



**Australian Government**  
**Defence Force Remuneration Tribunal**

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## DECISION

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

**TRANSITION ARRANGEMENTS FOR O9 and O10 OFFICERS**  
(Matter 7 of 2017)

MS I. ASBURY, PRESIDENT

MR A. MORRIS, MEMBER

CANBERRA, 20 SEPTEMBER 2017

RADM J. GOLDRICK AO CSC RAN RTD, MEMBER

[1] This decision relates to an application<sup>1</sup> made by the Australian Defence Force (ADF) under s.58H of the *Defence Act 1903* (the Act) in relation to remuneration arrangements to be set for specified O9 and O10<sup>2</sup> officers during transition activities in support of their resignation, retirement or transfer to the Reserves from the Permanent Forces.

[2] A hearing in this matter was held on 13 July 2017. Mr J. Phillips SC appeared for the ADF and Ms P. Morrison for the Commonwealth; Rear Admiral (RADM) B. Wolski AM RAN appeared as a witness for the ADF.

### Background

[3] Five O9 and O10 officers hold statutory appointments under the Act with salaries determined by the Commonwealth Remuneration Tribunal. Those prescribed positions are the only ones in the ADF to which this provision applies and refer to the incumbents of the roles of Chief of Defence Force (CDF), Vice Chief of Defence Force (VCDF), and the three Service Chiefs. Additionally, the position of Commander Joint Operations (CJOPS) is the only other officer presently appointed at the O9 rank; salary for that role is determined by this Tribunal.

[4] This Tribunal has previously considered transition arrangements for these officers in Matter 4 of 2014 *Statutory Office Holders and Non-Public Office Holders – O9 and O10 transition*. A decision and determination in that regard were issued on 22 April 2014.<sup>3</sup>

[5] The determination made particular provision for the round of transitions occurring at that time; a caveat which arose as a result of ambiguity around the operation of the *Defence Personnel Regulations 2002* and the impact on O9 and O10 officers when transferring to the Reserves at the expiration of their appointment.

[6] In the decision, the Tribunal required the ADF to return in order to provide ‘an enduring system’ of transition for these officers. In the context of an imminent repeal of *Defence Regulations 2002* the ADF chose not to make further submission at that time and withdrew the matter.<sup>4</sup>

[7] A replacement *Defence Regulation 2016* was issued in September 2016; this matter now addresses the requirement to provide ‘an enduring solution’ within the framework of the new regulation.

### **Submissions**

[8] The ADF propose to establish salary rates, set by this Tribunal, for an eight week period of transition once O9 and O10 officers cease to hold their appointments.

[9] The ADF submission<sup>5</sup> specifically seeks to:

- a. establish a consistent treatment of O9 and O10 officers by providing a paid period of about eight weeks to allow effective and fair transition from the Permanent ADF following appointment to the roles of CDF, VCDF, Service Chiefs and CJOPS;
- b. remunerate those O9 and O10 officers during transition periods at a rate that is equivalent to the rate of salary for superannuation purposes that applied on the last day of their respective final appointment prior to the period of transition;
- c. cease payment of non-superannuable (position or residual) salary components during transition periods; and
- d. establish provisions able to ensure and accommodate changes to salary rates without the need to be re-determined with each salary adjustment made by the Commonwealth Remuneration Tribunal.

[10] The ADF submit that “*unlike the flexibility and capacity available to other ADF members (to undertake transition activities during the course of their final appointment) the practicality of the CDF, VCDF, Service Chief or CJOPS being able to undertake the majority of transition activities in the last 12 months of service is eroded by high tempo, formal responsibilities and time constraints associated with*

*their roles – all of which are more than 12 months in duration and generally preceded by equally demanding roles.”*<sup>6</sup>

[11] The ADF state that, during their appointment, individuals of the same rank (e.g. VCDF and the Service Chiefs) are remunerated at different rates. As a result, they do not seek a single transition rate but propose the superannuable rate of salary that applied to each senior officer on the last day of the final appointment continues to be paid throughout the transition period.

[12] The ADF submit that the current incumbent of the CJOPS position took up the position at a “*period close in time*”<sup>7</sup> to when the provisions of Matter 4 of 2014 were put in place and therefore propose the incumbent should be considered to fall under the requirements of that round of transitions.

