



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

REVIEW OF RESERVE ALLOWANCE

(Matter No. 9 of 2013)

THE HON. A. HARRISON, PRESIDENT

THE HON. A. BEVIS, MEMBER

CANBERRA, 18 JUNE 2014

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

[1] This decision arises from a submission made by the Australian Defence Force (ADF) in relation to Matter 9 of 2013 – *Review of Reserve Allowance* under s.58H of the *Defence Act 1903*. The ADF seek an increase in reserve allowance to a rate fixed at 75% of the daily rate of service allowance; repeal of the daily rate of separation allowance; and extending the eligibility of Reservists for the annual rate of separation allowance. Aligned with this, the ADF seek the placement of reserve allowance into the service allowance group of the Salary Related Allowance Structure (SRAS). A date of effect of 26 June 2014 is sought.

[2] In this matter Mr R. Kenzie AM QC appeared for the ADF and Mr J. O'Reilly for the Commonwealth. Major General Paul Brereton AM, Head Cadet, Reserve and Employer Support Division and Brigadier Iain Spence CSC, Lead Officer, Plan SUAKIN, both gave evidence before the Tribunal.

Background

[3] Reserve allowance is paid to compensate for the demands of Service life while undertaking Reserve duties. All Reservists are paid according to their rank and skill grade

with daily rates of salary calculated using a divisor of 1/365 of a Permanent member's annual salary.

[4] Reserve personnel volunteer to serve on either a continuous full time or a daily basis and are paid for days served. Reservists serving on a 'days' basis do not receive superannuation and their daily salary is exempt from income tax. Reservists who undertake continuous full time service receive the same remuneration and benefits as Permanent members.

[5] A flat rate of \$10 a day reserve allowance was established in 2006 as an initial attempt to compensate for the service related disabilities experienced by Reservistsⁱ. This has increased to the current rate of \$13.15 through Workplace Remuneration Arrangements.

Submissions

[6] The ADF seeks to:

- a) place reserve allowance into the SRAS aligning it within the service allowance group (which contains service allowance and trainee allowance);
- b) increase the existing rate of reserve allowance from \$13.15 per day/part day to a rate fixed at 75% of the daily rate of service allowance for all categories of Reserve service (Standby/Active/High Readiness) equating to a daily payment of \$26.56 for each day or part day served;
- c) repeal the daily rate of separation allowance (\$8.57) currently quarantined for Reserves; and
- d) include Reservists in the group of members eligible to qualify for the new rate of annual separation allowance if they are separated from their dependants for a period of more than 60 daysⁱⁱ.

The \$26.56 rate that the ADF propose includes a roll-in of separation allowance to compensate for separations of less than 60 days.

[7] The ADF propose that the changes in remuneration will apply to all personnel up to and including the rank of Major/O4 (or equivalent). Reserve members with the rank of Lieutenant Colonel/O5 (or equivalent), like their permanent counterparts, receive a daily rate of salary that already incorporates service allowance.

[8] The Commonwealth supported the placement of reserve allowance into the service allowance group of SRASⁱⁱⁱ; however, they reserved their final position until after completion of the hearings.^{iv} The Commonwealth made a subsequent submission in March 2014^v opposing the proposed date of effect for the repeal of separation allowance and outlining what they considered to be five core disabilities associated with Reserve service. The ADF made a further written submission in May 2014 addressing these issues^{vi}.

Evidence

[9] The ADF submitted that the service allowance compensates for factors such as, but not limited to^{vii}:

- a) the requirement to be on call and the liability to work long and irregular hours including weekends, public holidays and shifts;
- b) the turbulence in postings caused by the liability to be moved frequently, and often at short notice, to meet the needs of the service and the effects of this on the member and the member's family;
- c) the requirement to submit to discipline and control in personal and employment matters in which a civilian generally has some freedom of choice;
- d) the requirement at times to live and work in uncomfortable conditions;
- e) the turbulence associated with frequent movement not related to postings, away from a member's home location, on duty and often at short notice; and
- f) the requirement to undertake short separations.

[10] The hearing commenced with an update brief on Plan SUAKIN conducted by MAJGEN Brereton. This focussed on the contemporary roles of Reserve personnel in support of ADF capability and outlined a range of proposed employment options for Reserves.

Major General Paul Brereton, AM, Head Cadet, Reserve and Employer Support Division

[11] In his affidavit MAJGEN Brereton addressed the disabilities and vicissitudes of Reserve service across 'traditional categories'^{viii}. He outlined these as:

- long and irregular hours: particularly in regard to weekend training and training conducted in addition to civilian working hours;
- military discipline: giving rise to a restriction on lifestyle impacting on behaviour even when off duty;
- working conditions: reflecting the fact that Reservists can spend a greater proportion of their service in training where the conditions, particularly in the field or in inferior accommodation, is equally uncomfortable, or more so, than that of Permanent members;
- short separations: where Reservists are away from their support networks on a regular basis and which can see them absent for up to four weeks a year; and
- liability to call out: where Reservists experience a form of disruption to their civilian lives that arises from their service obligation and the liability to be called out at short notice for any type of military contingency, including peacekeeping and humanitarian assistance and disaster relief.

[12] These disabilities were also addressed by MAJGEN Brereton in his oral evidence before the Tribunal. He said that continuous exposure to these disabilities applies to Reservists both when on and off-duty. He again encapsulated these as^{ix}:

- Reserve service being inherently rendered outside regular working hours making the exposure to long and irregular hours assured;
- Reservists are not subject to the same levels of posting turbulence as Permanent members but are subject to related issues that could be considered to fall into that category such as, the liability for short notice 'call out', balancing the competing demands of civil employment, home life and Reserve duties;
- Military and security implications which apply to a Reservist at all times;
- Living and working conditions for Reservists when on duty because a high proportion of duty is spent training or in the field; and
- Separation from family accentuated by a pattern of service where days served are for training courses or exercises and often served on weekends.

