

# DEFENCE FORCE REMUNERATION TRIBUNAL

## SERVICE ALLOWANCE

### DECISION

The Australian Defence Force (ADF) has sought a review of Service Allowance. It seeks 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 members 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 is currently paid at the rate of \$7321 per annum to all Permanent Force members of the ADF up to and including the rank of Major (and equivalent). It is not paid to Officers of more senior rank on the basis that these members are in receipt of a 'consolidated' salary. It is also not generally paid to trainees, nor is it paid to members of the Reserve Forces. Service Allowance is part of military salary for superannuation and other purposes.

## **OUTLINE OF CLAIM**

The ADF is seeking a twenty per cent increase in the allowance to \$8785 per annum. It is also seeking to maintain the structure of the allowance with a single level of payment applicable to all relevant members. In accordance with the claim the allowance would continue to be limited to Permanent Force members and would not apply to the majority of trainees. The ADF is also seeking to limit payment to Majors (and equivalents) and below and does not propose any consequential adjustment to the salaries of members in the ranks of Lieutenant Colonel and above.

## **BACKGROUND**

The history of Service Allowance is referred to in detail in the Tribunal's 1994 decision (Matter 15 of 1993). It is appropriate, however, to outline here some of the significant background to the allowance including the Tribunal's previous decisions on this matter in 1987 and 1994.

Service Allowance in its present form was introduced in 1972 by the Committee of Inquiry into Financial Terms and Conditions of Service for Male and Female Members of the Regular Armed Forces (COI). In recommending the introduction of Service Allowance the COI indicated that it had regard to the following factors:

“first, the need to observe a strict code of discipline and to accept the necessarily regimented nature of Service life. This involves restrictions on personal freedom which are not normally encountered in civilian life. Secondly, there is the liability to be moved frequently, and often at short notice, to meet the needs of the Service. To some extent this can and should be compensated on occurrence – particularly where family movement is concerned. But we regard the disruption caused to the serviceman himself as one of the special features of Service life which requires consideration in the present context. The third aspect of the Service commitment to which we refer is the requirement at times to live and work in uncomfortable conditions. In a few cases this disability may affect the pay level of the particular job or may be specially compensated on occurrence. But, generally speaking, this is a factor which affects almost all Service employments from time to time and is not specially compensated. Finally, there is the requirement of all servicemen to be on call at all times, to work shifts in some cases and to work beyond normal hours in many cases. This

acceptance of long and irregular hours of work is, in our view, the most important consideration for present purposes.”

The Committee of Reference for Defence Forces Pay (COR) reviewed the allowance in 1979 and again in 1981 and retained the essential character of the allowance.

The Tribunal carried out its first major review of Service Allowance in 1987. In that matter (Matter 5 of 1986) the ADF sought a significant increase in the allowance based on submissions that working hours had increased significantly since the COR review in 1981. The ADF also submitted that there had been a decrease in the other factors relevant to the allowance. The Tribunal said in its decision that it was not satisfied that members were working more or less hours than in 1981 and that a working hours survey carried out by the ADF “simply provided a different result flowing from a different survey with a different sample and different validation process”. In considering compensation for hours worked by ADF members the Tribunal noted:

- Service Allowance is not a one for one compensation for hours worked.
- Service Allowance is paid during leave.
- Additional leave is granted in areas where long hours are involved eg work on ships. Extra Recreation Leave and Short Leave may also be granted.
- Other allowances are paid where long hours are involved eg Field, Seagoing and Submarine Service Allowances.
- Service Allowance forms part of military salary which is the basis for pensions and therefore members are compensated for lack of overtime payment long after they cease employment.

The Tribunal decided to increase the allowance to reflect the general shift in the community to a 38 hour week.

With respect to Lieutenant Colonels and above (and equivalents) the Tribunal agreed with the views expressed by the COR regarding consolidated salaries paid to members at managerial levels and decided against extending the allowance to these members or adjusting their salaries. The Tribunal also agreed with the COR's view that trainees should not receive Service Allowance.

In 1993/1994 the Tribunal again reviewed Service Allowance. The ADF submitted that the allowance required valuation in a contemporary setting as it had not been reviewed taking into account changes in all its factors since 1981. It was also submitted that it is inappropriate to value independently the elements for which Service Allowance is paid because of the intangible nature of those elements.

