



# **DEFENCE FORCE REMUNERATION TRIBUNAL**

## **TWENTIETH REPORT**

**2004 – 2005**

**(Period from 1 July 2004 – 30 June 2005)**



**Australian Government**

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**Defence Force Remuneration Tribunal**

21 October 2005

The Hon Kevin Andrews MP  
Minister for Employment and Workplace Relations  
Parliament House  
CANBERRA ACT 2600

My dear Minister

I have great pleasure in presenting to you the Twentieth Report of the Defence Force Remuneration Tribunal, which covers the period of the Tribunal's operations from 1 July 2004 to 30 June 2005.

Yours sincerely

The Honourable Senior Deputy President R N Cartwright  
President

***DEFENCE FORCE REMUNERATION TRIBUNAL***

**President:       The Honourable Senior Deputy President R N Cartwright**

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

**Mr G D John**

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## ***1. INTRODUCTION***

The Tribunal has been operating for over 20 years, having been established in 1984 to determine the pay and allowances of members of the Australian Defence Force (ADF), considering the special nature of Defence Force service.

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:

*“Where a determination of the Tribunal in respect of the salaries and relevant allowances to be paid to members [of the ADF] 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:	The Honourable Senior Deputy President R N Cartwright
Members:	Air Vice Marshal F D Cox AO (Retd) Mr G D John

Senior Deputy President Robert Cartwright has been a presidential member of the Australian Industrial Relations Commission since February 2001. Prior to this appointment he held a number of senior management positions in civil industry. Senior Deputy President Cartwright was appointed as President of the Tribunal by the Governor General from 8 March 2004 to 7 March 2009.

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 has been reappointed by the Governor General until 11 August 2005.

Mr Greg John was appointed as a member of the Tribunal by the Governor General for the period 8 March 2004 to 7 March 2008. Mr John is currently a director of an industrial relations consultancy and previously held senior management positions in both the public and private sectors.

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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 seek leave to 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 ADF concerning any matter that is being considered by the Tribunal; and
- . representing the ADF 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 30 June 2008.

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 Ms Helen Marshall, Mr Joshua Shingles and Mr Marco Spaccavento.

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**

Under the Act, the Tribunal may regulate the conduct of its proceedings as it thinks fit. However, given its obligations to determine the salaries and allowances paid to ADF members, subject only to requests from the Minister, the Secretary or the Chief of the Defence Force to reconsider a Determination, the Tribunal continues to conduct its proceedings in public, by way of hearings at which the parties are able to argue their case and to lead and test evidence. It publishes reasons for decision in each case. The Tribunal in all its work has regard to the special nature of ADF employment and the need to ensure that ADF members are treated fairly and equitably.

Consideration of such matters is aided by inspections, allowing the parties to address service or workplace specific needs. Details of the inspections undertaken by the Tribunal in the reporting period are located in Part 6 of this Report.

While hearings and inspections centre on particular cases under consideration, the Tribunal uses visits to ADF establishments for informal feedback from ADF members and to inform itself beyond the particular cases. The Tribunal values such opportunities to interact with ADF members about conditions of service matters generally and, in particular, about pay and allowances. The conduct of these visits is strongly supported by the Chief of the Defence Force and is welcomed by ADF members. Details of the visits undertaken by the Tribunal in the reporting period are located in Part 7 of this Report.

Similarly, the Tribunal seeks briefings from the ADF on matters of interest, such as member opinion surveys, attraction and retention issues, or the operation of military superannuation schemes. The latter is relevant in beginning to understand what would, in private industry, be referred to as total employment cost, a subject, at this stage, not well understood in the ADF.

The Tribunal continues to be impressed by the hard work and dedication of members of the ADF, in particular at a time of high operational tempo. The Tribunal is also impressed by the ADF's investment in trade and skill training, the benefit of which finds its way back to the community.

Major cases considered this financial year are the reform of the officers' pay scale and commencement of the Flying Allowance review for aircrew. The Tribunal also conducted reviews of the Other Ranks Remuneration Structure, the Navy Electronic Warfare Trades, the salary of the Chief of Capability and Development Group, the salary of Senior Officers in the Reserve Forces, the Commando trade structure to accommodate the introduction of the Special Forces Direct Recruiting Scheme, Specialist Operations Allowance, Service Allowance, Navy Medical Grade 4 Allowance, Diving Allowance, Army Clerk Categories and the Legal Officers Specialist Officer Career and Salary Structure. The Tribunal commenced a review of Paratrooper Allowance, which will be completed by the end of 2005.

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 the 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.

