



Australian Government
Defence Force Remuneration Tribunal

DECISION

Defence Act 1903

s.58H - Determination of the salaries and relevant allowances to be paid to members

SEA GOING AND SUBMARINE SERVICE ALLOWANCES REVIEW

(Matter No. 24 of 2012)

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

CANBERRA, 9 DECEMBER 2013

Introduction

[1] This decision arises from an application by the Australian Defence Force (ADF) for amendment to the current salary related allowances pursuant to s.58H of the *Defence Act 1903* (the Act). The ADF seeks to replace Seagoing, Submarine Service and Hard Lying Allowances with two maritime related allowances that distinguish between disability and sustainability elements. These would be known as the Maritime Disability Allowance and Maritime Sustainability Allowance respectively.

[2] Hearings were conducted in Canberra and Sydney. Inspections were conducted in conjunction with the review and included:

- HMAS *Melbourne* (at sea):
- Cowley Beach Training Area and HMAS *Choules* (at sea):
- HMAS *Albany* (at sea)

[3] During the hearings Mr R. Kenzie, AM QC, appeared on behalf of the ADF and Mr J. O'Reilly on behalf of the Commonwealth. The Defence Force Welfare Association (DFWA) and the Returned Service League (RSL) were granted leave to intervene. Mr L Bienkiewicz appeared on behalf of the DFWA and Commodore S. Lemon RAN Rtd for the RSL.

[4] The following witnesses were called by the ADF:

- Vice Admiral (VADM) R. Griggs, AM, CSC, RAN Chief of Navy;
- Rear Admiral (RADM) T. Barrett AM, CSC RAN Fleet Commander;
- Commodore (CDRE) G. Sammut RAN, Director General Submarine Capability;
- Commodore (CDRE) P. Laver RAN, Director- General Navy People;
- Brigadier (BRIG) S. Caughey, AM CSC, Commander 3rd Brigade; and
- Warrant Officer (WO) M. Holzberger, CSC, Warrant Officer of the Navy.

Background and the proposition

[5] This matter initially commenced within the Salary Related Allowance Review (SRAR - Matter 3 of 2012) in August 2012 in which the ADF made submissions in relation to Seagoing Allowance, Submarine Service Allowance and Hard Lying Allowance. At the time, the Commonwealth reminded the ADF of its undertaking to comprehensively review maritime allowances during 2013. Subsequently, this review was listed and undertaken as a separate matter.

[6] This review takes place at a time when Navy is continuing to face significant workforce capability and readiness issues combined with the introduction of a new amphibious capability.

[7] The ADF is seeking a revised allowance structure that separates disability considerations for seagoing and submarine service from sustainability considerations. Assessments have been based on the current operational tempo of an average of 150 days at sea per year.

[8] The ADF has worked continuously and constructively with the Commonwealth since opening submissions were made in December 2012 regarding the detail of this proposal. Adjustments to the proposal have been made in response to issues raised by the Commonwealth and, as a result, a joint submission was tendered reflecting the agreement of the parties on each of the components of the ADF application. The ADF seeks a date of effect for the proposed structure of 30 January 2014¹.

Joint position

[9] We summarise the joint submission of the ADF and the Commonwealth below. It should be noted that all the monetary amounts have been adjusted post the 7 November 2013 increases made pursuant to the Workplace Remuneration Agreement.

- a. Disbandment of current Seagoing, Submarine Service and Hard Lying Allowances;