The ADF sought an increase of at least twenty per cent based on the increased hours of work of ADF members shown by the ADF Activities Survey and a recognition of additional disabilities suffered by families as a result of turbulence caused by postings. The reduction in strength of the ADF in recent years was said to have contributed to a need to work longer hours. It was further submitted that there had been little change in turbulence and frequency of postings or in the exposure to uncomfortable living and working conditions. The requirement to be subject to discipline was said to justify an increase in Service Allowance because of a widening gap between the ADF and the workforce generally, through a relaxation of community standards and increased restrictions on ADF members, for example those introduced by the *Defence Force Discipline Act 1982*. With respect to disabilities suffered by families the ADF submitted that there had been "a change in the spouse employment situation in the last ten years, a change in community expectations and the fact that ADF spouses .... are disadvantaged by foreshortened careers and a lack of career prospects."

A further aspect of the ADF claim was that the Pay Structure Review would ultimately address the appropriate remuneration for Lieutenant Colonels and Colonels (and equivalents) but that in the meantime the relativities between Majors and Lieutenant Colonels (and equivalents) should be adjusted by the grant of a similar increase as was applied to Service Allowance.

The Tribunal decided that it was not possible to make valid comparisons between the results of the ADF Activities Survey and earlier surveys and stated that it was not able to conclude that there had been a significant change in the hours worked by ADF members since 1981. The Tribunal said that Service Allowance is not paid as a direct compensation for actual hours worked by ADF members

and that the hours worked by ADF members would vary considerably according to careers and the requirements of different postings and Services. Therefore it would be “inappropriate to place too great a reliance in assessing the quantum of a general allowance like Service Allowance on the actual hours of work suggested by survey material”.

The Tribunal decided that disruptions caused as a result of the frequency of postings to ADF members with spouses and/or family responsibilities should be taken into account in the assessment of Service Allowance. It stated that the concept behind Service Allowance is to compensate for the special demands and exigencies of Service life compared with civilian employment and that “if a significant change in community lifestyle or expectations evolves over time or a particular aspect becomes more prominent, for example the reliance on two income families, then the effect of the change on ADF members needs to be considered”. The Tribunal referred to submissions regarding the disruption of childrens’ education, the lack of access to extended families, the reduction in spouse education and career opportunities and the increase in family stress and stated that although some of these disabilities no doubt existed when the allowance was introduced there had been significant developments in community standards and expectations relating to family matters since the last full review of the allowance. Particular reference was made by the Tribunal to the increasing incidence of two income families and that as a consequence the ability of spouses to pursue careers had assumed greater importance.

The Tribunal stated that it had given regard to the other factors of discipline and living and working in uncomfortable conditions in assessing a new rate.

In addressing submissions regarding the possible tiering of Service Allowance the Tribunal stated that a single rate should be retained. It noted that the allowance compensates for a broad range of disabilities across Service life and represents “an averaging of the disabilities across the differing circumstances, postings and commitments of ADF members” and that “it would be a difficult task to differentiate between the conditions experienced by Service personnel across different postings and at different stages of their Service careers and family life”.

Further issues addressed by the Tribunal included agreement to adjust, as an interim measure pending completion of the Pay Structure Review, salaries for Lieutenant Colonels and Colonels (and equivalents) and the matter of date of effect. The ADF and Commonwealth had sought a prospective date of effect applying at the end of the year when the existing ADF Productivity Based

Remuneration Package concluded and the Returned and Services League (RSL) and Armed Forces Federation of Australia (ArFFA) had sought backdating. The Tribunal decided that the new rate of the allowance should apply from the commencement of the next pay period.

In 1999 the Tribunal approved the ADF Enterprise Productivity Arrangement: 1999 – 2002 (EPA) which applied for a three year period from 12 November 1999 to 11 November 2002.

One of the key elements of the EPA was:

“The ADF will seek a review of Service Allowance by the Tribunal during the life of this Arrangement in order to ensure that it provides sufficient compensation having regard to contemporary requirements. The allowance was last fundamentally reviewed in 1994; it has been adjusted by increases in line with base salary since that time”.

In the result that review was not undertaken, despite the fact that the EPA covered a period of three years.

