



Australian Government
Defence Force Remuneration Tribunal

DECISION

Defence Act 1903

s.58H(2)(a)—Determination of the salaries and relevant allowances to be paid to members

STATUTORY OFFICE HOLDERS AND NON-PUBLIC OFFICE HOLDERS – O9 AND O10 TRANSITION

(Matter No. 4 of 2014)

THE HON. A. HARRISON, PRESIDENT

CANBERRA, 22 APRIL 2014

THE HON. A. BEVIS, MEMBER

BRIGADIER W. ROLFE, AO (Ret'd), MEMBER

[1] This decision relates to a submission made by the Australian Defence Force (ADF) in relation to Matter 4 of 2014 – *Statutory Office Holders and Non-Public Office Holders O9 and O10 Transition* under s.58H of the *Defence Act 1903*. The ADF seeks to provide a period of paid transition for up to two months to allow non-Public Office Holders (non-POH) to transition from ADF Service. This is coupled with a proposal to increase the O10 Reserve daily salary rate for Statutory Office Holders (SOH) serving in the Reserve Forces during their transition on completion of their appointments.

[2] Hearings were conducted in regard to this Matter on 4 March 2014 in Canberra. During the Hearing Mr R. Kenzie AM QC appeared for the ADF and Mr J.O'Reilly appeared for the Commonwealth.

Background

[3] Prior to 2013 non-POH were remunerated by way of individual Determinations made by the Tribunal. In Matter 18 of 2012 – *O9 non-Public Officer Holders* the Tribunal repealed Determinations in place for the positions of Chief of Joint Operations (CJOPS) and Chief Capability Development Group (CCDG) and established the O9 non-POH remuneration structure using the Statutory Office Holders (SOH) as a point of reference.

[4] O9 and O10 SOH's have their remuneration set by the Remuneration Tribunal and, under *Defence Personnel Regulations 2002 - Regulation 65(2)*, must transfer to the Reserve Forces on immediate completion of these appointments.

[5] In hearings in relation to Matter 18 of 2012 on 16 April 2013 the ADF made a commitment to return to the Tribunal to address transition arrangements for O9 and O10 SOH and non-POH as they transitioned from the ADF at the end of specified appointmentsⁱ.

[6] The matter was returned to us in March 2014 with the imminent departure of a number of the senior officers from both SOH and non-POH appointments.

Submissions

[7] In their submission for transition arrangements the ADF now seeks to:

- a. provide Reserve salary days for the purpose of transition for O9 and O10 SOH on exiting their appointments,
- b. refresh the O10 Reserve rate listed in DFRT Determination 15 of 2008 – *Salaries*,
- c. establish an appropriate rate to be paid during transition from the ADF for O9 non-POH, specifically the positions of Chief of Joint Operations and Chief Capability Development Group, and
- d. provide a period of paid transition of up to two months to allow these senior officers to effectively transition from the ADF.

[8] The ADF submits that the workloads involved in the positions held by O9 non-POH and O9 and O10 SOH preclude the individual from completing transition activities while in their final posting.

[9] In response the Commonwealth submission does not oppose the proposed outcome for the impending round of transitions. They do, however, seek an undertaking that both Parties would return before the Tribunal before the next round of transitions in order to give further consideration to the proposed structure and with intent to provide an enduring system of transition.

Evidence

[10] Air Vice Marshal (AVM) Anthony Needham AM gave evidence that the ADF was about to experience a significant changeover of SOH's and the imminent transition of both of the non-POH. He detailed a long standing and customary practice for Star Ranked officers leaving the ADF to have a transition period of up to eight weeksⁱⁱ and that the intent of the submission was to treat the current non-POH in a similar way.

Consideration

[11] We accept the evidence that service in the ADF *'brings with it a range of conditions and benefits [and that] the ADF has an obligation to assist permanent force members [to] transition out of the permanent force'*ⁱⁱⁱ and further that *'for Star Rank officers it is often impossible for some transition activities (such as security debriefs) to occur until after their final posting has been completed'*^{iv}.

[12] We considered the regulatory requirements for SOH to transfer to the Reserve Forces on immediate cessation of their appointment and accept that Reserve salary days will be utilised for their transition.

[13] Having been required to give immediate consideration to this matter, and noting the imminent departure of those officers transitioning, we recognise the fact that any further delay may cause detriment to those senior officers. It is necessary there be a determination addressing these matters albeit we are required to address this at a late stage. We do however agree with the Commonwealth that further consideration of these matters is warranted to look at procedures that might better address this situation in the future.

Conclusion

[14] We agree with the Commonwealth that a suitable long term solution needs to be identified before the next round of transitions in order to provide an enduring system and require the ADF to return to us with a further submission outlining their proposal for this in November 2014. We note their willingness to re-engage with the Commonwealth on this issue^v.

[15] We accept the salaries and transition as sought by the ADF and agreed by the Commonwealth for this round of transitions only. Determination 4 of 2014 gives effect to this decision.

THE HON. A. HARRISON, PRESIDENT

THE HON. A. BEVIS, MEMBER

BRIGADIER W. ROLFE, AO (Ret'd), MEMBER

Appearances:

Mr R Kenzie AM QC counsel for the ADF assisted by *Ms S Robertson*

Mr J O'Reilly for the Commonwealth assisted by *Mr A McKechnie*

Witness:

Air Vice Marshal A V Needham AM, Head People Capability

ⁱ Transcript 16 April 2012 page 22 lines 10-23.

ⁱⁱ Transcript 4 March 2014 page 23 line 40

ⁱⁱⁱ ADF 1 Affidavit page 2

^{iv} ADF 1 Affidavit page 2

^v DMR Letter DMR/OUT/2014/19 of 21 March 2014