



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 SPECIAL FORCES, PARATROOPER AND ALLOWANCES FOR SPECIALIST OPERATIONS

(Matter 16 of 2013)

THE HON. A. HARRISON, PRESIDENT

THE HON. A. BEVIS, MEMBER

CANBERRA 18 SEPTEMBER 2015

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

[1] This decision arises from a submission made by the Australian Defence Force (ADF) to examine the spectrum of salary related allowances that apply to the ADF's Special Forces (SF). The allowances proposed to be reviewed are:

- SF disability allowance – containing 21 separate items;
- paratrooper allowance – containing 12 items; and
- allowance for specialist operations; specifically referring to clearance diver allowance and unpredictable explosives allowance – containing 19 items.

[2] Mr R. Kenzie AM QC appeared for the ADF in this matter and Mr J. O'Reilly for the Commonwealth; Commodore S. Lemon RAN Rtd (Returned and Services League of Australia) was granted leave to appear as an intervener. A number of witnesses were called by the ADF and are listed at the conclusion of this decision.

[3] Evidence in regard to some aspects of this matter was taken under separate classified arrangements and will not be reproduced or expanded upon in this written decision.

Background

[4] The term ‘special operations’ is the term used by the ADF to refer to certain military activities. These operations are highly specialised and focused operations. They differ from conventional Army operations in the degree of physical and political risk, operational techniques and modes of employment. Historically, SF allowances have formed the upper benchmark of ADF allowance rates and have also been accepted as the upper benchmark of disability factors.

[5] Special Forces disability allowance (SFDA) is paid in recognition of the disabilities associated with serving in an environment which is typically extreme and represents the highest degree of endeavour, endurance and military capability. Special Operations Command (SOCOMD) is the primary user of SFDA allowances.

[6] Paratrooper allowance is payable to qualified members in recognition of the qualifications, skills and disabilities associated with parachuting. Since the last review of this allowance Army has transferred its parachuting responsibilities to SOCOMD changing the demand for, and operation of, this allowance. A reduction of members in receipt of the allowance has occurred with the move to SOCOMD because members already in receipt of SFDA are not able to receive both allowances concurrently.ⁱ

[7] Allowance for Specialist Operations (ASO) compensates members for the disabilities endured when undertaking specialist diving operations and/or roles requiring members to work with unpredictable explosives. The current ASO structure reflects an amalgamation of clearance diving (CD) allowance and unpredictable explosives allowance (UEA).

[8] In dealing with this matter we have taken into account:

- a) The application of the salary related allowance review (SRAR) principles,ⁱⁱ
- b) application of the disability elements matrix (DEM) as a decision support tool for the comparison of allowances;
- c) consideration of SFDA as the upper benchmark across the disabilities spectrum; and
- d) appropriate relativities to other disability related allowances.

[9] It should be noted that all monetary values in this decision reflect the quantum sought by the ADF in their application. These values have not been updated for any subsequent Workplace Remuneration Arrangement (WRA) adjustments.

The Disability Elements Matrix (DEM)

[10] The DEM is a tool devised by the ADF which grades a range of disabilities and applies them to allowances, thereby providing for comparison of disabilities endured. The DEM has been applied to all allowances throughout this submission.

[11] The ADF detailed limiting factors when applying the DEM to SFDAⁱⁱⁱ for example:

- the inability to capture frequency, intensity and differences in duration of disability exposure;
- the inability to capture the impact of multiple disability environments in contrast to a single disability environment; and
- the inability to consider more philosophical and intangible aspects of disability such as the consequence of failure.

[12] We accept evidence that the “*SFDA rate has always sat out well to the right of other disability allowances and that this continues to be appropriate, because of the extreme and diverse environments in which the disabilities are incurred.*”^{iv} We acknowledge the limitations of the DEM as well as the extremes of disability and, to the extent possible, have applied the DEM as a decision support tool, rather than a method of exacting calculation.

SUBMISSIONS

Special Forces Disability Allowance

[13] In their opening statements^v the parties outlined a program for the matter, proposing it be heard over several months and be informed by inspections. The parties jointly outlined a proposition that would address SF alignment into the salary related allowance structure (SRAS) and deal with structural issues in order to achieve an enduring SF composition.

