



Australian Government
Defence Force Remuneration Tribunal

STATEMENT

Defence Act 1903
s.58H—Functions and powers of Tribunal

ANNUAL REVIEW OF DETERMINATIONS: SALARIES AND ALLOWANCES - 2017

(Matter 1 of 2017)

MS I. ASBURY, PRESIDENT

MR A. MORRIS, MEMBER

CANBERRA, 12 FEBRUARY 2018

RADM J. GOLDRICK AO CSC RAN RTD, MEMBER

[1] Subsection 58H(6) of the *Defence Act 1903* (the Act) prescribes that: “*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 determinations in respect of those salaries and allowances:*

- a. Within two years of the first-mentioned determination taking effect; or*
- b. If the Minister, by notice in writing given to the President, requires the Tribunal to make a further determination in respect of those salaries and allowances within a shorter period of the first mentioned determination taking place – within the shorter period”.*

[2] Pursuant to this obligation, the ADF submitted determinations made by the Tribunal during 2014 and 2015 for review.¹ An opening hearing in this matter was held on 8 March 2017 with Mr J Phillips SC appearing for the ADF and Ms J Menaglio for the Commonwealth. The matter was finalised in a hearing on 8 December 2017 where Mr J Phillips SC appeared for the ADF and Ms P Morrison for the Commonwealth.

Background

[3] Historically, the task of this review has come to be referred to as an “Annual Review” although we note that s.58H(6) of the Act refers to an obligation to ‘inquire into’ determinations. We continue to adopt the prior description noting the obligation as set out in the legislation.

[4] Each Annual Review incorporates analysis of each determination by providing:

- a. a background to the target employment category;
- b. the intended purpose;
- c. an evaluation of the implementation and effectiveness to date; and
- d. recommendations for further consideration where applicable.

[5] The Review does not preclude the ADF from filing an application in respect of any of the determinations for consideration by the Tribunal in the future. We do not consider determinations made in respect to each ADF Workplace Remuneration Arrangement within this Review as they are reviewed annually when each increment is determined.

Submissions

[6] The ADF opening statement made on 8 March 2017 provided a review of all determinations dating back to 2013 for continuity purposes. The statement considered the determinations in three categories:²

- a. determinations that require no further action;
- b. determinations that require further consideration and review; and
- c. determinations to be reviewed in 2017.

[7] The Commonwealth supported the ADF approach to this review.³

[8] Final submissions by the parties were made in November 2017 by which time matters dealt with during the year had narrowed the Review to 44 determinations. Of these, 33 were recommended for no further action with 11 proposed for consideration and review to be deferred to 2018.

Considerations

[9] Further to the submissions, in our last Annual Review we had specifically required report back on 10 specific determinations during 2017.⁴ Two of those, Determination 2 and 12 of 2013 (regarding Trainee and Language Allowance respectively) have been addressed during this year and have been resolved.

[10] The other eight concern Matter 16 of 2013 – *Special Forces, Paratrooper and Specialist Operations Allowance*. Six of these have not yet been reviewed and contribute to the 11 proposed by the ADF in this Annual Review.

[11] We considered the ADF evidence that there are “*two matters where the review, by way of the Tribunal’s statutory functions...will be in Special Operations and also in Maritime Disability*” and that “*both of these matters will require a multifaceted approach because there are a number of pieces with respect to each of the matters that need to be considered.*”⁵ We note that a review into Maritime allowances will result in the addition of an additional determination for revision.⁶

[12] The ADF have now submitted that achieving a review of some determinations (such as the 11 proposed by the ADF in the current Review and the additional determination identified in ADF evidence) within the legislated two year time frame reduces the ability to adequately measure the impact of the determinations on the relevant workforce. Detailed submissions were made that “*if an outcome to a review is due within two years, it means the ADF would generally need to start the review 12 months after implementation of the determination*” and that: “*where the intended effect occurs cumulatively over an extended period of time, 12 months has been found to be an insufficient period of time to collect or draw conclusions from data, measure the effect of changes in the affected workforce and yield conclusive findings that would indicate whether the changes are having the required impact/effect.*”⁷

[13] We gave consideration to this time frame and, where the intended effect occurs over an extended period of time, accept that 12-24 months can be an insufficient period for thorough review.

[14] Conversely, we note that for determinations making minor amendment or change the effect can be immediate and the determination may not require further action upon review.

Conclusion

[15] We gave consideration to all determinations listed and accept that an evaluative approach was undertaken by both the ADF and the Commonwealth. We accept this was completed with the intention of recommending whether there was a need for a further determination in order for the original determination to continue to achieve its intended effect.

[16] We note that the ADF will return to us in 2018 to consider those matters in which the implementation and intended effect of the determination has required longer than 24 months to enable accurate assessment. In consideration of this, the following 12 determinations will be reviewed in 2018 separately to the Annual Review requirements:

- 20 of 2013: to be considered in a review of Matter 24 of 2012 – *Review of Seagoing and Submarine Service Allowance*.
- 11 of 2014; 1, 10,11,12,13 and 16 of 2015: to be considered in a review of Matter 16 of 2013 - *Special Forces, Paratrooper and Specialist Operations*.
- 3 and 15 of 2015: to be considered in Matter 14 of 2017 – *1st Recruit Training Battalion – Report Back*.
- 1 and 2 of 2016: to be considered in Matter 15 of 2017 – *Submarine Capability Assurance Payment - Report Back*.

[17] In future, should a review period be likely to vary from the two yearly annual review timeframe we will require the extended review period to be agreed when first considering the matter. We accept that many determinations may require no further action as they have dealt with obsolete requirements or will have immediately had the intended effect.

[18] Having inquired into each of the determinations, and taken into account the submissions, we do not intend to issue a further determination in respect of salaries or allowances reviewed in this matter. The consideration of these matters, and this Statement, constitutes review as required under the Act.

MS I. ASBURY, PRESIDENT
MR A. MORRIS, MEMBER
RADM J. GOLDRICK AO CSC RAN RTD, MEMBER

Appearances:

Mr J Phillips SC with Ms S Robertson and Mr P Blady for the ADF.

Ms J Menaglio and Ms P Morrison with Ms T Morris and Mr S Leung for the Commonwealth.

¹ ADF submission – Matter 1 of 2017, *Annual review of Determinations Opening Statement*.

² ADF submission – Matter 1 of 2017, *Annual review of Determinations Opening Statement*.

³ Commonwealth submission 2017 Review of Salary and Allowance Determinations dated 31 October 2017.

⁴ Annual Review of Determinations: Salaries and Allowances – 2016 dated 14 October 2016 page 3 paragraph 6.b and 6.c.

⁵ Transcript 8 December 2017 page 4 lines 31 to 35.

⁶ Determination 20 of 2013 – *ADF Allowances – Maritime – Amendment* dated 9 December 2013.

⁷ ADF submission page 11 paragraph 1.28