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## ADF Remuneration Reform Project (RRP)

The ADF seeks to introduce a flexible pay structure, applying to almost all officers. Such a structure has been the subject of developmental work for approximately ten years. Following ADF presentations last year, the Tribunal set a hearing timetable for the ADF to complete its proposal in December 2005.

Due to the size and scope of the task, the ADF broke current work into eight 'blocks', six of which were heard by the tribunal during the reporting period.

On 25 August 2004, the ADF presented submissions on blocks 1 to 3, dealing with *The Remuneration Framework*, *The Underpinning Principles and Business Processes* and *The Placement Methodology*. The ADF submitted that there was justification in moving away from the existing remuneration structure which consists of:

- salary from by the Officers Common Scale, determined by the Tribunal under s.58H of the *Defence Act*;
- salary related allowances set by the Tribunal pursuant to s.58H of the *Defence Act*;
- a wide range of compensatory allowances, retention allowances and bonuses set by the Minister for Defence pursuant to s.58B of the *Defence Act*.

The ADF proposed a new 12 graded officers pay scale, in which the current officers common scale forms Pay Grade 3. The addition to the officers common scale of Qualification & Skill elements of Submarine Service, Special Action Forces and Specialist Operations Allowances would then provide benchmark employment groups, against which other officer employment groups may be compared and positioned, as required. Any special attraction and retention considerations would be incorporated in separate s.58H capability allowances, which may go up or down, but which would remove distortions from other allowances.

Whilst still under development, the ADF's proposed methodology for placing officer groups in the structure relied on:

- employment specialisation for the RAAF and Navy, and job groups for Army;
- identification of key factors for establishing value;
- development of key benchmark categories; and
- assessment of employment groups against identified criteria and benchmark categories.

Submissions on Block 4 – *Career Profiles for Colonel (and equivalent) to Major General (and equivalent) Officers* - were made on 3 December 2004. The ADF submitted that it proposed to deal with these officers separately, as:

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- it is generally accepted that promotion to Colonel (or equivalent) marks the progression to the senior management level;
  - the nature of work at this level is increasingly managerial or generalist in nature; and
  - career management at this level is generally conducted on an individual basis;

On 24 May 2005, the ADF presented interim submissions on Block 5 – *Placement of the Warrant Officer Class 1 group* – on the basis that further examination of this group was necessary.

Also on 24 May 2005, the ADF presented its submission on Block 6 – *Rules regarding the use of Pay Grades 1 and 2*.

Further hearings on the Remuneration Reform Project have been scheduled for July, August and November 2005, with the final hearing date scheduled for December 2005.

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## **5. MATTERS CONSIDERED**

### **A. Matter 7 of 2004 – Annual Review of Allowances**

Pursuant to Section 58H(6) of the *Defence Act 1903*, the Tribunal is required to review all ADF salary related allowances at least once every two years.

In June 2004 and again in August 2004, the Tribunal heard submissions reviewing the seventeen allowances in the nature of pay. In the first hearing, the ADF submitted that these allowances were either considered to be contemporary, having been recently reviewed, or were scheduled for review in the near future.

Those allowances are:

- Submarine Service Allowance
- Seagoing Allowance
- Hard Lying Allowance
- Special Action Forces Allowance
- Specialist Operations Allowance
- Flying Allowance
- Flight Duties Allowance
- Field Allowance
- Separation Allowance
- Paratrooper Allowance
- Service Allowance
- Adventurous Training Instructor Allowance
- Arduous Conditions Allowance
- Diving Allowance
- Language Proficiency Allowance
- Medical Grade 4 Allowance
- Submarine Escape Allowance

The Tribunal stated that it could not be satisfied, on the basis of the material presented, that it had discharged its obligation under the Act adequately to review all allowances. Consequently it directed the ADF to make more detailed submissions on each of the allowances which the ADF considered to be current and to provide opportunity for the other parties to make further submissions based on that additional information.

On 25 August 2005, the Tribunal considered the additional submissions and was satisfied that Submarine Service Allowance, Seagoing Allowance (including the Boarding Party Element), Hard Lying Allowance, Field Allowance, Specialist Action Forces Allowance, Service Allowance, Arduous Conditions Allowance, Language Proficiency Allowance, Experimental Diving Allowance and Submarine Escape Allowance did not require review at that time.

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The Tribunal also dealt with submissions on Diving Allowance and Specialist Operations Allowance and noted that Flying Allowance, Flight Duties Allowance and Navy Medical Grade 4 Allowance had been scheduled for hearings in 2004/05. Dates for the review of Adventurous Training Instructors Allowance, Separation Allowance and Paratrooper Allowance were set in a later conference.

