

DEFENCE FORCE REMUNERATION TRIBUNAL

MATTER NO 1 OF 2008

NAVY CAPABILITY ALLOWANCE

REASONS FOR DECISION

The Australian Defence Force (ADF) sought the introduction of a Navy Capability Allowance (NCA) to “address the acute and pressing nature of Navy Workforce issues”. This is the first application to the Tribunal for determination of a Capability Allowance. In a statement on 9 April 2008 the Tribunal approved the introduction of the Allowance and we now publish our reasons for decision.

On 5 December 2006, as part of the ADF Recruiting and Retention Strategy, the Minister for Defence announced that the ADF would ask the Defence Force Remuneration Tribunal (DFRT) to fundamentally review Sea Going and Submarine Service Allowances to better recognise “the increasing dissatisfaction with sea service and compensate for the demands associated with serving at sea.” In the ministerial announcement on 5 December 2006, the Government proposed that the review should examine appropriate levels of compensation, particularly with regard to the liability of Navy personnel to serve at sea, at all times, not just when the member is at sea.

In the context of discussions on the Graded Officer Pay Structure in 2007, the Chief of Navy and the Fleet Commander advised the Tribunal of unprecedented workforce manning issues impacting the delivery of Navy capability. On 27 June 2007 the Tribunal wrote to the Chief of Navy suggesting an approach “which may be of assistance in accommodating a timely review.”

As a result the Tribunal visited HMAS STIRLING in Western Australia in July 2007 and was briefed by the Director General Navy Personnel and Training in August, September and October 2007.

Having considered the remuneration options to address the Navy workforce issue, the ADF decided that it would seek the introduction of a capability allowance rather than pursue the review of the Sea Going and Submarine Service Allowances at that time.

SUBMISSION AND EVIDENCE

The Australian Defence Force

The ADF proposed a NCA to target key areas of workforce priority within the other ranks general and submarine trained force (Able Seaman through Chief Petty Officer ranks) as follows:

Category 1	Members who are not presently committed to any further period of service.
Category 2	Members who will complete an Initial Minimum Period of Service during the life of the allowance.
Category 3	Members who are committed to a period of service associated with an existing s.58B bonus scheme.

The structure and quanta of the allowance proposed by the ADF are set out in the table below.

Group	Quanta and Structure	Qualifying Comments
General Service Sailors	\$24,000	Eligibility will be confined to sailors who:
Submarine Sailors	\$60,000	<ul style="list-style-type: none"> ▪ Hold the rank of AB-CPO (inclusive) ▪ Have completed an Initial Minimum Period of Service ▪ Are ‘Individually Ready’ in accordance with Navy policy for readiness. ▪ Accept an undertaking for further service of 18 months. ▪ Apply for the allowance in the approved form.

On the more general consideration of an s.58H Capability Allowance, the ADF submitted that such an allowance may be sought to stabilise definable elements of the workforce in circumstance where one or more of the following is relevant:

- “ - *A threat to the sustainability of an employment group is identified as a result of pressures associated with external market competition which are either short term in nature, or the period of vulnerability is not able to be accurately determined. OR*
- *A threat to the sustainability of an employment group arises as a result of a need to grow the workforce, internal workforce turbulence caused by changes in capability or other disruptive influences which are either short term in nature, or the period of vulnerability is not able to be accurately determined. OR*
- *There is a need to grow new capability from within the existing workforce, in circumstances in which the final form of the capability is unclear. OR*
- *There is a need to buy tolerance in an element of workforce impacted by sustainability issues while longer term responses (which may include permanent remunerative arrangements) are devised and implemented. OR*
- *Other matters or s.58H allowances that might be identified by the Tribunal.”¹*

It was said that the characteristics of s.58H Capability Allowances are as follows:

- “ - *The sole purpose for the application of an s.58H Capability Allowance is to enable the delivery of ADF capability. The application of an s.58H Capability Allowance is not governed by the application of work value principles.*
- *The allowance has an identified aim which is appropriate and achievable and has regard to other workforce initiatives.*

