



Defence Force Remuneration Tribunal

DECISION

Defence Act 1903

s.58H—Functions and powers of Tribunal

SPECIAL FORCES REVIEW: REPORT BACK

(Matter 20 of 2020)

MS I. ASBURY, PRESIDENT

MR A. MORRIS, MEMBER

CANBERRA, 22 MARCH 2021

MAJGEN G. FOGARTY AO RETD, MEMBER

[1] This decision arises from a listing application¹ made by the ADF under Section 58H of the *Defence Act 1903* to provide a report back, as required by this Tribunal, in response to Matter 9 of 2018 – *Special Operations Review* which re-examined allowances pertaining to Special Forces.

Background

[2] During Matter 1 of 2016 - *Annual Review of Determinations*² the Tribunal elected to review allowances for Special Forces separately due to the complexity of those allowances. That separate review subsequently became Matter 9 of 2018 – *Special Operations Review*. Consequently, in the decision published in regard to Matter 9 of 2018 the Tribunal required extended reports back on nine items;³ this decision now addresses those specific nine items.

[3] We considered this matter in hearing on 4 March 2021 when Mr J. Phillips SC appeared for the ADF and Mr P. Hoang for the Commonwealth.

Submissions

[4] The ADF submission comprises:⁴

- a. an update in relation to each of the nine items;
- b. a brief update on the related environmental changes;
- c. implications of the review;
- d. concluding comments; and
- e. an amending determination.

[5] The specific nine items are:

- a. Special Operations Command intends to conduct further analysis of the enhanced work value of Special Forces support staff;
- b. subject to internal review, there is potential for Air Force to consider an independent Combat Control officer employment profile;
- c. if the trend of calling upon combat control teams more frequently to operate as independent reconnaissance elements in support of 2nd Commando Regiment advance force operation, including an increased exposure to parachute-related disability and a heavier expectation of self-reliance and survivability, the level of disability for Combat Controllers is expected to be internally reviewed;
- d. the eligibility criteria associated with Special Forces support members may require review;
- e. the ADF will continue to analyse the relevance of the three year period of eligibility for the Special Forces sustainability allowance;
- f. the ADF expects to review the clearance diver workforce;
- g. a future review may need to consider the inclusion and alignment of additional employment streams as Special Forces support staff;
- h. as Army reviews its employment categories in line with the introduction of new equipment and capabilities, an assessment will be necessary to determine any effect on Special Forces support staff capabilities; and
- i. the relevance of paratrooper allowance would be reviewed when the parachuting capability is fully transitioned to Special Forces Command.⁵

[6] Further to these nine items the ADF submit that two other anomalies have been identified.

[7] The Commonwealth acknowledges the report back and notes “*that as a result of this review a number of issues may be brought to the DFRT for consideration in due course*”.⁶

Consideration

[8] In giving consideration to the nine matters we mention them individually below and comment on the evidence provided within the submission:

a. Special Operations Command intends to conduct further analysis of the enhanced work value of Special Forces staff.

We considered the evidence that “*the current remunerative placements adequately reflect the work value of Special Forces support staff in the current construct*” and note that “*Army will be undertaking a Special Operations Workforce Review which will include the Special Operations support staff*”.⁷

b. subject to internal review, there is potential for Air Force to consider an independent Combat Control officer employment profile;

We note that “*Air Force is now considering how their Combat Control officers can be incorporated as a new competency stream in the Officer Aviation Pay Structure*”⁸ (OAPS) and also refer them to our previous observation in Matter 5 of 2016 - OAPS and the concerns of the Commonwealth of potential flow-on effects to other workforces.⁹

c. if the trend of calling upon combat control teams more frequently to operate as independent reconnaissance elements in support of 2nd Commando Regiment advance force operation, including an increased exposure to parachute-related disability and a heavier expectation of self-reliance and survivability, the level of disability for Combat Controllers is expected to be internally reviewed;

We accept that “*the trend has continued to increase*” however the “*specific level of disability for combat control teams and the manner in which this disability should be compensated is still to be decided*”.¹⁰

d. the eligibility criteria associated with Special Forces support members may require review;

We accept that “*no issues have arisen and that therefore no further review is warranted*”.¹¹

e. the ADF will continue to analyse the relevance of the three year period of eligibility for the Special Forces sustainability allowance;