The Tribunal, at the request of the ADF, listed the present matter for hearing a number of times in 2002. The final date set for hearing was 9 September 2002. In a letter to the Tribunal in May 2002 the ADF again sought to defer the matter, this time until early 2003. The reasons given were: limited resources to develop the case; the need to provide some separation between the ADF Pay Arrangement and Service Allowance cases and the proposal that work on the Pay Structure Review should be progressed in advance of Service Allowance.

At a brief hearing on 22 May 2002 at which the ADF was asked by the Tribunal to make submissions as to why the matter should be deferred, the ADF further indicated that it had other commitments such as consideration of the Review of Australian Defence Force Remuneration and priority matters relating to increased ADF capability following the events of 11 September 2001.

Following that hearing the Tribunal issued a statement in the following terms:

“In the matter of Service Allowance the Tribunal wishes to indicate that it stands ready to hear Service Allowance on the listed date of 9 September 2002 but agrees, with reluctance, to the deferral of this matter.

The deferral is a matter of real concern to the Tribunal given that we were advised in November 1999 that this matter was to be reviewed as part of the ADF Enterprise Productivity Arrangement: 1999 – 2002, that in the 2000 Two Yearly Review the ADF stated that the allowance was to be brought before the Tribunal in 2001 and furthermore at the request of the ADF firm dates were set for the Tribunal to hear the matter in September of this year.

For the future the Tribunal expresses its expectation that commitments and undertakings in Enterprise Productivity Arrangements will be adhered to unless there are extraordinary circumstances that could not possibly have been anticipated in advance.

We have some sympathy for the Federation's view that the hearing should be as early as possible and in this regard seek from the ADF advice of a proposed date for hearing.

The Tribunal would expect that any communications with ADF members and management about the deferral will include the Tribunal's concerns about the delay".

Service Allowance was subsequently set down for hearing on 23 April 2003.

Service Allowance has been adjusted in line with movements in salary since the Tribunal's last review in 1994.

In the course of the Tribunal's visits to Defence establishments to inform itself of the views of ADF members, a constant issue has been the review of Service Allowance and in particular the failure to review it within the period of the 1999 – 2002 EPA. Members and spouses have been particularly concerned that the allowance remain current and that it adequately reflect the contemporary disabilities of Service life.

## **POSITIONS OF THE PARTIES**

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

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

The RSL and Regular Defence Force Welfare Association (RDFWA) supported the ADF position. ArFFA supported the twenty per cent increase proposed by the ADF but sought retrospective application to no later than 6 November 2002 or alternatively a \$750 bonus as a lump sum payment in addition to the twenty per cent increase. It submitted that during the hearing regarding the 2002 – 2004 ADF Workplace Relations Arrangement the Commonwealth had indicated some sympathy for the Federation's position regarding the ADF delay in bringing the matter forward. ArFFA alternatively proposed a tiered structure for the allowance and also the flow-on to Lieutenant Colonels and Colonels (and equivalents) of any increase.

## **EVIDENCE IN SUPPORT OF AN INCREASE**

All parties are agreed that some increase in the allowance is warranted but the size of the increase is an issue between them. The range of increase proposed is between ten per cent and twenty per cent. The general areas of change agreed upon are those changes flowing from alterations in the strategic situation and the flow-on affect to operational tempo.

The datum point for measurement of change was an issue with the ADF submitting that the appropriate datum point is 1994 because that was the time of the last considered review and accordingly the time of the last work value review. The ADF relied on major structural changes that have taken place since that time. The Commonwealth submitted that it is open to the Tribunal to find that the relevant datum point is later than the previous review in 1994 on the basis that in subsequent Two Yearly Reviews the ADF stated that Service Allowance was current. It was submitted that in the present case the issues were dealt with by the Commonwealth on the basis that 1994 was the base point but that it could be argued that a later base point would not be inappropriate.

The Tribunal considers that 1994 is the appropriate datum point from which to consider change for the purposes of the current review. Even though there may have been indications by the ADF that the allowance did not warrant review in 1996 or at another time, this ignores the fact that change

can occur incrementally. The National Wage Principles on work value refer to “significant” change and, although the point at which this change is identified is important, the fact remains that the change can accumulate gradually from an earlier time.

The specific areas of change relied upon by the ADF to justify an increase in Service Allowance were 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”.

It was stated by the ADF that the above factors had increased the requirement to be on-call and the liability to work long and irregular hours and had also increased posting turbulence. Finally it was submitted that there was no evidence to suggest any significant reduction in the requirement to submit to discipline and control in personal and employment matters or the requirement to live and work in uncomfortable conditions.