¹ ADF Court Book 21 Feb 2008, paragraph 3.9

- *An s.58H Capability Allowance is applied to an identified employment group(s) where there is a direct nexus with the sustainable delivery of capability.*
- *The allowance is not relevant for the purposes of superannuation.*
- *The allowance will operate for a short defined period of duration and be subject to regular review.*
- *The allowance may be adjusted over the period of its life having regard to its aims and workforce development over the period.*
- *The application of the allowance is not confined to fortnightly payments, but may take any form including period lump sum payments.*
- *The allowance may apply to specified groups of officers or other ranks of the ADF.*
- *The Capability Allowance may be structured or tiered in such a way as to avoid compression or distortion of the salary structure or set at rates which target the differential circumstances of the target population.*
- *The operation of a Capability Allowance will necessarily be short in duration. Accordingly, an existing eligibility for other special allowances or remuneration based on sustainability factors (including a pre existing s.58H Capability Allowance) does not disqualify entitlement to application of a new s.58H Capability Allowance.*
- *A s.58H Capability Allowance must be structured having regard to salary or allowances payable for the purposes of sustainability or attraction and retention considerations.*
- *Applications for s.58H Capability Allowances will be raised via a Tri Service collegiate approach or with the endorsement of the most senior leadership of the ADF.”²*

The ADF also proposed that the application for the Capability Allowance will have the following features:

- “ - *The proposal must include identification and justification of a targeted group of intended recipients.*
- *The proposal must clearly identify and establish a relationship between;*
 - i. *the vulnerable or desired capability;*
 - ii. *the group or groups within the workforce who deliver that capability; and*
 - iii. *the remunerative solution sought.*
- *The proposal must establish that a remunerative solution is required and appropriate, and that the capability issue can not be dealt with via non-remunerative measures alone.*
- *The proposal must explain the nature of any relationship between the remunerative solution sought, and the permanent remuneration regime available to members of the targeted group, particularly in circumstances in*

² Ibid, paragraph 3.10

which permanent remunerative arrangements are influenced by long-term sustainability issues.

- *The proposal must be supported by qualitative and quantitative evidence in relation to specific points of workforce vulnerability.*
- *A rationale for the form of the allowance sought is to be set out.*
- *The period of duration and the rationale for the period must be enunciated.*
- *The proposal is to include a plan for transition at an appropriate time during the life of the allowance.*
- *The proposal is to include Key Performance Indicators against which the impact of the allowance can be reported and assessed.”³*

In regard to the Navy workforce problems, the ADF submitted that an organisational response, beyond remunerative measures, was required to:

- “ - *arrest separation rates and retain trained and experienced members of the Navy who will facilitate workforce recovery, further growth and development of the training workforce;*
- *extend the period of service of existing members of the trained force, including members presently subject to an Initial Minimum Period or Service in order to increase the average time of service and the cumulative corporate knowledge of the organisation;*
- *address the separation rates and the consequent prospects for recovery of Navy critical and perilous categories; and*
- *prevent any further degradation in the health of categories which are not presently officially regarded as “critical” but are vulnerable to such development.”⁴*

The ADF called one witness, Commodore D.J. Letts the Director General Navy Personnel and Training who gave evidence on the proposed operation of the allowance and the range of initiatives planned by Navy to address workforce issues. He stated:

“Over the last 15 years Navy has experienced increasing difficulty in attracting and retaining personnel. Largely, these difficulties have been identified as being associated with the requirement for sea service and the extent to which the social and physical limitations imposed by sea service are increasingly at odds with community expectations and standards.”⁵

The Commodore outlined other initiatives under Project SeaChange, which commenced late in 2004, and Nautilus, established in 2003 specific to the submarine fleet. Another submarine project, Klaxon, had been operational for a year. *“Despite the efforts of the Seachange Program”, he said, “the state of the workforce has continued to deteriorate.”⁶ Further, “The complexity of the workforce problem ... when coupled with the ongoing operational commitments of the Navy means that there is no ‘quick fix’.”⁷ “The Navy has adopted a holistic approach to its present critical workforce*

³ Ibid, paragraph 3.11

⁴ Ibid, paragraph 4.0

⁵ Affidavit of Commodore David Letts, paragraph 8.

⁶ Ibid, paragraph 9.

⁷ Ibid, paragraph 13.

situation. Financial incentives form a major component of the Navy response.”⁸ His evidence was the NCA “is proposed as a stop gap measure to buy tolerance in the workforce”.⁹

The ADF provided additional submissions on issues raised by the Tribunal in hearings. These submissions addressed the following:

- further description and identification of members who would be subject to the NCA;
- the provision of a draft determination; and
- the identification of metrics, or measurements to be applied to any Key Performance Indicators to assess the effectiveness of the NCA.