[13] The Commonwealth submission supports the implementation of consistent transition arrangements for these specific O9 and O10 senior officers.<sup>8</sup>

## **Evidence**

[14] RADM Wolski gave evidence in regard to a range of processes required to be completed by ADF personnel when transitioning from the Services, and specifically how those apply to this group of O9 and O10 officers. These requirements include “*activities such as de-briefing in security matters relating to their office; separation medical and dental assessments; vacating the residence tied to the position, as well as completing general and personal administration.*”<sup>9</sup> He outlined operational reasons why the incumbents of these positions are not readily available to attend to the requirements while they remain in their appointments and that they are “*unable to conduct the transitional tasks because of the demands on their time*” that could “*be a distraction from the important functions of the role.*”<sup>10</sup>

[15] In establishing the rates of salary to be determined, the ADF gave oral evidence that a salary rate for the officers (with the exception of CJOPS) “*based on the [Commonwealth] Remuneration Tribunal’s determination*”<sup>11</sup> should be determined taking into account the differing rates of salary during their appointment.

## **Considerations**

[16] We accept that transition periods would generally be no more than eight weeks and that “*a transition period would only extend beyond eight weeks if there was an evidenced and genuine requirement, such as extenuating medical circumstances*” and that this is “*consistent with treatment of other ADF members who are able to access a period of transition in order to complete their personal administration and prepare for separation from the permanent ADF.*”<sup>12</sup>

[17] We gave consideration to the repeal of *Defence Personnel Regulations 2002* and the replacement *Defence Regulation 2016*. We note this revision removed the requirement for senior officers in statutory offices to transfer to the Reserves at midnight at the expiration of their appointment.

[18] We accept that that O9 and O10 statutory office holders now remain as members of the Permanent Force during their transition and agree that this amendment results in the incumbents returning to the remit of this Tribunal. We gave consideration to the relevant determinations of the Commonwealth Remuneration Tribunal and note that ‘superannuation salary’ is “70% of Total Remuneration” for members of the Defence Force Retirement and Death Benefits Scheme or the Military Superannuation and Benefits Scheme.<sup>13</sup>

[19] We considered the evidence from the Commonwealth that their support for this proposal is based on an understanding that the transition arrangements only cover the positions listed, and that the CJOPS exception only applies to the existing and current incumbent.

### **Conclusion**

[20] We accept the need for a paid transition period of eight weeks for the officers specified with exemption only in exceptional circumstances.

[21] We determine that the superannuable rate of salary of each senior officer that applied on the last day of the final appointment continues through the transition period and that any non-superannuable components (including pay points for specific positions) cease to be paid on expiry of the final appointment.

[22] We determine that the rate draws upon the Commonwealth Remuneration Tribunal annual superannuable rate for a defined benefits scheme member as determined by them from time to time.

[23] We considered the evidence that the current incumbent of the CJOPS position was appointed in the days prior to the decision of this Tribunal made in 2014 and agree that he can be considered to fall under the ‘round of transitions’ specified in the Tribunal’s decision of 22 April 2014.

[24] Determination 8 of 2017 will give effect to this decision from 20 September 2017.

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

#### *Appearances:*

*Mr J Phillips SC assisted by Mr P Blady for the ADF*

*Ms P Morrison assisted by Ms J Menaglio for the Commonwealth*

*Witness:*

*Rear Admiral B.S. Wolski AM RAN, Head People Capability, Defence People Group*

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<sup>1</sup> DMR/OUT/2017/27 Listing Application – *Transition arrangements for O9 and O10 Senior Officers* dated 16 June 2017.

<sup>2</sup> The ranks of Lieutenant General and above (equivalent)

<sup>3</sup> DFRT decision *Statutory Office Holders and Non-Public Office Holders – O9 and O10 transition* dated 22 April 2014 and Determination 4 of 2014 – *Salaries – Senior Officers – Amendments* dated 22 April 2014.

<sup>4</sup> CDF/OUT/2015/443 *Matter 4 of 2014 – O9 and O10 transition: Statutory Office Holders and Non-Public Office Holders* dated 17 April 2015.

<sup>5</sup> ADF Submission - Transition Arrangements for O9 and O10 Senior Officers dated 11 -13 July 2017.

<sup>6</sup> ADF submission page 11 paragraph 36.

<sup>7</sup> Transcript 13 July 2017 page 10 line 5.

<sup>8</sup> Commonwealth submission - Transition Arrangements for O9 and O10 Senior Officers dated 5 July 2017.

<sup>9</sup> Affidavit of RADM B S Wolski dated 19 June 2017 page 2 paragraph 10.

<sup>10</sup> Affidavit page 3 paragraph 15.

<sup>11</sup> Transcript page 19 line 7.

<sup>12</sup> ADF submission page 17 paragraph 56.

<sup>13</sup> whose total remuneration is more than \$426, 160. Remuneration Tribunal Determination 2017/07 *Specified Statutory Offices – Remuneration and Allowances* dated 28 June 2017 part 2 paragraph 2.3.1 and Remuneration Tribunal Determination 2017/11 *Remuneration and Allowances for Holders of Full-Time Public Offices* dated 28 June 2017 part 5 paragraph 2.5.1