## **B. Matter 8 of 2004 – Review of Other Ranks Remuneration**

In February 2005 the ADF sought changes to the Other Ranks remuneration structure following an internal ADF review undertaken during 2003 and 2004.

The Other Ranks remuneration structure was introduced in 1995 following the ADF Pay Structure Review, as the basis for salaries paid to all ADF sailors, soldiers and airmen. It accommodates within seven broad-banded pay groups approximately 200 employment categories and covers around 40,000 permanent force members and some 19,000 reservists. It is a two-dimensional structure in which personnel are remunerated according to both seniority within rank and the work value of the employment category. The structure is supported by a Definitional Framework which provides a means to assess the work value of each employment category.

The ADF submitted that its internal review resulted in the following findings:

- the original principles that underpinned the Pay Structure Review in 1995, including relativities between Pay Groups and ranks, were still current;
- levels of work value within the Other Ranks workforce were progressively increasing, consistent with the ADF employing greater levels of technology and requiring its personnel to progressively up-skill; and
- the distinct division in the Definitional Framework between the upper levels of non-technical categories and the lower level of technical categories had become blurred since the structure was introduced in 1995.

The ADF proposed an amendment to the structure by allowing for the recognition of a higher level of work value. Specifically, the ADF sought to make an eighth Pay Group available to ADF employment categories and to amend the Definitional Framework accordingly.

The ADF submitted that the introduction of an additional Pay Group was a pro-active measure aimed to a future need. The new Pay Group would not be immediately populated. Rather, the ADF would, at sometime in the future, bring to the Tribunal matters seeking the inclusion of appropriately skilled employment categories. Pay Group 8 would only apply to the most highly skilled members of the Other Ranks workforce – those whose skills made them very attractive to the civilian industry. The ADF submitted that the new Pay Group would allow it “to remain capable of providing fair and equitable remuneration to its sailors, soldiers and airmen in support of Defence’s roles, needs and requirements”.

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The Commonwealth supported amendments to the Definitional Framework regarding Pay Groups 5-7, but was opposed to the establishment of Pay Group 8 on the following grounds:

- without any employment category specified as the basis to Pay Group 8, the Tribunal could not be certain of the need, the appropriateness nor the consequences of introducing the Pay Group;
- the ADF approach of seeking the introduction of Pay Group 8 ahead of a Category Review seemed driven by internal processes rather than sound industrial rationale;
- the ADF had not provided any evidence to support its claim that the introduction of Pay Group 8 would resolve a number of problems;
- the proposed definition for Pay Group 8 did not adequately describe the work value level distinct from Pay Group 7;
- the proposal was premature given the outcomes from the Remuneration Reform Project were not known, and may have a significant impact on relativities; and
- the proposal may have obstructed the rolling in of qualifications and skills allowances in the future.

The Commonwealth submitted that while it did not completely rule out the idea that Pay Group 8 might be warranted, the ADF had not provided sufficient evidence in this matter to show that it is.

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

Having considered the submissions and evidence, the Tribunal did not approve the inclusion of Pay Group 8, as proposed. The Tribunal stated that “it would be difficult ... to set rates for an additional pay group without the full knowledge of the work value of those who may populate it”. The Tribunal was also of the view that further consideration of remuneration relativities within the proposed Pay Group 8 was necessary to address the rates at the higher rank levels.

### **C. Matter 9 of 2004 – Navy Electronic Warfare Trade Restructure**

In February 2005, the Tribunal heard submissions from the ADF, the Commonwealth and the Armed Forces Federation of Australia on changes to the training continuum underpinning the Royal Australian Navy’s Electronic Warfare category structures which were determined by the Tribunal in May 2001.

The ADF submitted that the changes were of a minor nature and had no effect on the previously established capability levels.

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In noting the changes, the Tribunal advised that it expected the ADF to exercise judgement on whether or not matters should be referred back to the Tribunal for further consideration. Questions of how the capability to perform a role is assessed and how the competencies required in the role are to be achieved are issues that, in the main, are within the discretion of the ADF. The Tribunal stated that it expected to be informed of proposed training changes only where its Reasons for Decision specify that requirement or changes are of such magnitude that the Tribunal's reasons for issuing a Determination are compromised.

#### **D. Matter 10 of 2004 – Salary of Chief Capability and Development Group**

In July 2004, the ADF sought an adjustment to the annual salary for the Lieutenant General position of Head Capability Development and Assessment Group. This followed the Remuneration Tribunal's decision to increase the remuneration for other three Star Officers by 3.9%.