[14] SFDA comprises 21 allowance items spanning three distinct groups:

- Operators: members qualified at the SAS or Commando (Cdo) level;
- SF Support Staff (SFSS): members posted to SOCOMD in designated SF positions but who are not operators and provide varying degrees of support to operations; and
- other members posted to, or assigned to, a specific operation.

In their submission^{vi} the ADF’s proposal for the ‘operator’ group was:

- to roll-in the discounted rate of separation allowance; and
- establish a sustainability allowance to attract SF and Cdo members and to encourage them to take postings outside their units.

The ADF’s proposition for the ‘support staff’ members encompassed an occupational analysis and intended:

- to replace the current structure with an allowance structure capable of accommodating contemporary SFSS roles; and
- the establishment of a sustainability allowance to attract and retain suitably qualified personnel in specific roles.

The ADF did not propose any changes to rates for members assigned to other operations.

[15] The ADF made a supplementary submission on 10 June 2015 seeking to clarify “*the impact of recent changes to the employment structure for Commandos on payment of SFDA to those members undertaking initial employment training and subsequent category specific training*”.^{vii} This submission was addressed in conference on 23 June 2015. The Commonwealth supported the ADF submission recognising the changes to the training continuum and the “*clarity about the transition point where members become qualified and capable of deployment*.”^{viii}

[16] On 23 June 2015 the ADF also filed two further related matters^{ix} to be dealt with in conjunction with this matter. While the applications listed these as ‘category reviews’ a full review was not required and there are no remunerative impacts. We have considered these matters “on the papers.” The applications are made simply as a result of adjustments to courses and competencies associated with recruitment, selection and specialist training as well as nomenclature.

Evidence

[17] The ADF addressed the above proposals individually in their submissions. We will do the same in this decision.

a) Operators:

- a. The ADF gave evidence about the subsumption of separation allowance into SFDA and consider it more appropriate to ‘roll-in’ the allowance for operators on the basis of administrative efficiency noting that they are ‘likely’ to be exposed to approximately 101 days of separation per year;^x
- b. Evidence was also given in the proceedings as to the significance of mobility issues and the desirability of operators taking postings outside SF for the significant benefit of the members, the SF community and the ADF. It was submitted that members, when faced with such a posting opportunity, have historically indicated they are likely to either leave the ADF, or forgo these postings, for a variety of reasons including financial loss. An important part of this application was that the payment be:
 - i. contingent on a requirement to return to SF;
 - ii. capped at three years outside an SF unit;
 - iii. limited to Corporal to Lieutenant Colonel ranks inclusive; and
 - iv. only available to members providing continuous full time service.^{xi}

b) SFSS:

- a. The ADF proposed the creation of an allowance structure capable of recognising contemporary SFSS employment requirements with clearly distinguishable levels of disability. It was submitted that this structure would place personnel in three tiers based on a level of disability at each

tier: Tier 1 (A, B and C), Tier 2 and Tier 3. The ADF submit they are formalising career and category management for SFSS.^{xii}

- b. For those SFSS in specified roles the ADF provided evidence to support a proposal for a sustainability allowance that would attract and retain an adequate number of suitably qualified personnel. Evidence in support of this aspect of the application was taken separately and we will not refer to it in this decision.

[18] In reply the Commonwealth submitted that they considered four key components required attention:

- a) Operator rates – the Commonwealth queried whether sustainability was an element in fixing the original 2007 datum point for allowances and that relativities had not been adequately assessed under the DEM;
- b) SFSS disability restructure and rates – the Commonwealth supported the reclassification and increased recognition of levels of disability however, considered those relativities, internal and external to SFDA, should be further examined;
- c) sustainability allowances – the Commonwealth queried whether the allowances would have the desired effect on the workforce and their interaction with other rates; and
- d) roll-in of separation allowance – the Commonwealth supports the roll-in stating it meets the SRAR principles of allowance simplification and ease of administration.^{xiii}

[19] The Commonwealth sought further discussion in order to further refine the DEM to reflect SFDA. In oral evidence^{xiv} they sought to clarify the “*appropriateness of differentials in the DEM*”. They subsequently sought conciliation^{xv} between the parties “*seeking to clearly identify and understand the elements that form the ‘gaps’ between the DEM assessment and proposed SFDA rates.*” We had previously asked the parties to “*satisfactorily articulate what the differences are*” and to “*articulate...peculiarities that might underpin a rate other than a rate the DEM itself would produce.*”^{xvi} The parties met in conference on 1 October 2014 to further consider this issue without reaching definitive agreement.