The Commonwealth

In a written submission to the Tribunal the Commonwealth advised the following:

- “1. The establishment of a Navy Capability Allowance (NCA) on the terms detailed in ADF Exhibit 1 – ADF Submissions Re Navy Capability Allowance and the Additional Submission of the ADF are agreed.
2. The terms of the proposed Determination are also agreed.
3. Noting that the NCA is intended to provide a short term retention mechanism to create tolerance in the Navy workforce while a broader range of remunerative and non remunerative initiatives are implemented the submissions of the ADF are agreed as to:
 - (a) Consideration of the enterprise level principles and policy which the ADF seeks to underpin the ongoing of Capability Allowances, including the relationship between the s.58H Capability Allowance and other remuneration entitlements; and
 - (b) Specific submissions in relation to application of the NCA, including:
 - i. the nature and specifics of the Navy workforce problem and its nexus with the delivery of capability;
 - ii. the explanation and justification for the proposed quanta, structure and duration of the NCA; and
 - (c) the identification of Key Performance Indicators (KPI) and the ‘other deliverables’ associated with the assessment of the operation of the proposed NCA (articulated at paras 5.21 – 5.22 of ADF Exhibit 1 – ADF Submissions Re Navy Capability Allowance and Paragraph 4 of the Additional Submission of the ADF) to be reported against over the life of the proposed allowance.
4. The significance of the KPIs and the ‘other deliverables’ associated with the assessment of the operation of the proposed NCA should not be underestimated. In particular the ‘other deliverables’ will be fundamental to the consideration of remunerative issues relating to Navy.

⁸ Ibid, paragraph 15.

⁹ Ibid, paragraph 22.

5. *Whilst the ‘Summary Key Dates for the Report Back’ at paragraph 4.6 of the Supplementary Submission of the ADF are noted it is the expectation of the Department that Navy would, in addition, be providing regular and periodic updates as to the status of each of the ‘other deliverables’ identified including in particular the use of any alternate remunerative initiatives pursuant to s.58B. In this regard it is submitted that (in addition to ongoing dialogue with the Department) that the scheduling program for the Tribunal should identify dates to enable the Department and the Tribunal to be informed (in conference or otherwise) as to the status of the KPIs and the ‘other deliverables’ identified.*
6. *The undertaking of the ADF to conduct a comprehensive review of Sea Going and Submarine Service Allowances by end 2010 is noted.”*

The Returned and Service League of Australia (RSL)

The Regular Defence Force Welfare Association (RDFWA)

In a written submission to the Tribunal, the RSL and RDFWA supported the ADF proposal and highlighted the importance of the progression of the ADF’s proposed “management initiatives and interventions.”

CONSIDERATION

In our decision on the Remuneration Reform Project (Matter No. 2 of 2003, 27 February 2006) we had the following to say about the role of an s.58H Capability Allowance:

“We see the role for any s.58H Capability Allowance, proposed by the ADF as an element of the system, as providing a temporary or varying adjustment, should it be necessary, in response to market exigencies. Since long term adjustment in relativities is properly expressed as a change in how the work is valued, we do not see how the argument for a long term correction factor can be sustained, as the ADF proposed in its closing submission. Rather, we agree with the ADF’s opening submission on 24 August 2004. A Capability Allowance, envisaged there, must of its nature be temporary, or varying over time. Being an allowance, it would be subject to two yearly review, as required by the legislation. As an adjustment mechanism in response to varying conditions, the Tribunal envisages that a Capability Allowance would either be determined for a maximum period of two years or be subject to detailed review at that point. We doubt the wisdom of a temporary or varying payment being made superannuable, given the operation of the present military superannuation schemes.

The Tribunal does not intend that the parties be constrained in considering the role of s.58H Capability Allowance by the cycle time that currently applies to pay cases contemplated by the ADF. The Act provides that the Tribunal is to “inquire into and determine the salaries and relevant allowances to be paid to members” of the ADF. In doing so, the Tribunal is not limited to practices developed by the parties in the past, but may determine its own processes, just as the ADF may adapt its management practices. If determining short term adjustments is important to maintaining the integrity of the system now introduced, the Tribunal will apply an appropriate process. Implementation of RRP provides the opportunity for the parties to rethink matters that may previously have been regarded as “givens”.