As the position of Head Capability Development and Assessment Group is a non-statutory position, the rate of salary must be determined separately by the Tribunal under s.58H of the *Defence Act 1903*.

The ADF also sought to rename the position Chief Capability and Development Group as a reflection of change of duties.

The Tribunal approved the change in title and determined a new annual salary, effective 1 July 2004.

#### **E. Matter 11 of 2004 – Salary of Senior Officers – Reserve Forces**

In July 2004, the ADF sought an adjustment to the daily rate of pay for Reserve Force officers at the rank of Lieutenant General (or equivalent). This followed the Remuneration Tribunal's decision to increase the remuneration for other three Star Officers by 3.9%.

Historically, Reserve Force Members have been remunerated at 85% of their permanent force counterparts.

The Tribunal agreed to maintain this nexus and determined an increased daily rate.

#### **F. Matter 12 of 2004 – Special Forces Direct Recruitment Scheme**

In August 2004, the ADF sought to establish an additional tier within the Commando trade structure to accommodate the introduction of the Special Forces Direct Recruiting Scheme (SFDRS).

The SFDRS aims to increase and sustain Australia's Commando capability as part of the expansion of the ADF's Special Forces.

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The Tribunal had the benefit of an inspection at 4<sup>th</sup> Battalion, Royal Australian Regiment (Commando), Holsworthy Barracks on 4 August 2004. The Tribunal was briefed on the history, purpose and structure of the scheme, shown static demonstrations of the training and equipment involved and had the opportunity to meet and talk with recruits who had enlisted through the scheme and were currently undergoing training.

The ADF submitted that a new skill level, payable at Pay Group 2 and applicable after completion of the special forces weapons and commando training courses, would ensure that members recruited under the SFDRS are paid commensurate to their skills and work value.

Under the SFDRS, recruits would move directly to the Special Forces Accelerated Infantry Training upon completion of their Initial Employment Training. At the end of the accelerated training they would complete the Special Forces Entrance Test and be posted to a Commando Regiment for the duration of the Commando Reinforcement Training Continuum. Six months employment in a Commando Regiment as a Commando Grade 1 and completion of the Commando Reinforcement Training Continuum would allow the development of the requisite knowledge, experience and skills for the full range of competencies required for Commando Grade 2 (Pay Group 3).

The Commonwealth and the Armed Forces Federation of Australia supported the ADF proposal.

The Tribunal approved the new skill level and pay point within the Commando Trade structure as sought by the ADF, concluding that remuneration at Pay Group 2 was appropriate at that stage of the Special Forces Direct Entry recruit's training.

#### **G. Matter 13 of 2004 – Specialist Operations Allowance**

In August 2004, the ADF sought a number of changes to Specialist Operations Allowance affecting members and/or support personnel of the 4<sup>th</sup> Battalion, Royal Australian Regiment (Commando), the 301 (Commando) Signals Squadron, East and West Tactical Assault Groups and the Incident Response Regiment.

Specialist Operations Allowance (SOA) is paid in recognition of special demands that cannot be adequately reflected in the salary structure. The allowance comprises two distinct elements: Qualification and Skill, and Disability. Qualification and Skill acknowledges the significant levels of additional skill that must be acquired and maintained. Disability acknowledges the hazard and stress associated with service in the specialist operations environment.

SOA was introduced in 2002 from the amalgamation of a number of existing allowances. At that time, the ADF indicated to the Tribunal that ADF Specialist Operations capabilities were evolving and would mature over a number of years.

The Tribunal had the benefit of an inspection of Holsworthy Army Base on 5 August 2004. The Tribunal was briefed on the ADF review of Specialist Operations Allowance and the background and makeup of Australia's Special Forces capability. The Tribunal was shown

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both practical and static demonstrations of the role of Commandos, Tactical Assault Group East, Special Forces Signals Squadrons and the Incident Response Regiment.

### **Trainee Special Forces Commandos**

The ADF proposed that a component of SOA be established for Trainee Special Forces Commandos which would be applicable once members have completed a number of pre-requisite courses and were fully deployable. The ADF submitted that trainee Commandos are exposed to the same hazards and stresses as a fully qualified Commando.

It also submitted that the introduction of a trainee allowance for Commandos would be consistent with trainee allowances currently provided to other ADF elements such as Tactical Assault Group East and the Special Air Service Regiment.

### **Ammunition Technicians, Ammunition Technical Officers and Medical personnel posted to a Tactical Assault Group.**

The ADF sought an increase in the Disability payment provided to Ammunition Technicians, Ammunition Technical Officers and Medical personnel who have been posted to a Tactical Assault Group (TAG).