The ADF outlined in Exhibit ADF 8 some of the issues it considered relevant in the formulation of its claim:

- “• Absence of retrospectivity
- Significant time elapsed since last review (lost potential for increases which would have compounded if reviewed at more regular intervals)
- Substantial evidence of increased posting turbulence
- Increased impact of posting turbulence on members and families (acknowledging that impact of posting turbulence was factored into the earlier Service Allowance decisions)
- Strategic changes, (which may have had their origins some time ago) have had substantial impact since 1994 (eg geographic disposition, reduction in staff numbers, operational tempo, increase in working hours since 1999 etc)
- Recognition that other section 58H allowances are paid to members with exposure to acute disabilities eg – Seagoing Allowance, Submarine Service Allowance, but intention that Service Allowance deal separately and in relation to ADF as a whole
- Awareness that Service Allowance has increased since 1994 via bargaining agreements – which may have included reference to Service Allowance disabilities were not intended to obviate members reliance on increase in disabilities for purpose of Service Allowance review

- While one of the agreements referred to issues such as readiness and deployability – this is no substitution for reliance on Service Allowance and doesn't suggest that allowance can be seen as intending to compensate members in respect of the wholesale consequences since 1994 and in particular since 1998.
- History of the Service Allowance approach by DFRT in 1994 – granted increase despite existence of other section 58H allowance and salary increases
- Financial cost of impact of awarding an increase and no change to structure
- Superannuable and paid during periods of leave
- Perception of members re strategic changes in service and impact of change to members
- Impact of disabilities has been a feature in other proceedings (eg Special Action Forces Allowance, Specialist Operations Allowance)".

The Commonwealth indicated that there was evidence of a heightening of operational tempo, increased requirements on ADF members to be assigned for temporary periods to fill roles vacated by other members deployed on operations, and less access to respite postings. It also agreed that there was evidence to suggest a greater incidence of postings at shorter intervals (less than 3 years) and fewer back to back postings in the same location.

The Commonwealth submitted that those changes, together with some regard to the greater likelihood of members being posted to remote areas, led to a conclusion that a "significant" change had occurred in the circumstances compensated by Service Allowance.

## **SUBMISSIONS ON THE SERVICE ALLOWANCE FACTORS**

### **LONG AND IRREGULAR HOURS**

The ADF submitted that the reduction in Service personnel, focus on operational functions and heightened operational tempo indicated that average weekly working hours had increased.

The Commonwealth acknowledged that there was some shortfall in manning to meet capability requirements and that this had a potential impact on members. It also recognised the evidence of an increase in short notice to move although it noted that increased operational tempo and short notice to move have been relied on in some category and allowance reviews. The Commonwealth further submitted that “while members on deployment generally receive a deployment allowance members not on deployment do not and may have to pick up additional work due to personnel shortfalls; and they may be posted to other locations to fill skill and/or rank gaps created by deployed personnel”.

The Commonwealth stated that evidence relating to members being on duty and on-call for longer hours was only anecdotal and that no specific evidence had been provided on working hours. It was submitted that the changes to hours worked had been “marginally significant”.

### POSTING TURBULENCE

The ADF provided statistical evidence regarding the increase in posting turbulence over recent years.

The ADF submitted that in 1998 – 1999 the strength of the ADF was 52 000 and that over the year 33 000 posting orders were generated resulting in 17 000 geographical relocations. It was also submitted that commercialisation and the reduction in uniformed members had led to the civilianisation of some jobs and that accordingly there is pressure on career managers to ensure that members cycle through a range of jobs to gain and maintain trade proficiency.

It was stated that the effects of the impact of posting turbulence on ADF members and their families are an increasingly important consideration and that extended operational deployments, continual organisational changes, lack of opportunity for leave and training and limited job options for spouses in remote localities were impacting on this element.

Some of the effects on members and their spouses and dependants were stated to be:

- The financial disruption caused by a physical relocation. Many spouses find it difficult to find employment and may be forced to stay out of the workforce for extensive periods of time while looking for childcare and new employment. Long term effects such as the inability to establish superannuation benefits, are also of concern.