[20] Deputy Chief of Army (DCA) Major General (MAJGEN) P. Gilmore AO DSC appeared as a witness and gave oral evidence in support of the ADF submission. He stated that the position on SFDA was that it “*continues to be valid for operators but that the lower levels of the structure which compensate support trades and support staff require some amendment to address increasing disability exposure for support staff from their evolving roles.*”^{xvii}

[21] DCA expanded on “*difficulties with mobility and fulfilling postings*” stating that the “*highly qualified members see little incentive in being employed elsewhere in Army and Defence [and that] the sustainability allowances will assist in providing some incentive for these members to take employment opportunities outside their home unit [and] will assist in mitigating one of the larger factors that can influence an individual’s decision.*”^{xviii}

[22] An affidavit was produced in evidence from Brigadier (BRIG) D. McDaniel AM, DSC, DSM, Special Operations Commander Australia which outlined that the review was being driven by *“two key priorities:*

- a. *to recognise the evolving role of the SFSS and the resultant increased disability exposure; and*
- b. *to achieve the mobility of our SF personnel within the Command, within Army and within the broader ADF.* ^{xxix}

[23] In oral evidence BRIG McDaniel discussed the differences in the roles of SFSS and operators stating that *“when I examine the disability exposure and aspects of risk planning, responsibility, consequence...the operators take on more of a burden...that are not specific aspects of burden to support staff.”*^{xx} He further expanded on this stating that *“operators will be exposed to greater physical risk in order to provide the environment for support staff to conduct their core role.”*^{xxi}

[24] With regard to mobility, BRIG McDaniel supported DCA evidence that there is a requirement to *“post SF qualified personnel into representational and developmental positions within Army and the wider ADF, as this has the effect of both broadening and contributing to their experience and individual development, and provides tangible benefits to SOCOMD and broader ADF capability.”*^{xxii} He expanded on the range of “levers” influencing why people make decisions with regard to career choices and stated that *“ADF can’t currently influence the financial lever.”*^{xxiii} His view was developed in oral evidence to define that there was *“no hard evidence that...would suggest a certain dollar figure is going to be a tipping point...[with] a number of factors that play into why people make the decisions that they make”* and that *“it’s about having a range of levers to influence those decisions.”*^{xxiv}

Consideration

[25] We note the willingness of the parties to work together to provide clarity to the DEM against the peculiarities of SFDA. We reiterate that we see the DEM not as a calculation matrix but as a tool to inform decision making. We accept the ADF evidence that to place SF disabilities within the DEM may corrupt the relativities and application to the broader Service requirements.

[26] We accept that the ADF seeks to maximise the benefits of the operator group through a sustainability allowance. We recognise that financial loss for a member accepting a posting away from SF may become one obstacle in the ADF’s need to post the most suitable candidate into some positions. We accept the evidence that such positions would be limited and available only to a small part of the workforce and note the Commonwealth’s stance^{xxv} that the allowance should be reserved for positions where the identified members’ capabilities are necessary to perform that role.

[27] We agree that the roles of SFSS members require recognition of differing levels and accept the tiered approach as submitted.

[28] We considered the evidence that operators are “likely to be exposed to approximately 101 days of separation and that for administrative efficiency an automatic payment of the allowance is appropriate [and that] in practice however it is an administrative burden to manage.”^{xxvi} The ADF considered it more appropriate and effective to ‘roll-in’ the rate to SF allowance items and discontinue the application of separation allowance. However, we are not persuaded that to roll-in this allowance will ease a significant burden especially noting the extant requirement to pay such an allowance separately for support staff. We have not previously considered this in matters where personnel spend considerable time away that could be considered ‘likely’ to be in excess of 101 days e.g. maritime disability allowance and have decided to not do so until such related allowances are also considered.