[13] MAJGEN Brereton said that reserve allowance factors have previously taken into consideration the fact that personnel serving on 'days' do not pay tax. His view, and that of the ADF, is that "the non-taxable status of Reserve service should be regarded as irrelevant to setting appropriate remuneration"^x

Brigadier Iain Spence, CSC, Lead Officer Plan SUAKIN

[14] BRIG Spence gave evidence in relation to the percentage of the services allowance of both reserve and trainee allowances being 75% of service allowance and stated the fact "that they both ended up as 75% is coincidental" and that the 75% has been arrived at as a result of different considerations and research.^{xi}

[15] BRIG Spence submitted that Navy and Air Force Reservists are often more 'integrated' than those in the Army and that, on occasions the disabilities in those Services are "virtually identical"^{xii}. However, he considered 75% to be appropriate as all three Service Reservists are liable for the same call out provisions.

Consideration

[16] We considered that Reserve allowance should compensate for factors such as the requirement to be called for duty at short notice (however expressed, whether as 'on-call', 'call out', 'call back' or 'call for') and consider that a requirement to be available to be called at short notice, and the subsequent impact, should be recognised. Long and irregular hours, military discipline and the requirement to live and work in uncomfortable conditions have also been taken into account.

[17] We gave consideration to the alignment of trainee allowance and whether it should be accepted that Reservists and Trainees had the same conditions imposed by their service. We

sought further information from the ADF on the discounting factors from service allowance. Their written reply outlined that the 25% reduction from service allowance comprises; the absence of posting turbulence (offset to a degree by the disruption to civilian employment); the reduced impact from the effects of cumulative disability arising from the nature of Reserve service; and the payment of the same rate for part or whole day service^{xiii}.

[18] We considered the Commonwealth's final submission that the following five core disabilities should be recognised as associated with Reserve service:

- a) the response to the call for duty at short notice and the liability to work long and irregular hours including weekends, public holidays and shifts;
- b) the disruption to civilian life caused by patterns of reserve service, including the effects of this on the member, the member's civilian employment and the member's family;
- c) the requirement to submit to military discipline and control in personal and employment matters in which a civilian generally has some freedom of choice;
- d) the requirement at times to live and work in uncomfortable conditions; and
- e) the requirement at times to be away from the home location for service reasons.^{xiv}

We agree that the above disabilities are appropriate to be recognised by the payment of Reserve allowance. They are consistent with the evidence of both MAJGEN Brereton and BRIG Spence.

[19] We considered the Commonwealth's request for an immediate repeal of the daily rate of separation allowance for O5 rank Reserve members and above. After that submission was made there have been delays in the receipt of final ADF documents which had an impact on whether the submission should be accepted. The proximity of the date for all of the other variations suggests that to have an earlier date of effect for the repeal of the separation payment will result in unnecessary administrative burden. We have therefore decided that the date of effect for the repeal will be 26 June 2014.

Conclusion

[20] It is clear to us that Reserve roles are more operationally focussed than in the past and that the current tempo of the ADF has resulted in an increased reliance on Reserve personnel. We are encouraged by Plan SUAKIN and the consideration given to the importance of Reserve personnel in meeting ADF commitments.

[21] We accept the evidence and submissions that any relativity between the reserve and trainee allowances having a 75% relation to service allowance is coincidental, and are satisfied that they were reached separately and as a result of independent assessments.

[22] We note that the reserve allowance rate has been considered conservative since its inception in 2006^{xv} and that a divisor of 1/365 remains an appropriate basis for payment. We have decided it is not appropriate to discount the daily rate on account of the manner in which

it is treated for taxation purposes. Further, we agree with the evidence that “tax operates on whatever remuneration is set rather than being a factor in setting remuneration^{xvi}” and approve the proposed \$26.56 rate.

[23] We approve the roll-in of separation allowance and also the placement of reserve allowance into the SRAS within the service allowance group. Determination 6 of 2014 gives effect to this decision.

THE HON. A HARRISON, PRESIDENT
THE HON. A BEVIS, MEMBER
BRIG W. ROLFE, AO (Ret'd), MEMBER

Appearances:

Mr R. Kenzie AM QC assisted by Ms S. Robertson appeared for the ADF

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

Witnesses:

Major General P.Brereton AM, Head Cadet, Reserve and Employment Support Division

Brigadier I. Spence CSC, Lead Officer Plan SUAKIN

ⁱ ADF 1 page 5 paragraph 1.11

ⁱⁱ ADF 1 page 7 paragraph 2.1

ⁱⁱⁱ Commonwealth 1 page 1 paragraph 7

^{iv} Commonwealth 1 page 3 paragraph 22

^v Commonwealth supplementary submission dated 3 March 2014

^{vi} ADF response to Commonwealth submission dated 21 May 2014

^{vii} ADF 1 page 4 paragraph 1.5

^{viii} Affidavit page 7 paragraph 23

^{ix} Transcript pages 47 – 49

^x Transcript page 52

^{xi} Transcript page 68

^{xii} Transcript page 69

^{xiii} ADF Letter DMR/OUT/2013/79 dated 11 December 2013

^{xiv} Commonwealth supplementary submission of 3 March 2014 page 2 paragraph 8

^{xv} Matter 3 of 2006 – Reserve Remuneration Review.

^{xvi} Transcript page 52