- The psychological effects of enforced unemployment can adversely effect the entire family unit because of the loss of income, loss of identity, which can be closely aligned with occupation, and loss of social status for the family as a unit and the spouse as an individual.
- The constant moving isolates members and their families from the support networks of friends and extended family. This additional stress adds to the sense of social isolation felt by members and their families.

Other effects were the impact on school age children with disruption to education, loss of close friends, change in curriculum and the negative impact on social activities such as sport and hobbies. A further factor is the loss of extended family support.

The Commonwealth noted the increase in removals across the Services in the period 1999 – 2002 and acknowledged that, to the extent that the frequency of postings had increased, there was a subsequent impact on ADF members and their families. The Commonwealth stated however that caution should be exercised in comparing the present situation with 1994. It also noted that some of the impacts on families identified above had been taken into account by the Tribunal in its 1994 decision.

ArFFA submitted that problems with spouse employment should be recognised in assessing changes since 1994.

#### REQUIREMENT TO SUBMIT TO DISCIPLINE

The ADF submitted that there has been no significant change in this factor and that members continue to be subject to a comprehensive disciplinary system. The ADF stated that changes in relation to the overall importance of operational service have brought disciplinary matters into greater focus. It was stated that all members are liable for operational service. The Commonwealth noted the ADF submissions on this factor but did not comment further.

## THE REQUIREMENT AT TIMES TO LIVE AND WORK IN UNCOMFORTABLE CONDITIONS

The ADF submitted that while there had been improvements in some living conditions, this factor continued to impact on members. The Commonwealth noted the “generally positive” submissions as to this factor and indicated that targeted allowances such as Field Allowance apply in many circumstances.

## ASSOCIATED CHANGES

The ADF submitted that the impact of changes in strategic policy, force structure and disposition of forces should be taken into account in assessing change and the appropriate quantum of Service Allowance. These changes had resulted largely from the introduction of the Defence Reform Program in 1997. There had been a reduction of ADF staffing from 58 930 in 1993 – 1994 to 51 365 in 2001 – 2002, a change of 12.8 per cent. These reductions were spread across all three Services. The ADF stated that there had been a reduction in non-core positions and a redistribution of uniformed personnel to combat functions with an increase from forty per cent “combat focussed personnel” in 1990 to sixty per cent in 1997 – 1998.

A further change had been the increase in the number of personnel posted to Northern Australia. The ADF stated that significantly more ADF personnel are serving in Northern Australian, remote from major southern urban areas than was the case in 1994.

The ADF submitted that these changes in strategic policy, force structure and disposition of members have impacted as follows:

- The fewer number of uniformed personnel creates a higher work load for each individual and greater liability for short notice tasks and operational deployment;
- The concentration of existing uniformed members in combat functions renders a greater proportion of members more liable to the more acute disabilities for which Service Allowance is paid; and

- A higher concentration of forces in northern areas of Australia means a higher liability for employment in operational units and higher susceptibility to disabilities for which Service Allowance is paid.

It was stated by the ADF that operational tempo, or the rate at which the ADF has contributed to operational deployments within the last decade, has increased substantially. The ADF submitted that “the rapid change in Australia’s strategic environment as well as enormous social, economic and technological changes nationally and internationally have impacted significantly on the number and nature of tasks assigned to the ADF”. To illustrate, in the last 24 months the ADF had been committed as follows:

- Coalition operations against Iraq;
- The international coalition war against terror;
- Border protection – including air and surface patrols to assist other Commonwealth agencies in the enforcement of migration laws;
- Peacekeeping operations in East Timor;
- Peace monitoring operations in Bougainville;
- Peacekeeping missions in former Yugoslavia, the Sinai, Israel, Syria, Lebanon, Sierra Leone, Ethiopia, Eritrea, and the Solomon Islands;
- Fisheries law enforcement patrols;
- Security and support including counter terrorism and air defence support for Commonwealth HOGM;
- Community assistance for environmental health infrastructure for remote indigenous communities; and

- Humanitarian assistance to evacuate persons affected by the October 2002 Bali bombing.

In outlining the impact of the change in operational tempo the ADF stated:

“The major difference in operational tempo in 2003 in comparison to 1994 is that there are fewer ADF personnel conducting a higher number and range of operations. The simultaneous nature of operations means that turnaround time between operational deployment is reduced significantly. The disposition of forces geographically, and force structure, means that fewer positions exist in either southern regions of Australia and/or, in non-operational or support functions. In sum, the net result is a higher liability to experience more acutely and for longer periods and more regularly, the disability for which Service Allowance is paid”.