[29] We agree there are no remunerative implications arising from the supplementary submissions dealt with on 23 June 2015 and note they simply impact on ‘trigger’ points for the payment of SFDA.

SFDA Conclusion

[30] It was important in our deliberations that we adequately recognise the range of environments in which SF perform their duties. We accept that SF operators are operating at the extreme of disability and that the SFDA was not previously meeting the full spectrum of remuneration requirements, particularly with respect to support members.

[31] We do not agree to the roll-in of separation allowance.

Paratrooper Allowance

[32] Paratrooper Allowance was heard in conjunction with CD and UEA matters. During our inspection on 8 and 9 April 2014 we received extensive briefings from the Commanding Officer and instructors serving at Parachute Training School (PTS). These briefings included details on the role and workforce, the training load, the complexities of the operating environment, and the physiological impacts.

[33] The ADF sought the retention of the current paratrooper allowance structure^{xxvii} with some minor amendments, to align with the SRAS. The submission was made in context of the transfer of the parachute responsibility to SOCOMD.

[34] In summary the ADF proposed to:

- increase the free-fall instructor rate to the same rate as the maritime disability allowance (major fleet unit);
- increase the parachute jump instructor (at PTS) allowance to the same rate as the Tier 1 SFSS rate;
- increase the parachute jump instructor (at any other unit) to sit alongside other instructor allowances (e.g. submarine escape) and Tier 1B SFSS;
- reduce paratrooper on-occurrence rate;
- increase the free fall instructor (non-parachute position) to the same rate as separation allowance; and

- amend the free-fall instructor and parachute jump instructor rate to ensure eligibility is limited to those who retain both their qualification and currency.

There were no changes proposed for the following:

- parachute jump master;
- free-fall paratrooper;
- paratrooper (tactical and non-tactical parachute operations);
- high altitude parachute operator (HAPO) jumper and non-jumper rates; and
- parachute jump instructor in a non-parachute posting.

The proposal is summarised in this table:^{xxviii}

Allowance Item	Rates			Proposed rates		
	Annual	Daily	On occurrence	Annual	Daily	On occurrence
Free fall instructor	\$11,052	\$30.28	-	\$11,275	\$30.89	
Parachute jump instructor (PTS)	\$8,939	\$24.49	-	\$9,000	\$24.46	
Parachute jump instructor (other unit)	\$6,177	\$16.92	-	\$6,294	\$17.24	
Parachute jump master	\$5,445	\$14.92	-	No change proposed		
Free fall paratrooper	\$4,715	\$12.92	-	No change proposed		
Paratrooper (specified units)	\$3,901	\$10.69	-	No change proposed		
Paratrooper (other units)	\$1,950	\$5.34	-	No change proposed		
Paratrooper on occurrence (max 30 jumps per year)	-	-	\$40.66			\$37.54
HAPO jumper per descent	-	-	\$357.62	No change proposed		
HAPO non-	-	-	\$178.80	No change		

jumper				proposed		
Free fall instructor < 3 years – sunset clause ^{xxix}	\$2,440	-	-	\$2,572		
Parachute jump instructor < 3 years - sunset clause	\$1,950	-	-	No change proposed		

Evidence

[35] In this matter we again sought clarification of the DEM noting that we considered the ADF applied a ‘conservative approach’^{xxx} to disability relativities in this case.

[36] The Commonwealth supported the ADF proposition subject to the proviso of the parties agreeing that the allowance will be further reviewed once the transition of the category to SOCOMD is completed.

Paratrooper Allowance Conclusion

[37] We are persuaded that we should endorse the transitioning of paratrooper allowance on the basis of the proposed alignment into the SRAS. We expect the ADF to address qualification and skill requirements within the rates set when the allowance is next reviewed.

[38] Accordingly once the capability has fully matured within SOCOMD we will review the allowances again.^{xxxi}

Allowance for Specialist Operations (ASO)

Clearance Diving (CD) Allowance

[39] In hearing the ADF made submissions in respect to CD allowance^{xxxii} and called Commander D. Scully-O’Shea as a witness. An affidavit was submitted by Lieutenant Commander J. Hissink. We were further informed by the inspection on 14 October 2014.