The ADF submitted that the role of these members had changed and that they may now be required to follow more closely behind TAG members involved in Special Operations. Ammunition Technicians and Ammunition Technical Officers posted to a TAG may be included with the first assault team to render explosive devices safe. They must be qualified in a range of weapons and deployment methods.

Medical personnel posted to a TAG may be required to accompany assault teams into large structures and operate in a live fire environment.

### **301 Signals Squadron**

The ADF established 301 Signals Squadron to provide reliable, rapid and high quality communications support to 1 Commando Regiment. The ADF submitted that the training and skills level of members of 301 Signals Squadron are the same as those of members attached to 126 and 152 Signals Squadrons, who provide similar support to other Special Forces units and, therefore, should be paid accordingly.

### **Incident Response Regiment**

The ADF sought to clarify the payment of SOA to members of 2 Troop Emergency Response Squadron. 2 Troop Emergency Response Squadron is part of the IRR which was established to provide a new ADF capability for high risk search, improvised explosive device disposal and chemical, biological and radiological response support.

The Commonwealth and the Armed Forces Federation of Australia supported each of the proposals.

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The Tribunal approved the changes sought. It determined a new allowance for trainee Commandos (\$1,631 for Qualification & Skill and \$5,438 for Disabilities experienced) applicable once members complete certain pre requisite courses.

Ammunition Technicians, Ammunition Technical Officers and Medical personnel who have been posted to a Tactical Assault Group were made eligible for a Disability element (\$10,331) in recognition of the hazards and stresses in their Counter Terrorist roles.

The Tribunal was satisfied that the training and skill level of members of 301 Signals Squadron were the same as for members of 126 and 152 Signals Squadrons. A Qualification & Skill element of \$1,631 (or as a daily rate for reservists) and a Disability element of \$5,438 for Regular Army members was determined.

Finally, the Tribunal accepted the parties' submissions that, due to their role in dealing with chemical, biological and radiological incidents, members of 2 Troop Emergency Response Squadron qualify for SOA under Item 17 – 'member undertaking medical, decontamination or search roles'.

#### **H. Matter 14 of 2004 – Service Allowance**

During the Annual Review of Allowances in June 2004, the ADF made submissions regarding an internal review of Service Allowance which may result in a later proposal to the Tribunal.

#### **I. Matter 15 of 2004 – Navy Medical Grade 4 Allowance**

In November 2004, the ADF sought amendments to the Navy Medical Grade 4 Allowance.

Specifically, the ADF sought to:

- retitle the allowance as Navy Medical Grades (Additional Responsibility) Allowance;
- extend eligibility for the allowance to Medical Grade 3 sailors and Underwater Medics who are filling the senior medical sailor positions on board Minehunter coastal vessels and submarines; and
- remove eligibility for the allowance for Petty Officer Medics posted to HMAS CRESWELL from 15 January 2005.

Medical Grade 4 Allowance was introduced into the Royal Australian Navy in October 1995. It is paid in certain circumstances in recognition of the additional responsibilities of some sailors in the Medical Grade 4 category at sea without the presence of a medical officer.

The Tribunal approved the changes sought by the ADF, noting the ADF's intention to conduct a fundamental review of ADF medical categories in 2005.

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**J. Matter 16 of 2004 – Flying Allowance**

Approximately 1700 officers and 500 other ranks members receive Flying Allowance for the additional skills to operate aircraft and hazards associated with flying. It was last reviewed thoroughly by the Tribunal in 1997.

In context of the Review of Allowances in June 2004, the Tribunal initiated a review of Flying Allowance, commencing in November 2004.

Inspections took place in May and June 2005, with hearing days scheduled for August and October, concluding in December 2005.

**K. Matter 17 of 2004 – Diving Allowance**

In August 2004, the ADF sought a review of Diving Allowance, paid for diving performed by members whose primary duties do not include diving.

The allowance is payable to Ships Divers who are qualified to undertake diving operations using Self Contained Underwater Breathing Apparatus (SCUBA), Army Work Divers and Shallow Water Divers who perform underwater engineering tasks and Army Instructors at the Army Dive Wing.

The ADF sought to define diving duties to include a reference to diving in a recompression chamber and to extend the allowance to medical attendants who provide therapeutic treatment in a recompression chamber. The ADF proposed an amendment to the existing Diving Allowance Determination to provide a daily payment of \$43.73, to a maximum of 40 days, to qualified personnel when they act as medical attendants in recompression chambers.

The Commonwealth did not support the ADF's proposals.

