised during these forums. Matters raised by ADF members within the jurisdiction of the Tribunal are raised with the Defence Personnel Executive in conference.

During the period covered by this report the Tribunal visited: Simpson Barracks at Watsonia, Williamstown Dockyard Victoria, HMAS CERBERUS and RAAF Williams.

The Tribunal wishes to express its appreciation to all members and spouses who participated in the meetings for the forthright manner in which issues were raised and discussed.

The Tribunal also carries out familiarisation visits to ADF establishments to broaden its knowledge of the operations of the ADF. On 29 May 2003 the Tribunal visited RAAF Edinburgh and was briefed on the Jindalee Operational Radar Network by members of No.1 Radar Surveillance Unit.

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## **8. FINANCIAL MATTERS**

The Tribunal's financial requirements are met through the Department of Employment and Workplace Relations, sub-program 2.2.6 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 in regard to office administration and management. 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 and Workplace Relations on behalf of the Tribunal.

## **11. ENERGY MANAGEMENT**

The Tribunal occupies space at 12 Moore Street, Canberra. 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.

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### **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 and Workplace Relations 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, operation 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;

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"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

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- (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

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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.

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**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.

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- (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.

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**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.

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- (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.

**Division 3 - The Defence Force Advocate**

**Interpretation**

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**58R.**

In this Division, unless the contrary intention appears:

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

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

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

**Defence Force Advocate****58S.**

(1) There shall be a Defence Force Advocate, who shall be appointed by the Minister on a part-time basis.

(2) The person appointed as the Advocate shall be a person who:

(a) is experienced in industrial relations matters; and

(b) has a knowledge of the nature of service in the Defence Force.

(3) In making an appointment under sub-section (1), the Minister shall have regard to any recommendations made by the Chief of the Defence Force.

**Functions of the Advocate****58T.**

The functions of the Advocate are:

(a) To advise the chief of the Defence Force in relation to matters that have been, or may be, referred to the Tribunal by the Chief of the Defence Force pursuant to sub-section 58H (3);

(b) to prepare submissions to be made to the Tribunal on behalf of the Defence Force concerning any matter that is being considered by the Tribunal; and

(c) to represent the Defence Force in proceedings before the Tribunal.

**Tenure and terms of office****58U.**

(1) Subject to this Division, the Advocate holds office for 3 years, but is eligible for re-appointment.

(2) A person shall not continue to hold the office of Advocate if he becomes a member of the Tribunal.

**Resignation****58V.**

The Advocate may resign his office by writing signed by him and delivered to the Minister.

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## **Termination of appointment**

### **58W.**

The Minister may terminate the appointment of the Advocate by reason of misbehaviour or physical or mental incapacity.

## **Acting Defence Force Advocate**

### **58X.**

(1) The Minister may appoint a person to act as the Advocate;

- (a) during a vacancy in the office of the Advocate; or
- (b) during any period, or during all periods, when the Advocate is absent from duty or from Australia or is, for any other reason, 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 the Advocate, he has and may exercise all the powers, and shall perform all the functions, of the Advocate.

(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 remuneration and allowances, of a person acting as the Advocate; and
- (b) terminate such an appointment at any time.

(5) Where a person is acting as the Advocate in accordance with paragraph (1) (b) and the 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 reappointment of a person to act as the Advocate ceases to have effect if he 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.

## **Fees and Allowances**

### **58Y.**

(1) The Defence Force Advocate shall be paid such fees and allowances as the Remuneration Tribunal determines.

(2) This section has effect subject to the *Remuneration Tribunals Act 1973*.

**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.

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## **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.