A further development was submitted to be the introduction of the ADF policy on Individual Readiness which requires all ADF members to maintain readiness standards and to be able to deploy at short notice.

The Commonwealth stated that it acknowledged the evidence regarding the short notice to move.

### **LIEUTENANT COLONELS AND COLONELS (and equivalents)**

The ADF submitted that the increase to Service Allowance it proposes should not flow-on to the salaries of Lieutenant Colonels and Colonels. It stated that this position was consistent with the decision by the Tribunal in 1987 (Matter 5 of 1986) and that there was no demonstrated salary compression problem of any significance.

The Commonwealth supported this approach and the RSL and RDFWA submitted that the lack of flow-on represented a “rightful managerial judgement”.

ArFFA submitted that Service Allowance should be extended to Lieutenant Colonels and Colonels, but that in the absence of such an extension the salaries of those ranks should be adjusted in line with the increase in Service Allowance, at least until the Remuneration Reform Project has been completed. The Federation stated that separation rates are highest at Lieutenant Colonel and that a lack of flow-on would provide a further disincentive for these members.

## **TRAINEES**

The parties agreed that Service Allowance should not apply to trainees. The ADF has identified some inconsistencies in the application of the allowance to trainees resulting from the different application of policy by the Services and different definitions of “trainees”. The ADF submitted that it will review the position of trainees and intends making separate submissions to the Tribunal on this matter no later than the end of 2003.

## **OTHER ASPECTS**

The parties agreed that members of the Reserve Forces should continue to be excluded from payment of Service Allowance.

The ADF submitted that Service Allowance should be maintained as a single entity and that it should be paid at a single rate to all eligible members. The Commonwealth, RSL and RDFWA did not seek any change to the structure of the allowance, however, the Armed Forces Federation of Australia sought the introduction of a four tiered structure based on years of service. ArFFA submitted that the impact of the disabilities that attract payment of Service Allowance is far greater on the longer serving, mature members and lesser on those who choose to serve for shorter periods of time. The rates proposed by ArFFA range from \$7 500 a year for members who have completed less than four years to \$11 902 a year for members with more than 15 years service.

## **SUMMARY OF THE PARTIES POSITIONS**

The ADF is seeking to maintain the present structure of the allowance and to increase it by twenty per cent. The Commonwealth supports maintenance of the existing structure but submits that the increase should be limited to ten per cent. The RSL and RDFWA support the ADF proposal. Each of these parties proposes prospective operation of any increase and no extension to Lieutenant Colonel and Colonel (and equivalents).

ArFFA proposes a tiered allowance, retrospective application of any increase to 6 November 2002 and extension to Lieutenant Colonel and Colonel (and equivalents).

## **CONSIDERATION**

This review of Service Allowance had been foreshadowed for some time and delays have occurred in bringing the matter forward. Those delays and the reasons for them are detailed elsewhere in this decision.

A substantial amount of evidence was provided by the ADF to support its claims of change and a number of witnesses attested to the nature and extent of that change. Some of that evidence from the Warrant Officer of the Navy, Academy Sergeant Major Australian Defence Force Academy and the Warrant Officer of the Royal Australian Air Force is open to the criticism that, at least in part, it is anecdotal. However, we are persuaded to place weight on that evidence given the roles of those appointments and in particular their continual close contact with members directly affected by change.

Service Allowance compensates for the special demands and exigencies of Service life and accordingly significant changes that impact in a broad sense on the generality of Service life that are not of a transitory nature should be encompassed by the allowance. This includes changes flowing from shifts in strategic policy, force structure and the disposition of forces as detailed earlier in this decision. The effect of the changes needs to be considered and recognised in the expression and quanta of Service Allowance.

We consider the changes established by the evidence to be significant and that they justify an increase in Service Allowance. The changes have resulted from a range of factors including the reduction in overall numbers, the civilianisation of non-combat functions, the significant increase in operational deployments, an increased range of tasks and the emphasis on readiness, mobility and deployability.