The Tribunal, having considered all the evidence and submissions, decided that members who are required to be in attendance during treatment within a recompression chamber should receive a disability payment in compensation for the health risks and demanding conditions experienced.

The Tribunal was, however, not fully persuaded by the ADF's case and decided that a payment of \$30 would be the appropriate level of allowance for qualified medical personnel providing treatment in a recompression chamber and for Navy Medical sailors undergoing training to qualify as Underwater Medicine sailors.

**L. Matter 1 of 2005 – Army Clerk Categories**

In February 2005, the Tribunal approved an ADF proposal to amend the relevant determination to change the name of the Royal Australian Army Pay Corps Clerk Pay employment category to that of 'Clerk Finance'. The ADF submitted that the change of name

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would better reflect the changed role of the clerk pay category that now focuses on the broader aspects of financial administration rather than the specialised payroll function previously undertaken.

#### **M. Matter 2 of 2005 – Specialist Operations Allowance**

Following a request from the ADF to revise the payment of Specialist Operations Allowance to certain members of the Reserve Force, the Tribunal listed this matter for hearing in June 2005. The ADF subsequently sought, and was granted, a deferral until later in 2005 on the basis that, in the process of assembling the material requested by the Tribunal, additional information came to hand that required further investigation.

#### **N. Matter 3 of 2005 – Adventurous Training Instructors Allowance**

Following the Review of Allowances in August 2004, the ADF submitted that it had undertaken a review of the value of Adventurous Training to the ADF. This review was completed in July 2004 and a report had been provided to the Vice Chief of the Defence Force for consideration. The Tribunal accepted that review of the allowance for instructors should await the Vice Chief's decision on the future of adventurous training.

During the June 2005 Review of Allowances, the ADF reported that no decision had been made on the report and that it should bring the matter to the Tribunal when the ADF internal review is completed. That remains the position at the time of this report.

#### **O. Matter 4 of 2005 – Annual Review of Allowances**

In June 2005, the Tribunal conducted the 2005 Review of Allowances.

The Tribunal noted that three allowances had been reviewed in the past 12 months (Diving Allowance – reviewed August 2004; Specialist Operations Allowance – reviewed August 2004; Medical Grades (Additional Responsibility) Allowance – reviewed November 2004) and that four were scheduled for hearing in the second half of 2005 (Paratrooper Allowance - scheduled for October 2005; Flying Allowance – scheduled for commencement in August 2005; Flight Duties Allowance - scheduled for commencement in August 2005; and Separation Allowance – scheduled for November 2005).

In relation to the remaining allowances in the nature of pay, the ADF submitted:

Arduous Conditions Allowance was last reviewed in 2003 (Matter 9 of 2003), but remains current and meets requirements. It does not require detailed review within the next two years.

Field Allowance was last reviewed in 2002 (Matter 12 of 2001) and the ADF intends to bring the matter to the Tribunal in the second half of 2006 for consideration. In the meantime, the allowance meets ADF requirements and it does not consider there is any justification for changing the quantum of this allowance.

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Language Proficiency Allowance was last reviewed in 2003 (Matter 14 of 2003) and the current structure and quantum of the allowance is meeting ADF requirements. The ADF proposed to provide further information with regard to management initiatives and changes to the allowance at the next Review of Allowances.

Seagoing (including Boarding Party Element), Submarine Service and Hard Lying Allowance have not been affected by changes to disability or work value. These are not current priorities for review.

Service Allowance was reviewed in 2003 (Matter 5 of 2003) and is to be considered by the Defence Committee in the second half of 2005. The Committee will assess issues with trainees and the structure of the allowance. In the meantime, the ADF considers the structure and quantum are current.

Special Action Forces Allowance, last reviewed in 2002 (Matter 3 of 2002), should be reviewed in detail in the second half of 2006.

Submarine Escape Allowance was last reviewed in 2003 (Matter 15 of 2003) and the structure and quantum are current.

The Commonwealth generally agreed with the ADF proposals.

The Armed Forces Federation of Australia was supportive of the ADF position on the currency and structure of the allowances addressed, with exception of Adventurous Training Instructor Allowance (see matter 3 of 2005). The Returned and Services League of Australia and the Regular Defence Force Welfare Association generally supported the ADF proposal, seeking a greater priority in the application of Service Allowance to Trainees.

The Tribunal noted all submissions and directed the ADF to schedule a review of Special Action Forces Allowance for 2006.

<b>P. Matter 5 of 2005 – Paratrooper Allowance</b>
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This matter will be reported in the 2005/06 Defence Force Remuneration Tribunal Annual Report. An inspection of the Parachute Training School in Nowra has been conducted in August 2005, with a hearing listed for October 2005.