- b. Introduction of three rates of Maritime Disability Allowance based on members posted to vessels in the surface and submarine fleet, irrespective of length of service at sea as follows:
 - i. \$11,275 p.a for seagoing members posted to Major Fleet Units (MFU)
 - ii. \$13,325 p.a for seagoing members posted to a Minor War Vessel (MWV) and
 - iii. \$16,913 p.a for seagoing members posted to a submarine;
- c. Introduction of a Maritime Sustainability Allowance with three substantive rates based on length of service as follows:
 - i. Tier 1 - less than 3 years of sea service – nil
 - ii. Tier 2 - completed 3 years but less than 6 years of sea service - \$10,250 p.a
 - iii. Tier 3 - Completed 6 years but less than 11 years of sea service - \$16,400 p.a and
 - iv. Tier 4 - 11 years sea service or more - \$18,450 p.a;
- d. Payment of a continuous rate of Maritime Disability Allowance to members posted to a vessel;
- e. Payment of a continuous rate of Maritime Disability Allowance extended to members posted to the Army Amphibious Ready Element who have a liability to serve 100 combined days of field and sea service per annum;
- f. Non-Reduction Allowance (NRA) to be applied to members currently entitled to Tier 1 Seagoing or Submarine Service Allowance who would be detrimentally affected by the proposed reduction to the Maritime Disability Allowance. This would have a ceiling of \$1,078 p.a for Tier 1 Major Fleet Unit members and \$1,615 p.a for Tier 1 submariners and remain in place until successive Workplace Remuneration Arrangement increases bring the new disability rates for Major Fleet Unit and submariner members to a level that meets or exceeds these ceilings. Members who achieve Tier 2 status in that time will no longer be eligible for Tier 1 NRA.
- g. Disbandment of Hard Lying Allowance in favour of the application of a daily rate of the relevant Maritime Disability Allowance and Maritime Sustainability Allowance;
- h. An increase to the rate of the Boarding Party element (consistent with submissions made by the ADF in the context of the SRAR) from \$56.61 to \$61.91 per day;
- i. Removal of the entitlement to the allowance for members posted as Commodore Flotillas as this position was disestablished;
- j. Introduction of a revised definition of ‘sea day’ for allowance purposes to remove the requirement for the calculation of a 24 hour period commencing at midnight

enabling an initial period of 24 hours on a vessel to be relevant for the purpose of calculating eligibility;

- k. Incorporation of the annual Maritime Disability Allowance (sub para. b), Boarding Party element (sub para. h) and Maritime Disability Allowance (sub para. g) within the SRAR schedule;
- l. Amendment of the eligibility criteria for access to the daily rate of Maritime Allowance to enable a part 'sea day' to be counted as full 'sea day' to align with arrangements under clause 6 of Determination 14 of 1995 (Field Allowance);
- m. Amendment of eligibility criteria to allow members of the Sea Training Group to be eligible for payment of the daily rate of Maritime Allowance on completion of one sea day (24 hours) in lieu of 48 hours;
- n. Amendment of eligibility criteria to ensure that members who move expeditiously from one vessel to another are not required to re-qualify for payment of the daily rate by performing another 48 hours or 24 hours on board; and
- o. Amendment of eligibility criteria in both Field Allowance and Maritime Allowance determinations to allow members who move from a ship to the field or vice versa to retain entitlement to the relevant allowance without having to complete a new qualification period on each occasion of change.

Evidence

VADM Ray Griggs AM, CSC, RAN, Chief of Navy.

[10] In giving evidence, VADM Griggs advised the objective was to “*create an allowance structure which would equitably, efficiently and effectively facilitate the delivery and importantly, the ongoing sustainment of Navy’s capability*”². VADM Griggs provided endorsement of the proposals following consultation with the Navy’s senior leadership group and relevant Army stakeholders³. He considered that the proposition has been carefully reviewed, and represents an integrated ‘package’ that will offer the best support to the delivery of capability into the future.

[11] VADM Griggs stated that features of these revised allowances include “*maintenance of a differential between submarine and surface service, and tiering of the allowance to reflect the cumulative impact of sea service and the requirement to motivate members to return to sea going postings*”⁴.

[12] VADM Griggs outlined specific hardships across Fleet units giving rise to the requirement for differing rates of Maritime Disability Allowance. He addressed the differentials between the Major Fleet Units, Minor War Vessels and submarine rates. In evidence he endorsed the importance of “*a very clear sliding scale of disability between Major Fleet Unit to Submarine*”⁵ with Minor War Vessels being inserted into the continuum, Major Fleet Units as a baseline, and submarines as the extreme. VADM Griggs advised that this proposal had received endorsement from members with experience across all platform types⁶.