All of the parties except ArFFA sought to retain the present structure of Service Allowance. The Federation proposed a tiering of the allowance to recognise “that the impact of the disabilities that attract payment of Service Allowance are far greater on the longer serving”. In the Tribunal’s decision in 1994 (Matter 15 of 1993) it stated:

“...we have decided that the present structure of the allowance with a single rate of payment should be retained. This is because of the nature of the allowance which compensates for a broad range of disabilities associated with Service life and the general acceptance of the allowance as representing an averaging of the disabilities across the differing circumstances, postings and commitments of ADF members. It would be a difficult task to differentiate between the conditions experienced by Service personnel across different postings and at different stages of their Service careers and family life and to identify the appropriate level of compensation for particular disabilities. In these circumstances and having regard to the submissions of the parties and interveners we do not consider that it is appropriate or desirable to tier the allowance”.

We consider that such an approach is still appropriate and we have decided to retain the present structure of the allowance.

The parties also proposed, with the exception of ArFFA, that any increase to Service Allowance should not flow-on to members in the ranks of Lieutenant Colonel and Colonel (and equivalent). We have decided, on the basis of the submissions of the parties, that there should not be any adjustment to the salaries of Lieutenant Colonels and Colonels (and equivalent) flowing from our decision in this matter. We consider that the compression in salaries is not so significant as to warrant any increase to the salaries of these members at this time. In this context we are also mindful that the Remuneration Reform Project is progressing and should address the appropriate level of Lieutenant Colonel and Colonel (and equivalent) salaries in due course.

We have heard extensive submissions from the ADF, Commonwealth and interveners. We are accordingly able to determine a current and appropriate rate for Service Allowance taking into account the existing circumstances and the disabilities relevant to ADF service. We recognise that now, as on previous occasions, an assessment of the compensation for a range of disparate intangible factors involves a significant element of informed judgement.

We have considered all the evidence and submissions and we have also considered the adjustments to Service Allowance that have occurred as a result of successive enterprise arrangements. We have further taken into account the need to ensure that there is no double counting with the recent

substantial variations to allowances within our jurisdiction. We consider that changes which justify the increase in the allowance include the:

- impact of the reduction in the number of ADF personnel;
- increase in numbers of personnel in the north;
- impact of the civilianising of non-combat functions;
- redistribution of uniformed positions into combat functions;
- impact of the significant increase in operational deployments;
- increase in operational deployment support;
- increase in intensity of work;
- new emphasis on readiness, mobility and deployability;
- increase in the range of tasks including non-conventional tasks that members are involved in; and
- a further shift in societal and sociological expectations.

Having regard to all the material and evidence before us we have decided that the rate of Service Allowance should be increased to \$8525 per annum and we determine accordingly.

Having determined the appropriate rates of Service Allowance a final consideration remains the date of application of the increase.

The ADF sought a prospective date of effect but indicated that the increase sought by it “acknowledges the delay in the review of Service Allowance”. The Defence Force Advocate submitted that “part of the consideration the ADF members gave for (the 1999 – 2002) Agreement

was that Service Allowance would be reviewed” and that the ADF had taken this into account in establishing the quantum of its claim.

The Commonwealth also proposed a prospective date of effect. The RSL and RDFWA expressed the view that the ADF position constituted “a rightful managerial judgement”. ArFFA, on the other hand, submitted that a retrospective date was justified and necessary because of delays in bringing the matter forward. It referred to the ADF 1999 – 2002 Enterprise Productivity Arrangement and its provision that Service Allowance would be brought forward in the life of the Arrangement. ArFFA also submitted that the ADF had not been able to quantify any component of its claimed twenty per increase that might be attributable to compensation for the lack of retrospectivity. It stated that if retrospectivity were not granted then consideration should be given to a \$750 bonus payment as compensation.

As submitted by ArFFA the 1999 – 2002 ADF Enterprise Productivity Arrangement included a commitment to review Service Allowance in the life of the Arrangement. The Tribunal outlined earlier in this Decision its concern in May 2002 regarding the deferral of a hearing of the matter.

After the conclusion of the present hearings into Service Allowance the Tribunal gave further consideration to the matter of the date of application of any increase flowing from our decision and sent a letter in the following terms to the parties.

“On 13 May 2003 the Tribunal reserved its decision in respect of Service Allowance (Matter 5 of 2003).

Issues of retrospectivity were raised in the submissions of the parties and the Armed Forces Federation of Australia made a substantial submission in support of backdating the operation of any increase.