<b>Q. Matter 6 of 2005 – Legal Officers Specialist Officer Career and Salary Structure</b>
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In June 2004, the Tribunal approved a revised Legal Officers Specialist Officer Career and Salary structure that was based on demonstration of competencies rather than time based criteria. At that time the Tribunal requested the ADF to “report back on the operation of the new structure and transitional arrangements”.

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The ADF provided this report to the Tribunal in March 2005. The report stated that Competency Log Books had not yet been introduced due to a number of unforeseen circumstances. The ADF now expects the Log Books to be finalised and ready for distribution in early September 2005.

The report also recommended an amendment to the Structure through the introduction of an additional Legal Level 1 pay point at the Captain (or equivalent) rank. The Tribunal listed the matter for hearing in June 2005.

At the June 2005 hearing the ADF submitted that there were insufficient pay points at the Captain (and equivalent) rank level to provide flexibility to remunerate members who have been promoted to a higher substantive rank but have not yet reached a higher competency. The ADF recommended an additional pay point at the level

The ADF illustrated their position by referring to a situation in January 2005 whereby a Navy Sub Lieutenant was entitled to automatic promotion to Lieutenant (Captain equivalent) on completion of 12 months at that rank as allowed by Navy's promotion policy. At the time of the promotion the officer was qualified to Legal Level 1, but was unable to advance to Legal Level 2 because the required training course clashed with another compulsory Naval Officer training course required for promotion. Because the Officer remained at Legal Level 1, no pay point was applicable.

The ADF recommended an amount of \$50,732 as the additional pay point. This amount reflected the current pay point for Legal Level 1 Officers on higher duties at the Captain (or equivalent) rank.

The Commonwealth did not support the ADF proposal. It submitted that there was insufficient evidence to demonstrate that a position at Captain (or equivalent) Legal Level 1 would not undermine the work value of the specialist structure. Furthermore, the Commonwealth submitted that the introduction of the pay point would create a situation where officers at different competency levels would be paid an identical salary which was not consistent with the intent of a competency based structure.

The Armed Forces Federation of Australia supported the ADF proposal.

After considering all the submissions, the Tribunal requested the parties' views on the addition of a pay point at the Captain (or equivalent) rank for Legal Level 1 not set by reference to a higher duties allowance. The Tribunal sought that submission by mid July 2005 and encouraged a joint submission with an agreed position, if possible, between the ADF and the Commonwealth.

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## **6. INSPECTIONS**

Inspections are generally made at the request of the parties to review work performed by ADF members and/ or the conditions under which work is done.

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

On 13 July 2004, the Tribunal inspected the work of the Underwater Medics at HMAS PENGUIN and aboard HMAS HAWKESBURY at HMAS WATERHEN. The Tribunal was briefed on the disabilities associated with treatment in recompression chambers and viewed practical demonstrations of the equipment and procedures that are utilised.

On 4 and 5 August 2004, the Tribunal inspected the Commando Capability at 4<sup>th</sup> Battalion, Royal Australian Regiment (Commando), Holsworthy Barracks. The Tribunal was briefed on the purpose and structure of the Special Forces Direct Recruitment scheme, shown static demonstrations of the training and equipment involved and had the opportunity to meet and talk with recruits who had enlisted through the scheme and were currently undergoing training.

The Tribunal was also briefed on the ADF review of Specialist Operations Allowance and the background and makeup of Australia's Special Forces capability. The Tribunal was shown both practical and static demonstrations of the role of Commandos, Tactical Assault Group East, Special Forces Signals Squadrons and the Incident Response Regiment.

On 19 October 2004, the Tribunal inspected the work of the Medical Grade 4 sailor at HMAS WATERHEN and on board HMAS STUART. Briefings covered the roles, branch structure, training and career paths for Medical Grade 4 sailors. The Tribunal also had the benefit of practical demonstrations of the equipment and procedures used.

Inspections of the work of aircrew took place during the periods of 29 May – 3 June and 20 June – 25 June 2005 in connection with the review of Flying Allowance and Flight Duties Allowance. The Tribunal was able to experience the range of disabilities affecting aircrew on the majority of airframes that are operated by the three Services. Detailed presentations were also given by the three Services on the changes that have occurred since the last review of the allowance. The quality of the briefings and demonstrations were a great credit to the Force Element Commanders, Commanding Officers and all of the other members involved.

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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. These visits include open forums with ADF members at all rank levels and, on occasion, with spouses. Usually 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 the visit, 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.

The Tribunal also carries out familiarisation visits to ADF establishments to broaden its knowledge of the operations of the ADF.