[40] The ADF submitted that the renaming of many of the allowance items, the removal of redundant or obsolete rates, and the reduction of the number of rates, will ensure that the functions and disabilities of the role are better aligned. They submitted that the establishment of a discrete CD allowance will ensure better understanding of the items and proposed to make the following changes to the ASO allowance:

- remove the CD, deep diving and experimental diving allowance rates from the ASO determination and establish a separate ‘clearance diving allowance’;
- rename ‘trainee clearance diver’ to ‘clearance diver – trainee’ and reduce the annual and daily rates to align with SRAS rates;

- rename ‘qualified clearance diver posted to clearance diving team’ to ‘clearance diver team’ and retain the annual and daily rates;
- rename ‘qualified clearance diver posted to Mine Hunter Coastal or diving school or the explosive ordnance disposal/improvised explosive device disposal response team Cairns, or on an overseas exchange in the United Kingdom’ to ‘clearance diver – other’ retaining the annual and daily rates;
- rename ‘explosive ordnance disposal/improvised explosive device disposal response team - Cairns as ‘explosive ordnance disposal/improvised explosive device disposal response team’;
- remove ‘qualified clearance diver posted to an explosive ordnance disposal/improvised explosive device disposal response team (other than Cairns) or to the Sea Training Group or an overseas exchange with the United States Navy’; and
- rename ‘support member’ to ‘CD support member’, reduce the rate and rename ‘Sea Training Group’ to ‘Mine Warfare and Clearance Diving Task Group’.

The proposal is summarised in this table:^{xxxiii}

Proposed Item		Current Rate		Proposed rate	
Deep diving >54m		\$306.75 per dive	\$31.50 per hour max 5 hours	No change	
Experimental diving	Grade 1	\$204.93 per dive	\$20.49 per hour	No change	
	Grade 2	\$341.57 per dive	\$37.54 per hour		
	Grade 3	\$555.07 per dive	\$59.77 per hour		
	Grade 4	\$1,110.06 per dive	\$187.87 per hour		
Clearance diver - trainee		\$11,547 annual	\$31.64 daily	\$11,275 annual	\$30.89 daily
Clearance diver - team		\$20,011 annual	\$54.82 daily	No change	
Clearance diver – other		\$14,625 (annual)	\$40.07 daily	No change	
CD support member and MW and CD task group		\$7,700 (annual)		\$6,294 annual	\$17.24 daily

[41] The Commonwealth supports the ADF proposal to establish a ‘stand-alone’ CD allowance and the rates proposed.

Evidence

[42] In his affidavit Lieutenant Commander Hissink gave detailed evidence about the physiological effects and risks of clearance diving duties including explosive ordnance disposal and the treatment of diving injuries and experimental diving within a hyperbaric (recompression) chamber.^{xxxiv}

[43] We note the definition of a Deep dive to be a dive to a depth of more than 54 metres of sea water and that Experimental diving consists of four grades and is conducted under directed trial^{xxxv} using non-service diving equipment and/or procedures.

[44] In their submission^{xxxvi} the Commonwealth sought information on the intent and purpose of compensating for recompression chamber diving compared with ‘wet’ diving and raised the issue that “*support members [e.g. a medic] don’t seem to be recompensed for deep diving.*”^{xxxvii} This issue was also raised by the Commonwealth after the conclusion of hearings.^{xxxviii} The ADF responded in January 2015^{xxxix} proposing a review of Deep and Experimental diving at a later time and that the matter proceed as submitted.

[45] Subsequently, Deep and Experimental diving allowance returned to us on 8 September 2015 in Matter 3 of 2015 – *Annual Review of Allowances* where the parties agreed on the ADF position following Navy advice that there was “*no requirement for a non-qualified clearance diver to undertake a deep or experimental dive, either dry or wet.*”^{xl}

Consideration

[46] We appreciate that the main role of a clearance diver is to locate, classify, identify and deal with explosive ordnance devices and recognise the complexity of this role when operating in water with additional risks and inherent environmental factors.

[47] We were well informed in consideration of this matter by the evidence of Commander Scully-O’Shea and by briefings conducted during our inspection.

[48] With respect to the lesser allowance rate for members of Sea Training Group, we note the impact on approximately five to six personnel^{xli} and agree that non-reduction provisions would be applied to the current recipients for the remainder of their postings. We also note the same provisions would be applied to clearance diver trainees as, and if, required.

