

# **DEFENCE FORCE REMUNERATION TRIBUNAL**

## **SEAGOING ALLOWANCE**

### **BOARDING PARTY ELEMENT**

#### **REASONS FOR DECISION**

The Australian Defence Force (ADF) has sought the introduction of a new element within Seagoing Allowance for ADF members directly engaged in the boarding, holding or steaming of foreign vessels being investigated or apprehended during illegal fishing, customs or immigration activities within Australian Territorial waters or the Australian Exclusive Economic Zone.

#### **INSPECTION**

On 10 June 2003 the Tribunal undertook an inspection of the work of members of boarding parties at Darwin Naval Base. The Tribunal was briefed on boarding procedures, equipment used in boardings, types of boardings and conditions under which boardings are conducted.

The Tribunal then boarded the Patrol Boat HMAS LAUNCESTON to witness a demonstration of a boarding operation on a previously captured Type III Foreign Fishing Vessel (FFV) manned by Darwin Naval Base personnel acting in the role of the FFVs crew. The Tribunal boarded the ships Rigid Hull Inflatable Boat and was embarked on the FFV to more closely observe the processes and conditions under which such activities are conducted. A demonstration of a towing/steaming operation was also provided.

## **SUBMISSIONS AND EVIDENCE**

### Australian Defence Force (ADF)

The ADF submitted that the introduction of a new element of Seagoing Allowance would acknowledge and compensate members engaged in boarding operations for disabilities experienced by ADF personnel not currently comprehended by the ADF salary and allowance structure. The disabilities identified included:

- the requirement to work in confined spaces;
- exposure to extremely hot or cold temperatures for prolonged periods of time;
- exposure to potentially harmful substances including: dangerous chemicals, diseases and unhygienic conditions;
- exposure to physical dangers and risk of harm by means including: unknown sharp objects and booby-traps; and
- the requirement to work with, and around, the crews and personnel on the foreign vessel who are at least unpredictable and potentially hostile to the presence of ADF personnel.

A boarding party normally comprises up to six personnel and includes a Boarding Officer, a Petty Officer Boatswain, a communications rating, a MT Fitter and a two person search/sentry team. It was submitted that the Boarding Party is responsible for the initial boarding of the (FFV) or Suspected Illegal Entry Vessel (SIEV). The Boarding Party is required to secure the vessel against sabotage, prevent the crew from taking retaliatory action, inspect the vessel for illegal substances and conduct investigations and collect evidence.

It was said that in situations where multiple vessels are encountered and multiple boardings must be conducted, a Holding Party is used to control an apprehended vessel while the Boarding Party is moved to another vessel. The Holding Party usually consists of two personnel who are responsible for maintaining control and custody of the vessel and its crew until the Patrol Boat can return to commence steaming or towing.

The ADF submitted that the dangerous nature of boarding party activities requires members to be appropriately trained and prepared. All personnel must be qualified in the use of the 9mm pistol and baton and have completed training in the Rules of Engagement and Use of Force. All personnel assigned to a Patrol Boat with the requisite training are liable for such duty.

It was submitted that Boarding Operations, while predominantly conducted by RAN personnel, have the potential to be undertaken by other elements of the ADF, in particular by Army Tactical Support Elements. These elements are on standby should there be a requirement to apprehend a large SIEV.

The ADF proposed the payment of a rate of \$40 on a per day of occurrence basis. The allowance would not be paid concurrently with: Arduous Conditions Allowance, Special Action Forces Allowance, Specialist Operations Allowance or with any deployment allowance empowered by Ministerial Determinations under section 58B of the Defence Act.

The ADF called two witnesses.

Lieutenant Commander M Gough, the former Commanding Officer of the Patrol Boat HMAS LAUNCESTON, gave evidence about the preparation for and the conduct of Boarding Party operations. He also gave evidence on the different types of resistance that can be experienced from the FFV/SIEV crewmembers which can include: passive resistance in the form of general lack of cooperation; the erection of physical barriers to prevent boarding and search; verbal abuse; the offering of violence by crew members and sabotage of the engine and/or hull of the vessel.

Leading Seaman K McIntosh, a Marine Technician Mechanical on HMAS LAUNCESTON, gave evidence on the physical and health risks inherent in Boarding Party operations. He also described the psychological effects on members prior to and during boardings.

## The Commonwealth

The Commonwealth supported the introduction of the new element of Seagoing Allowance and the daily rate proposed by the ADF. It was submitted that the rate proposed reflected an informed judgement that the ADF had made having regard to the disabilities suffered, the environment in which the work is performed and to other ADF allowances. It was said that the proposal was consistent with the ADF Workplace Remuneration Arrangement: 2002 – 2004 and the principles established by the Australian Industrial Relations Commission.

## The Armed Forces Federation of Australia

The Armed Forces Federation of Australia submitted in writing that although it favoured an on-occurrence rate for the allowance and a higher rate for the boarding of Suspected Illegal Entry Vessels it was prepared to support the ADF proposal at this time. The Federation suggested that these issues be given further consideration when the new element, if approved by the Tribunal, is next reviewed.

## **DECISION**

The ADF has sought the introduction of a new element for Seagoing Allowance for ADF members engaged in the boarding, holding or steaming of foreign vessels.

Having considered the submissions and evidence the Tribunal is satisfied that the disabilities encountered by members of the ADF involved in boarding FFVs and SIEVs should be compensated by the payment of an allowance under the auspices of Seagoing Allowance.

We have determined that a rate of \$40 should be paid to members directly involved in the boarding, holding or steaming of foreign vessels on a per day of occurrence basis. The allowance may be paid to any members of the ADF, including Army Tactical Support Elements, involved in operations, without the need to be posted to a seagoing vessel.

The Tribunal considers that this rate is appropriate having regard to other ADF allowances and in particular the high risk search rate of Unpredictable Explosives Allowance where there are substantial similarities in the tasks performed.

We have also decided that the allowance is not to be paid concurrently with Arduous Conditions Allowance, Special Action Forces Allowance, Specialist Operations Allowance or an operational deployment allowance.

We note that the Armed Forces Federation of Australia has proposed an alternative basis for payment of the allowance and a higher rate for the boarding of Suspected Illegal Entry Vessels. These submissions will be further considered in the next review of the allowance.

As agreed by the parties the new element to Seagoing Allowance will apply on and from 31 July 2003.

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

H Lavey with L Cox for the Commonwealth

G Howatt for the Armed Forces Federation of Australia

**DATE AND PLACE OF HEARING:**

30 July 2003                      Canberra

**INSPECTION:**

10 June 2003                      Darwin Naval Base, HMAS LAUNCESTON