On 12 October 2004, the Tribunal visited the Special Air Service Regiment at Swanbourne, Western Australia. The Tribunal was briefed on the role and capability of the Regiment and had the opportunity to meet and discuss matters with a range of members, including those from 152 Signals Squadron, the Military Geographic Information Cell, the Technical Support Troop, the Language Training School West and the Regimental Aid Post.

On 13 October 2004, the Tribunal visited HMAS STIRLING at Rockingham, Western Australia. The Tribunal was shown practical demonstrations of the Submarine Escape and Rescue Centre and toured the Collins Class submarine HMAS RANKIN and the ANZAC Class Frigate HMAS WARRAMUNGA. The Tribunal met with members from a diverse cross section of specialisations and was shown the environments in which they have to operate.

During the period 23 – 24 November 2004, the Tribunal visited RAAF Williamtown, the School of Infantry and the Special Forces Training Centre at Singleton. The visits to the School of Infantry and the Special Forces Training Centre were of particular interest as the Tribunal had the opportunity to talk to members involved in Infantry Initial Employment Training and the Special Forces Direct Recruiting Scheme courses.

During the period 8 - 10 March 2005, the Tribunal visited units at RAAF Base Edinburgh in Adelaide and 16 Air Defence Regiment at Woodside. The Tribunal had the opportunity to talk to members at all rank levels about their conditions of service and to meet with the coordinator of the Edinburgh Community Centre to hear the perspective of members' families.

On 17 – 19 May 2005, the Tribunal visited Air Headquarters at Glenbrook, NSW and Kokoda Barracks, Canungra, Queensland. The Tribunal specifically selected these establishments to allow Officers and Warrant Officers to raise issues on the Remuneration Reform Project.

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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 supports participative practices involving staff in decision-making and process improvement through the sharing of information, and clarity of accountability 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.

## **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 Government Departments, including the Department of Defence and the Department of Employment and Workplace Relations, and by the Australian Industrial Relations Commission and other Tribunals. The facilities are made available subject to the Tribunal's own requirements.

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## ***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;

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

"Salary" includes pay;

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"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.
- (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.

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- (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 subsection (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.

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- (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.
- (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.

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- (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.

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**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.
- (5) 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 Tribunal 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 Tribunal 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.

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## **Division 3 - The Defence Force Advocate**

### **Interpretation**

#### **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 Tribunal 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.

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## **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.

## **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 Tribunal 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.

<b>LIST OF DETERMINATIONS</b>
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<b>Determination</b>	<b>Subject</b>	<b>Date of Effect</b>
7 of 2004	Specialist Salary Structure Legal Officers	1 July 2004
8 of 2004	Salary of Chief Capability and Development Group	1 July 2004
9 of 2004	Salary of Senior Officers – Reserve Forces	1 July 2004
10 of 2004	Army Commando Employment Categories – Amendment	26 July 2004
11 of 2004	Diving Allowance Amendment	25 August 2004
12 of 2004	Special Action Forces Allowance and Specialist Operations Allowance – Amendment	26 July 2004
13 of 2004	Specialist Salary Structure – Chaplains	30 November 2004
14 of 2004	ADF Workplace Remuneration Arrangement: 2004 – 2006	4 November 2004
15 of 2004	ADF Workplace Remuneration Arrangement and Star Ranks Remuneration Arrangement: 2004 – 2006 – Amendment	4 November 2004
16 of 2004	Submarine Service Allowance – Amendment	16 November 2004
17 of 2004	Navy Medical Grades (Additional Responsibility) Allowance	2 December 2004
18 of 2004	Navy Medical Grade 4 Allowance – Repeal	2 December 2004
19 of 2004	Specialist Operations Allowance – Amendment	26 August 2004
20 of 2004	Navy Electronic Warfare Categories	24 May 2004
1 of 2005	Army Clerk Categories	25 February 2005
2 of 2005	Specialist Operations Allowance	8 March 2005
3 of 2005	Reserved	-

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<b>Determination</b>	<b>Subject</b>	<b>Date of Effect</b>
4 of 2005	Electronic Warfare Non-Reduction Provisions	24 May 2005
5 of 2005	ADF Workplace Remuneration Arrangement and Star Ranks Remuneration Arrangement: 2004 – 2006 – Amendment	2 June 2005

***SECRETARIAT***

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The Tribunal records its sincere appreciation to the officers of the Secretariat for the commitment and professionalism shown in their work for the Tribunal.

The challenges facing a part-time Tribunal with a busy workload could not be dealt with without the contribution of a hard working and able Secretariat.

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