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| <b>LIST OF DETERMINATIONS</b> |
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| <b>Determination</b> | <b>Subject</b>   | <b>Date of Effect</b>                |
|----------------------|--|--------------------------------------|
| 10 of 2002           | Salary of Senior Officers – Reserve Forces   | 2 July 2002                          |
| 11 of 2002           | Special Action Forces Allowance  | 9 May 2002                           |
| 12 of 2002           | Specialist Operations Allowance  | 8 February 2002                      |
| 13 of 2002           | Special Action Forces Allowance & Specialist Operations Allowance Repeal & Consequential Amendments                    | 8 February, 9 May & 5 September 2002 |
| 14 of 2002           | Salary of General and Equivalent Ranks – Reserve Forces  | 15 July 2002                         |
| 15 of 2002           | Seagoing Allowance and Submarine Service Allowance – Application to Members on Exchange with Other Sea Training Groups | 16 August 2001                       |
| 16 of 2002           | Salary Scales for the Officer Tertiary Recruitment Scheme  | 1 October 2002                       |
| 17 of 2002           | Cargo Specialist Categories  | 26 September 2002                    |
| 18 of 2002           | Clearance Diver Category   | 29 September 2002                    |
| 19 of 2002           | Specialist Operations Allowance October 2002   | 1 November 2002                      |
| 20 of 2002           | Specialist Operations Allowance – Repeal and Consequential Amendments  | 1 November 2002                      |
| 21 of 2002           | Combat System (Mine Warfare) Categories  | 7 November 2002                      |
| 22 of 2002           | Army Mechanic Recovery Category  | 7 November 2002                      |
| 23 of 2002           | ADF Workplace Remuneration Arrangement: 2002 – 2004  | 7 November 2002                      |

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| <b>Determination</b> | <b>Subject</b>  | <b>Date of Effect</b>              |
|----------------------|---|------------------------------------|
| 24 of 2002           | RAAF Airfield Engineering Categories  | 21 November 2002                   |
| 25 of 2002           | ADF Star Ranks Remuneration Arrangement: 2002 – 2004                            | 21 November 2002                   |
| 26 of 2002           | Transitional Provision – Special Action Forces Allowance                        | 2 December 2002                    |
| 27 of 2002           | Special Action Forces Allowance and Specialist Operations Allowance – Amendment | 9 May 2002                         |
| 28 of 2002           | Trainee Leaders Allowance – Repeal  | 31 December 2002                   |
| 29 of 2002           | Chaplains Specialist Salary Structure   | 19 December 2002                   |
| 1 of 2003            | Salary of Senior Officers – Reserve Forces                                      | 6 February 2003                    |
| 2 of 2003            | Specialist Salary Structure (Chaplains) Amendment                               | 19 December 2002                   |
| 3 of 2003            | Flying Allowance – Amendment  | 21 February 2003                   |
| 4 of 2003            | Salary Non-Reduction – Navy   | 21 February 2003                   |
| 5 of 2003            | Navy Photographer Category  | 27 February 2003                   |
| 6 of 2003            | Specialist Operations Allowance – Amendment                                     | 17 March 2003                      |
| 7 of 2003            | Specialist Salary Structure – Dental Officers                                   | 22 May 2003                        |
| 8 of 2003            | Flying Allowance and Specialist Operations Allowance – Commencement             | 22 April 2003                      |
| 9 of 2003            | Salary of Senior Officers – Reserve Forces                                      | 2 May 2003                         |
| 10 of 2003           | Navy Electronic Warfare Analyst Categories                                      | 22 May 2003, Clause 3 18 July 2003 |
| 11 of 2003           | ADF Workplace Remuneration Arrangement: 2002 – 2004                             | 3 July 2003                        |

***SECRETARIAT***

|                          |  |
|--------------------------|--|
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The members of the Tribunal wish to pay tribute to the professionalism and work ethic of the members of the Secretariat. In such a small unit, it is essential that everyone pulls their weight and that relationships both between Secretariat staff and between the staff and the members of the Tribunal, are congenial and productive.

It is to the credit of each member of staff that this has consistently been the experience of Tribunal members.

The Tribunal wishes to record formally its appreciation for what it considers to be the outstanding support of its Secretariat.

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