

DEFENCE FORCE REMUNERATION TRIBUNAL

ADF REVIEW OF DIVING ALLOWANCE

REASONS FOR DECISION

The Australian Defence Force (ADF) has sought a review of Diving Allowance. Diving Allowance is paid to ADF members in recognition of diving duties performed by members whose usual duties do not include diving. Divers perform their diving duties as an additional role to their primary function.

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 (Trainees Allowance is paid to members attending the RAN Dive School or Army Dive Wing).

The ADF is seeking the following amendments:

- 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.

BACKGROUND

The Allowance was reviewed in full by the Tribunal in 1998 (Matter 2 of 1997). At that time increases to the Allowance were sought on the grounds of additional training, introduction of new and replacement equipment and the knowledge to plan and conduct underwater repair tasks. The introduction of the new and replacement equipment resulted in an increase in the skills and capabilities of divers, as well as an increase in the types of activities being conducted and the level of risk.

In 1999 (Matters 13, 16 and 17 of 1999) the Tribunal conducted a review of Deep and Experimental Diving Allowance, Submarine Escape Training Facility Allowance and Clearance Diving Allowance. As part of that review the ADF sought a payment for medical personnel who were required to provide treatment in a Recompression Chamber. In the Reasons for Decision the Tribunal stated “in the case of persons assisting with such treatment in a compression chamber we are not satisfied that it is appropriate on the basis of the material presently before the Tribunal to introduce an entitlement to payment of the allowance”. The Tribunal queried whether recognition of the work was not already included in the salary scales for medical personnel. Additionally the Tribunal was not aware that payment of the kind proposed was provided in civilian employment areas.

INSPECTION

The Tribunal had the benefit of an inspection of the work of Underwater Medics at HMAS PENGUIN and onboard HMAS HAWKESBURY at HMAS WATERHEN on 13 July 2004. The Tribunal was briefed on the disabilities associated with treatment on the various platforms where recompression chambers are utilised within the ADF.

SUBMISSIONS AND EVIDENCE

The Australian Defence Force

The ADF submitted that while there had been some minor changes to training and equipment these were not so significant as to warrant an increase in the allowance. This was based on the following factors:

- training content and length of the basic and supervisor courses have not changed in any significant respect since 1997;
- the only new equipment introduced, the Emergency Breathing System, has resulted in a safer dive kit and is easier to manoeuvre;
- there is no evidence to indicate the level of disability associated with diving tasks has increased;
- there is no evidence of increased medical risks; and
- the allowance has been increased by 26.1% since 1997 via workplace bargaining arrangements.

The ADF proposed to amend 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 majority of the recipients would be Navy Underwater Medical sailors but Medical and Nursing Officers would also be included when they work as attendants in recompression chambers. Authorisation to act as a medical attendant in a recompression chamber requires the qualification gained through the Underwater Medicine Course or an equivalent, as in the case of the Nursing Officer posted to Balmoral Naval Hospital. The ADF also proposed that payment should be available to medical sailors who are required to assist in the recompression chamber during the Underwater Medicine courses.

The ADF addressed the Tribunal's reasons in the 1999 case for not extending payment of the then Clearance Diving Allowance to medical and other personnel involved in recompression chamber treatment. It submitted that:

- there was no evidence from past reviews to suggest that the Pay Group for Underwater Medics provides appropriate compensation for all work undertaken as part of their duties; and
- various Federal and State Awards and Agreements provide for additional payments to medical attendants, mainly nurses, who are required to work in Hyperbaric Units in various hospitals.

In response to a question from the Tribunal about the circumstances affecting RAAF personnel involved in the Hypobaric (Decompression) Chambers at RAAF Edinburgh, the ADF submitted that:

- the predominate use of the chambers is the training of aircrew in their exposure to the effects of hypoxia; and

- RAAF Medical Assistants are not required to be present in the chamber.

The ADF called one witness, Lieutenant Commander Sarah Edith Sharkey, the Officer in Charge of the Submarine and Underwater Medical Unit, who gave evidence in relation to the inherent risks associated with diving. These risks were said to involve hazards to health from diving or exposure to increased ambient pressure and include barotrauma, decompression illness, nitrogen narcosis and marine animal injury. Lieutenant Commander Sharkey also outlined the health risks and other disabilities associated with work in the recompression chamber. Witness statements were provided by Chief Petty Officer John Brady, Lieutenant Commander Scott Hamilton and Leading Seaman Michael Holman.

The Commonwealth

The Commonwealth did not support the ADF's proposal to define diving duties to include reference to diving in a Recompression Chamber nor to the widening of diving allowance to include a reference to therapeutic treatment that a member provides as a medical attendant in a chamber. The Commonwealth submitted that in its view the quanta and structure of the allowance remain current.

The Commonwealth submitted that by changing the definition for a dive, the effect would "be adding an entitlement inappropriately and without due consideration". The Commonwealth also did not consider that medics were performing a secondary and additional role to their primary function, as is the case for Army Works and Navy Ships Divers.

Whilst acknowledging that Underwater Medicine sailors perform an important role, the Commonwealth submitted that the ADF had not provided sufficient evidence to support the contention that the disabilities encountered in the recompression chamber were not already being recognised by pay group placement. It was the Commonwealth's view that these disabilities were taken into account when their pay group placement was determined and therefore the disabilities should not be further compensated through an allowance.

The Armed Forces Federation of Australia

Returned and Services League of Australia

Regular Defence Force Welfare Association

The ADF proposal was supported by the Armed Forces Federation of Australia and, by letter, by the Returned and Services League of Australia and the Regular Defence Force Welfare Association.

DECISION

The Tribunal recognises the role of Underwater Medicine sailors in the treatment of injured divers, both military and civilian. Lieutenant Commander Scott Hamilton, the Officer in Charge of the RAN Diving School, said in his statement, "Underwater medics are essential to divers safety with substantial risk mitigation relying on their continued professional support".

Having reviewed the reasons for the Tribunal's decision not to approve payments to Underwater Medics in 1999 and considering all the submissions and evidence before us, we have 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. These members may be suitably qualified Medical Officers, Nursing Officers, Underwater Medicine sailors or those Navy medics undergoing underwater medicine training. We are satisfied, on the basis of the material presented by the ADF, that the requirement for these sailors to provide treatment in a recompression chamber was not a factor when they were placed at Pay Group 4. We do not intend by this statement that every task that may be required in a role is to be specifically considered in assigning roles to pay groups, but rather that we are dissuaded in this case from the doubts previously expressed by the Tribunal.

But we are not fully persuaded by the ADF's case. In our view the disabilities and risks experienced by divers involved in underwater operations and encapsulated in Diving Allowance are more extensive than those experienced by medical attendants in a recompression chamber. We have, therefore, decided that a payment of \$30 will 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.

We recognise that the effect of this single rate to be paid, whether training or qualified, produces a higher training rate for these personnel than the Diving Allowance training rate. The small difference is justified in our view by the benefits of simplicity over the longer period for all involved.

We see no reason to change arrangements for Underwater Medicine sailors who are qualified ships divers. These members will continue to receive the same allowance as ships divers when in a recompression chamber.

The date of effect for our decision is on and from 25 August 2004.

APPEARANCES: R Kenzie QC, Defence Force Advocate with Lieutenant D Talbot, for the Australian Defence Force.

H Marshall with J Shingles for the Commonwealth

G Howatt for the Armed Forces Federation of Australia

INSPECTION:

13 July 2004 HMAS WATERHEN, HMAS PENGUIN and onboard HMAS HAWKESBURY

DATE AND PLACE OF HEARING:

12 August 2004 Canberra