[13] VADM Griggs also addressed the substantial consideration which had been given to the payment of Maritime Allowances to members posted to ships in refit. He supported the proposal that members posted to ships in refit continue to receive the full Maritime Allowance entitlements based on the fact that a refit period is an integral part of the operating cycle of a vessel.

[14] VADM Griggs gave evidence about the reasoning for the proposal for a reduction in the Tier 1 rate and the significant differential between Tier 1 and Tier 2. He said it would aid by motivating members to advance through the tiers and serve to sustain the required depth of experience.

RADM Tim Barrett AM, CSC, RAN, Commander Australian Fleet.

[15] RADM Barrett gave evidence in relation to the availability of appropriate maritime allowances *“being fundamental to the delivery of capability”*⁷. He advised that the introduction of the Landing Helicopter Dock will see the Navy transition from a basic amphibious capability to one of considerably greater significance, stating: *“In my view, the proposed structure, and in particular the significant remunerative outcome between Tier 1 and Tier 2 is consistent with Navy’s need to develop and then retain the requisite amphibious skill sets”*⁸.

[16] RADM Barrett supported the differentiation between allowances relevant to platforms and noted in particular the poor sea keeping qualities of Minor War Vessels and the arduous conditions in submarines. He supported the reduction in the Tier 1 allowance and described the need to attract people to sea at that level as *“not currently acute...[they] are excited by the prospects of rendering sea service”*⁹.

[17] The payment of allowances for crews while ships are in refit was an important aspect for RADM Barrett. He outlined the need to ensure the crew have a sense of *“ ‘ownership’ of the ship – ‘no matter where the ship is or what state it is in”*¹⁰. He echoed evidence of the Chief of Navy in stating that during refit the workplace is *“uninhabitable in some places, noisy, dangerous, cramped and without amenities”*¹¹.

[18] As Commander Australian Fleet, RADM Barrett has responsibility for the Sea Training Group and identified their workload as having a *“unique level of intensity”*¹². He gave evidence that members frequently conduct their work in periods of less than 48 hours and indicated his support for the reduction from 48 to 24 hour for the qualifying period for payment of allowances.

CDRE Gregory Sammut, Director General Submarine Capability

[19] CDRE Sammut gave evidence that *“disabilities associated with submarine work, the differentiation between work in surface units vice subsurface units and the mitigating effects on non-financial management interventions, which have to some extent eased submarine disabilities”*¹³ have been considered, and that conditions on submarines justify the differentiated outcome particularly in respect to *“curtailment of home contacts, secrecy, lack of leisure, working conditions, living conditions, working hours and exposure of risk to harm”*¹⁴.

[20] The tiered sustainability component was considered by CDRE Sammut to provide a powerful motivator for members to return to sea while recognising the cumulative effect of sea time and the complexity associated with absence at sea through various life stages.

CDRE Peter Laver RAN, Director General Navy People

[21] CDRE Laver has responsibility for ensuring the ADF proposal is consistent with Navy's workforce capability requirements. He noted that with the advent of the Landing Helicopter Docks, Navy is conscious of the effect of the Maritime Allowance on Army sea-going members.

[22] CDRE Laver gave evidence that a tiered structure for sustainability '*acknowledges the experience, efforts and sacrifices...and reinforces the other seagoing recognition systems [such as] the sea-service badge which denotes the time a member has spent at sea and is directly linked to the allowance tiering system*¹⁵'. CDRE Laver gave detailed evidence that the significant increase from Tier 1 to 2 is appropriate and designed to improve retention prospects after the initial minimum period of service, a time which tends to coincide with the accumulation of sea time for progression to Tier 2.

BRIG Shane Francis Caughey, AM CSC, Commander 3rd Brigade

[23] BRIG Caughey gave evidence in relation to the growing amphibious role of Army, driven mainly by the ADF's decision to acquire the Landing Helicopter Dock and the Landing Ship Dock vessels. This has meant a greater emphasis on combining land and sea forces in a maritime environment and "*given the ADF the ability to generate a substantial amphibious capability*¹⁶".