We accept that the “*eligibility conditions remain fit for purpose*” and “*no change to the three year period is warranted*”.¹²

f. the ADF expects to review the clearance diver workforce;

We accept that “*Navy has identified no requirement to modify allowance settings at this point in time*”.¹³

- g. a future review may need to consider the inclusion and alignment of additional employment streams as Special Forces support staff;**

We accept that “no additional employment categories have been identified that need to be included as Special Forces Support Staff and hence no change to the current definition is required”.¹⁴

- h. as Army reviews its employment categories in line with the introduction of new equipment and capabilities, and assessment will be necessary to determine and effect on Special Forced support staff capabilities; and**

We accept that “ongoing refresh of Army’s equipment and capabilities will routinely necessitate an assessment of the level of its effect on each employment category and, by extension on Special Forces support staff” but that as flow-on effects are identified they will be brought to us for consideration in due course.¹⁵

- i. the relevance of paratrooper allowance would be reviewed when the parachuting capability is fully transitioned to Special Forces Command.**

We accept that “elements of Parachute Allowance will be required to be maintained for the non-Special Forces members such as the parachute rigger employment category who support the Special Forces in parachute roles”. We also note that “the Army employment category modernisation program is proposing to merge employment categories that require parachuting qualifications and that “these considerations are expected to be complete in 2021”.¹⁶

[9] With regard to the two items noted in paragraph 6 of this decision as requiring remediation we accept that:

- a. the ADF seeks to formally align the receipt of Separation Allowance by eligible Combat Controllers and Combat Control officers with that of Army Special Forces Support Tier 2 counterparts; and
- b. Air Force has identified that the current eligibility criteria are restrictive in identifying which Combat Controllers and Combat Control Officers are incurring the disability necessary to receive Special Forces Disability Allowance and seek to expand the definition to include additional posting locations in order to meet the criteria.¹⁷

Conclusion

[10] We agree that the outcomes detailed in paragraph 5 of this decision, and the minor corrections detailed in paragraph 6, give effect to the changes sought by the ADF and consider this review to have identified and resolved areas of previous concern.

[11] We accept that flow-on effects within this workforce are likely to continue to evolve and encourage the ADF to return to us with any outcomes for consideration in due course.

[12] Determination 1 of 2021 will give effect to these amendments from 22 March 2021.

MS I. ASBURY, PRESIDENT
MR A. MORRIS, MEMBER
MAJGEN G. FOGARTY AO RETD, MEMBER

Appearances:

Mr J. Phillips SC for the ADF assisted by Mr P. Blady
Mr P. Hoang for the Commonwealth assisted by Ms E. Beresford-Jones.

¹ DMR letter DMR/OUT/2020/36 Listing Application: *Special Forces Report Back* dated 18 November 2020.

² https://www.dfrt.gov.au/sites/default/files/2021-01/Annual-Review-of-Determinations-Salaries-and-Allowances-2016_0.pdf

³ https://www.dfrt.gov.au/sites/default/files/2020-11/statement_-_2018_special_forces_review.pdf

⁴ ADF Submission *Special Forces Report Back 2020 Matter 20 of 2020* undated (ADF1).

⁵ ADF1 page 1 paragraph 1.02.

⁶ Commonwealth submission *Matter 20 of 2020 Special Forces Report Back* dated 17 February 2020 (CWLTH1).

⁷ ADF1 page 3 paragraphs 2.1.2 and 2.1.3.

⁸ ADF1 page 3 paragraph 2.2.2.

⁹ <https://www.dfrt.gov.au/sites/default/files/2021-01/Decision-OAPS.pdf> paragraph 37c.

¹⁰ ADF1 page 4 paragraph 2.3.2 and 2.3.3.

¹¹ ADF1 page 4 paragraph 2.4.2.

¹² ADF1 page 6 paragraph 2.5.4.

¹³ ADF1 page 6 paragraph 2.6.2.

¹⁴ ADF1 page 7 paragraph 2.7.2.

¹⁵ ADF1 page 7 paragraph 2.8.2.

¹⁶ ADF1 pages 7 and 8 paragraph 2.9.2.

¹⁷ ADF1 pages 9 and 10 paragraphs 4.05 and 4.06.