Following its initial deliberations and consideration of the submissions and evidence regarding Service Allowance the Tribunal has 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 by the Tribunal and in particular whether some grant of retrospectivity should be considered. The submissions should address, *inter alia*, the arguments of the Armed Forces Federation of Australia in favour of retrospectivity.

The submissions should be exchanged by the parties and forwarded to the Tribunal by close of business on 10 June 2003. Should the parties wish to respond to the submissions those responses are to be provided to the Tribunal by 16 June 2003”.

The Chief of the Defence Force responded in a submission that concluded that the date of operation of any increase awarded should be consistent with the normal practices of the Tribunal, that is, the increase should take effect on the first pay day following decision by the Tribunal, and that “retrospectivity should not be granted”.

The submission argued that the circumstances under which the ADF failed to bring the matter forward for review were legitimate. These circumstances included the need to commit large resources to a review of specialist groups following the 11 September 2001 terrorist attacks and the need to progress a replacement Remuneration Arrangement. The Chief of the Defence Force also submitted that the issue of funding was relevant to any consideration of retrospectivity with the cost of retrospective application negatively impacting on other personnel initiatives.

ArFFA submitted that the circumstances surrounding the consideration of Service Allowance were “exceptional and compelling to such a degree that a retrospective date of effect was truly justified”.

The RSL and RDFWA supported a prospective date of effect based on the original ADF submissions but stated that retrospectivity to November 2002 may be appropriate if the Tribunal was persuaded to award less than the claimed twenty per cent increase.

The Commonwealth submitted that any increase should apply prospectively. In particular it noted that:

- The very developments that had been the cause of the delay had themselves largely been relied on by the ADF as an integral part of the contemporary review of the allowance.
- Service Allowance had been increased since the expiry of the 1999 EPA in line with subsequent ADF salary adjustments and that since the last fundamental review of the allowance in 1994, the quantum of the allowance had in fact been indexed in line with salary adjustments which had exceeded increases in the consumer price index over the

same period. In keeping pace with salary movements, the real value of the allowance had therefore increased over time, thus safeguarding ADF members to a large degree in the period between reviews.

- This was not a case where the delay could in any way be said to constitute undue delay resulting from procrastination or other unreasonable action on the part of the ‘employer’. (In this context the Commonwealth noted that “unanticipated delay resulting from unforeseen exigencies is not an uncommon occurrence in workplace relations processes and is not, in itself, sufficient reason to justify a finding of exceptional circumstances”.)

Finally the Commonwealth referred the Tribunal to the practice of the AIRC and State industrial Tribunals and noted that its research had not uncovered any precedents where retrospectivity had been granted based solely on delays in the applicant presenting the initial case material to the relevant Tribunal.

It is normal practice for Tribunals to determine prospective dates of effect unless exceptional circumstances prevail. It was in the circumstances of the history of this matter, particularly the undertakings provided in the 1999 – 2002 Enterprise Productivity Arrangement, that we sought additional submissions from the parties. Having given this matter further detailed consideration in the light of the parties responses we consider that whilst there is much to be said for ArFFA’s submissions, on balance, and given in particular the firm position of the ADF on the issue, we have decided to determine a prospective date of effect.

## **DECISION**

We have decided that Service Allowance should be increased to \$8525 per annum. The increase will apply from the first pay period commencing on or after the date of this decision. We are mindful of the fact that an increase flowing from the WRA: 2002 - 2004 is to apply on and from 3 July 2003. We have decided that the WRA increase should also apply to the rate of Service Allowance we have determined. There will be no change to the structure of the allowance and, as submitted by the ADF and Commonwealth, the increase we have determined will not flow-on to Lieutenant Colonels and Colonels (and equivalents). We note that the ADF will review the extent

of application of Service Allowance to trainees and will report back to the Tribunal on this matter before the end of 2003.

The parties should provide a draft determination to the Tribunal Secretariat within 14 days.

**APPEARANCES:** R Kenzie QC, Defence Force Advocate, with Lieutenant Commander A Bradshaw, for the Australian Defence Force

E Cole with M Frawley for the Commonwealth

P Morrall, AM, CSC for the Returned and Services League of Australia and Regular Defence Force Welfare Association

G Howatt for the Armed Forces Federation of Australia

**DATES AND PLACE OF HEARINGS:**

23 – 24 April 2003      Canberra

13 May 2003              Canberra