[24] Under '*Australia's Amphibious Concept*', released in 2010, the nature of Army's commitment to the maritime environment will dramatically change. Within this structure sits the Amphibious Ready Element, the core of which will be 2nd Battallion Royal Australian Regiment (2RAR), a specialised amphibious unit training with the Navy to ensure they can work within a maritime environment. BRIG Caughey anticipated that the majority of 2RAR personnel will be dedicated to the amphibious capability and therefore 'force assigned' to the Amphibious Ready Element¹⁷. He gave evidence that all elements of the Amphibious Ready Element are required to be certified against amphibious outcomes which mandates a number of days at sea or in the field and will impose a significant disability¹⁸. It was clarified by BRIG Caughey that with lead up training required to meet Initial Operational Capability and the limited availability of amphibious assets, he "*[did] not believe it would be appropriate to pay soldiers an annual maritime [disability] allowance*¹⁹" until Initial Operational Capability was achieved.

[25] BRIG Caughey noted that the challenge for Army was understanding the combined impact of maritime and field allowances and the fact that sea time requires soldiers to be away for longer periods than field training alone.

[26] Army consider it logical and practical that the Amphibious Ready Element access an annual rate of disability allowance that recognises the similar disabilities experienced for all personnel posted to the ship. Army also note that the Ships Army Department have traditionally been treated as part of the crew for allowance purposes; they are not immune from the cumulative effects of sea time and will be able to progress to Tiers 2 and 3. BRIG Caughey gave evidence that it is "*appropriate that these members continue to access*

the Maritime Sustainability Allowance in the same way as past Army Ships Detachment members have accessed the higher tiers of Sea Going Allowance²⁰". In contrast he confirmed that there are yet to be identified circumstances justifying the sustainability allowance for the Amphibious Ready Element and recommended a conservative approach until the impact is known.

WO Martin Holzberger, CSC, Warrant Officer of the Navy.

[27] As Warrant Officer of the Navy, WO Holzberger is the most senior ranked sailor in the Navy and represents the views, opinions and concerns of sailors to the Chief of Navy. In evidence, WO Holzberger advised he had been involved with the development of the ADF's proposition and strongly supported disability and sustainability elements being identified as discrete components.

[28] In his affidavit, WO Holzberger advised that feedback from sailors: "*...gives an overwhelming sense that the vast majority of Navy people are supportive of the proposed structure. They acknowledge that there has been a moderate easing of disability in recent years and regard the proposed reduction as reasonable, particularly as those with a current entitlement to Tier 1 would be protected by a non-reduction provision. They also understand the structural shift aimed at attracting people to return to sea for service beyond Tier 1. The proposal to provide a higher rate of the Disability Allowance for the Minor War Vessel Force is also accepted as most people recognise the service aboard MWV's is more onerous than aboard Major Fleet Units in terms of living and working condition²¹*".

[29] WO Holzberger concurred that the working conditions and work load during refit are "*as hard, and often perceived as more demanding*"²² that those at sea. WO Holzberger gave evidence that liaison with his Army counterpart, the Regimental Sergeant Major – Army, (RSM-A) has ensured acknowledgment of the impact of the proposal and that the RSM-A sees it as a positive step for those Army personnel going to sea²³.

DFWA and RSL

[30] The DFWA submitted that it had solicited the views of ADF members, and advised it supported the proposal to segregate the sustainability and disability provisions. The DFWA drew the Tribunal's attention to minor inconsistencies in the payment of allowances arising from the changes proposed that may be perceived as unfair by ADF members.²⁴ Both the DFWA and the RSL supported the joint submission.

Consideration

[31] We note the considerable effort the ADF and Commonwealth have undertaken to work towards an agreed position regarding the revised framework for maritime-related allowances. The parties are commended for achieving that level of consensus on the significant and important changes to be made to maritime allowances.

[32] We consider the strengths of the proposed model are the establishment of a distinction between hardship and capability while still providing an appropriate nexus within the SRAR structure. The proposed tiers reflect the differential between Tier 1 and 2 rates where workforce behaviour is a significant consideration. The nexus between the rates recognises the relativity between them and the separation of the sustainability element from disability

considerations has increased the capacity to accurately assess levels of disability. We consider that the proposed tiers appropriately recognise the cumulative effect of being at sea, and encourage each cohort to remain available for sea service. At the same time the tiers assist in retaining experienced management and supervisory levels needed for personnel management.

