



Australian Government
Defence Force Remuneration Tribunal

DECISION

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

FLEXIBLE SERVICE DETERMINATIONS (Matter 13 of 2017)

MS I. ASBURY, PRESIDENT

MR A. MORRIS, MEMBER

CANBERRA, 20 FEBRUARY 2018

RADM J. GOLDRICK AO CSC RAN RTD, MEMBER

[1] This decision concerns an application¹ made under s.58H of the *Defence Act 1903* (the Act) by the Australian Defence Force (ADF) to make provision for ‘flexible service determinations’ as introduced in Part 1 Division 2 (23) of the *Defence Legislation Amendment (First Principles) Act 2015*. (the *First Principles Act*).

[2] A hearing in this matter was held on 8 December 2017; Mr J Phillips SC appeared for the ADF and Mr S Leung for the Commonwealth.

Background

[3] All permanent members of the ADF have an obligation to render ‘continuous full time service’. Under the *First Principles Act*, the Chief of the Defence Force (CDF) is able to determine reduced hours or periods of duty for members by way of a ‘flexible service determination’.

[4] The concept of ‘flexible service’ has been developed by the ADF as part of a ‘Total Workforce Model’² through the introduction of Project *Suakin* to which we have often referred.³ Previously, in order to achieve this effect, the ADF had utilised provisions for part-time leave without pay and/or leave without pay under s.58B of the Act.

Submissions

[5] In this matter the ADF specifically seeks to make provision for flexible service determinations by amending Tribunal Determinations 2 of 2017 – *Salaries*; 11 of 2013 – *ADF Allowances*; and 12 of 2012 – *Officer Aviation Remuneration Structure* to give effect to flexible service determinations and to ensure that a member is not remunerated for a period where they are not rendering service under their agreed flexible service determination⁴.

[6] The Commonwealth supports the ADF proposal.⁵

Evidence

[7] The ADF provided evidence that this provision was “*designed by way of a pro-rata assessment of the salary or any other allowances, to use a fortnight with a one-tenth divisor, because salaries and allowances with respect to the Permanent Forces are annualised rates*”.⁶

[8] Evidence was also given on the expected number of flexible service determinations projected to be “*in the vicinity of 1.33 per cent, or almost 830 members*” by 2027 “*based on case studies of allied industries with male-dominated workforces and widespread operational sites that have gradually achieved flexible arrangements of 4 to 5 per cent over a 10 to 15 year period*”.⁷

Considerations

[9] We accept that the concept of flexible service is in line with contemporary workforce expectations and standards of employment and provides the ADF with versatile patterns of service to support capability requirements.

[10] We note the written advice that, under the Total Workforce Model, service category 6⁸ will be used to facilitate flexible service for Permanent members and is likely to be a “*key enabler for attraction and retention providing members the opportunity to accommodate their personal lifestyle choice and their service obligations*”.⁹

[11] We agree that a one-tenth divisor aligns with previous Tribunal divisors in regard to part-time leave without pay arrangements as far back as 1997.¹⁰

[12] We agree that flexible service determinations will establish a formal agreement between the member and the ADF for their pattern of service and periods of attendance for duty. We considered the proposed amendments to ensure that a member is not remunerated for a period when they are not rendering service. We do note that a member’s pattern of service will include, at times, paid days for which they are not required to attend duty such as public holidays or short absences from duty.

[13] We gave consideration to the fact that CDF may revoke or vary a member’s flexible service determination under paragraph 23(3) (b) of the Act or if the member requests revocation or variation.

Conclusion

[14] We accept that a flexible service determination will provide a pattern of service which enables a member to attend for particular hours in a day, days in a week, or for differing periods of time (for example: three months on followed by three months off) or a combination of those arrangements.

[15] Provisions made in the Tribunal determination ensure that a member is not remunerated for a period where they are not rendering service under a flexible service determination.

[16] Determination 13 of 2017 gives effect to this decision from 20 February 2018.

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

Appearances:

Mr J Phillips SC with Mr P Blady for the ADF.

Mr S Leung with Ms P Morrison for the Commonwealth.

¹ DMR/OUT/2017/38 Listing Application – *Interoperability of DFRT Determinations with Flexible Service Determinations* dated 18 September 2017.

² A workforce model that provides the ADF with enhanced arrangements for flexibility around attendance, remuneration and conditions of service through a spectrum of Service categories referred to as SERCAT.

³ For example: Matter 9 of 2013 – *Review of Reserve Allowance* and Matter 5 of 2015 – *Reserve salary increment amendments*.

⁴ ADF2 – DMR/OUT/2017/039 Matter 13 of 2017 – *Flexible Service Determinations* – dated 25 October 2017.

⁵ Commonwealth letter *Flexible Service Determinations* dated 31 October 2017

⁶ Transcript 8 December 2017 – Matter 13 of 2017 *Flexible Service Determinations* page 3 lines 13 - 15

⁷ Transcript page 3 lines 3 - 9.

⁸ Permanent/Regular members rendering part-time service who are subject to the same service obligations as members rendering full-time service.

⁹ ADF 3 Enclosure 1 paragraph 3.

¹⁰ Tribunal Determinations 2 and 18 of 1998.