We want to be clear on this. We reject the ADF's closing submissions about the role of any Capability Allowance in the officers' salary system; we consider the ADF's opening proposal in this case is appropriate, save for the superannuation aspect, and intend to operate as set out above."

In this case, the ADF seeks an NCA as a short term measure, payable to a sailor over a twelve month period.

The application of remunerative measures to these workforce issues is not new. The Tribunal's 2001 decision on Submarine Service and Seagoing Allowances set out deliberations on reviews in 1995, 1999 and 2001. The same themes recur.

In summarising the 1995 review, on Submarine Service Allowance the Tribunal wrote:

"The ADF relied substantially on crewing difficulties in the Submarine Arm and sought a significant increase to the allowance which it said would attract sailors from the surface fleet and new recruits, as well as improve the retention of submariners.

The ADF indicated that an increase in the allowance was only one of a number of issues being addressed by Navy in relation to personnel levels in the Submarine Arm. In this regard, Navy had developed a Manpower Strategy for the Arm and advised that implementation of various measures, including manning, training, management and conditions of service initiatives, had commenced in October 1994.

*... In relation to the quantum of the allowance, the Tribunal decided that there were special circumstances which warranted the continued reliance upon elements of attraction and retention in the assessment of the allowance. The Tribunal also took into account other matters in making its assessment of the new rates for the allowance, such as the increased workload being undertaken by submariners. The Tribunal also had regard to the management measures being taken by Navy to address the crewing difficulties."*¹⁰

It goes on to record that, in a 1999 interim review of Submarine Service Allowance,

*"...the Tribunal raised concerns about reliance on increases in pay and allowances in dealing with problems relating to attraction and retention. The Tribunal directed that "there should be a report provided to the Tribunal in six months time on the implementation of the various measures to address the current personnel shortages in the Submarine Arm and the impact of the changes now made to SSA."*¹¹

In the 2001 review the ADF proposed a new structure for the allowance, which it submitted *"creates a powerful attraction and retention tool for long term sea going careers."*¹² Evidence was given that *"the greatest threat to ongoing capability remains the parlous manpower situation."*¹³

¹⁰ Decision, Matters 3 and 7 of 2001, page 2.

¹¹ Ibid, page 4

¹² Ibid, page 8

¹³ Ibid, page 10

Similarly, the Tribunal observed in reviewing Seagoing Allowance, “...*reliance was placed on critical manning aspects which result in the need for particular attention to be paid to attraction and retention factors.*”¹⁴

In this case, Commodore Letts gave evidence that the NCA was to be a short term measure while other strategic interventions addressed the fundamental issues with sea service to which he referred. He did not enlarge upon those initiatives, beyond the SeaChange, Nautilus and Klaxon programs which have been running for some time. Clearly, those other initiatives will need to be significant, since on Commodore Letts’ evidence the state of the workforce has continued to deteriorate.

Certainly, the sums of money involved in the NCA are significant. For example, for a Leading Seaman Boatswains Mate Submariner, \$60,000 equates to 67% of before tax earnings of \$57,177 salary, \$10,672 Service Allowance and \$21,648 Submarine Service Allowance. For the same sailor in the surface fleet, the NCA of \$24,000 represents 33% of before tax earnings.

Were it not for the significant sums involved, we doubt the effectiveness of the proposed allowance. But the very size of the figures puts further pressure on Navy’s other strategic interventions. In the absence of major change within the life of the allowance, we are concerned for Navy’s position when the NCA finishes. While a further review of Seagoing and Submarine Service Allowances is contemplated, we simply observe that money has not so far been the solution and do not see that changing.

Consequently, we regard as critical the Key Performance Indicators to measure the effect of the NCA and, particularly, report backs on other strategic initiatives. We accept the ADF’s proposed timetable for report back on KPIs and on the progress of other deliverables. We will program accordingly.

Considering the agreed position between the ADF and the Commonwealth, we decided to approve the introduction of the Navy Capability Allowance as proposed. It will be apparent that we did so with misgivings.

The Tribunal has not seen this as the occasion to consider further principles that might apply in future. We do not see that there are matters of general application to be taken from Navy’s position in this case.

Determination 9 of 2008 has been issued with a date of effect on 9 April 2008.

¹⁴ Ibid, page 21.