[33] The specific hardships of Minor War Vessels are considered to justify separate recognition. We acknowledge the imposition of space restraints, the rare opportunity for privacy and the lesser sea keeping qualities as justifying the need for differential rates.

[34] We paid particular consideration to the continuation of allowance payments during refit periods. We noted evidence that refit periods form an integral part of the operating cycle of the vessel and that the levels of disability remain on a par with seagoing disabilities. We noted the Commonwealth position that differences in new platform types, and the impact during refit, will require reconsideration when allowances are next revisited.

[35] We accept the evidence concerning the separation of the Army units of the Amphibious Readiness Element from the Ships Army Detachment. We considered the evidence of BRIG Caughey that Ships Army Detachment personnel should continue to have access to the sustainability component and that the Amphibious Ready Element will be reconsidered when the impact for sustainability is better known.

[36] We gave consideration to the fact that Sea Training Group is a unique group constantly engaged in high impact, high intensity operations. They undertake frequent movement between vessels, short durations onboard and with little afforded in the way of facilities or comfort. We noted evidence from CDRE Sammut that this is equally applicable to Submarine Sea Training Group.

[37] We benefitted greatly from the inspection conducted onboard HMA Ships *Melbourne*, *Choules* and *Albany*, and were aided in our considerations by seeing the physical conditions onboard. Discussions with personnel gave us a better appreciation and understanding of the issues raised by this application and we thank all personnel for their time and effort in supporting our inspections.

Conclusion

[38] The whole of the proposals we have set out at paragraph (9) are granted. Determination 20 of 2013 will be issued reflecting this decision. The changes will come into effect on 30 January 2014.

[39] These allowances will be incorporated into the principal allowances determination, Determination 11 of 2013 *ADF Allowances*.

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

Appearances:

Mr R. Kenzie, AM, QC for the ADF assisted by Ms A. Bradshaw and Mr M Peake

Mr J. O'Reilly for the Commonwealth assisted by Ms S. Farrelly and Mr A. McKechnie

Mr L. Bienkiewicz for the Defence Force Welfare Association

Commodore S. Lemon RAN Rtd for the Returned Services League

Witnesses:

VADM R. Griggs AM, CSC, RAN Chief of Navy

RADM T. Barrett AM, CSC, RAN Commander Australian Fleet

CDRE G. Sammut RAN, Director General Submarine Capability

CDRE P. Laver RAN, Director General Navy People

BRIG S. Caughey, AM, CSC, Commander 3rd Brigade

WO M. Holzberger, CSC, Warrant Officer of the Navy

¹ ADF Letter DMR/OUT/2013/67 of 22 October 2013.

² ADF 13, page 3, paragraph 8.

³ ADF 13, page 3, paragraphs 7 -9.

⁴ ADF 13 page 4, paragraph 10.

⁵ Transcript, 26 July 2013, page 5, line 35.

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- ⁶ ADF 13, page 12, paragraph 23.
⁷ ADF 12, page 2, paragraph 4.
⁸ ADF 12, page 3, paragraph 6.
⁹ ADF 12, page 4, paragraph 10.
¹⁰ ADF 12, page 6, paragraph 14.
¹¹ ADF 12, page 7, paragraph 15.
¹² ADF 12, page 9, paragraph 21.
¹³ ADF 4, page 2, paragraph 5.
¹⁴ ADF 4, page 3, paragraph 6.
¹⁵ ADF 8, page 6, paragraph 16.
¹⁶ ADF 5, page 3, paragraph 7.
¹⁷ ADF 5, page 4, paragraph 9.
¹⁸ ADF 5, page 5, paragraph 12.
¹⁹ ADF 5, page 6, paragraph 15.
²⁰ ADF 5, page 10, paragraph 24.
²¹ ADF 11, page 8, paragraph 30.
²² ADF 11, page 6, paragraph 24.
²³ ADF 11, page 8, paragraph 31.
²⁴ DFWA Submission, page 2, paragraphs 6-8.