[49] We also gave consideration to the fact that by removing the reference to ‘on overseas exchange with the United States Navy’ members will no longer be eligible for allowances while on posting. Again, we accept that this reflects application of the DEM as well as evidence before us.^{xlii}

[50] We accept that while support members are exposed to some additional disabilities they do not go underwater or deal with explosives ordnance. Our observations of their roles during the inspection confirmed the evidence before us.^{xliii}

[51] We acknowledge the requirements of experimental diving and note that the ADF proposes no changes to the rates.

[52] We considered the intent and purpose of compensation for recompression chamber diving and consider it appropriate.

CD Conclusion

[53] Having assessed Deep and Experimental diving allowance we agree the restructure and rates set in their entirety as proposed by the ADF.

Unpredictable Explosives Allowance (UEA)

[54] This matter was heard on 11 November 2014 with the ADF calling Major E. Sheridan and Corporal T. O'Connor as witnesses. We had been further informed during our inspection at Defence Establishment Orchard Hills where we witnessed range and static displays which demonstrated aspects of explosive ordnance disposal and the associated risks and disabilities.

[55] The ADF proposed changes to the UEA items to:

- a) amend the structure to reflect organisational requirements;
- b) obtain structural alignment; and
- c) revise the rates to reflect the levels of disability.

The ADF proposed to restructure UEA with the following items:

- Low Risk Search^{xliv} - annual and on-occurrence^{xlv} rates;
- High Risk Search^{xlvi} - annual and on-occurrence rates; and
- Render safe^{xlvii} - annual (two rates: continuous and non-continuous) and on occurrence rates as detailed below^{xlviii}:

Extant UEA Schedule*				Proposed UEA schedule			
Item	Descriptor	Annual Rate	On occurrence		Descriptor	Annual Rate	On occurrence
1	Continuous liability search	\$3,849		→	Low Risk Search	\$3,901	\$30.89
2	Continuous liability – high risk search	\$7,700		→	High Risk Search	\$9,000	\$75.00
3	Search		\$61.53				
4	Continuous liability – render safe	\$14,625		→	Render safe	\$14,625 (continuous)	\$123.07
5	Non-continuous liability render safe	\$7,700				\$8,142 (non-continuous)	
6	Render safe		\$123.07				

[56] The Commonwealth was broadly supportive of the changes but did not support the structural alignment of the annual Low Risk Search with a rate derived from paratrooper allowance until such time as we had considered that matter. The Commonwealth was *“reasonably satisfied that the proposed structural changes should in general simplify the UEA structure [and supported] changes in nomenclature which should provide greater clarity for members and decision makers for the purposes of the allowance items.”*^{xxlix}

Evidence

[57] In his affidavit and in oral evidence Corporal O'Connor outlined examples of search and render safe activities. He also gave detailed oral evidence focussing on the stressors associated with these roles and the psychological impacts including *“the cumulative impact of the daily requirements to conduct patrols; an enduring sense of responsibility for the safety of others; and the personal effect on members if an improvised explosive device was missed and personnel in the patrol or locals suffered injuries or fatalities as a result.”*¹

[58] Major Sheridan gave oral evidence on the psychological support being offered to personnel on operations and outlined the current research being conducted by the ADF to further understand the psychological impact of combat operations. Evidence was also given about the limitations of these studies in relation to the analysis of data in mental health issues with specific subgroups, trades, functions or roles. In her affidavit Major Sheridan stated that *“the ADF is only part way along the process of developing an understanding of the nature of the disabilities associated with high risk tasks such as those covered by UEA.”*ⁱⁱ

Consideration

[59] We accept that UEA remunerates for two types of functions involving unpredictable explosives; ‘search (low or high risk)’ and ‘render safe’ which are represented as allowances items dependant on whether the liability is on-occurrence, continuous or non-continuous; we agree that the proposed changes to nomenclature should provide clarity and aid simplicity of application.

UEA Conclusion

[60] We conclude that the changes to the structural alignment of UEA and the revised allowance rates reflect appropriate differentials in the level of disability associated with each task and agree the rates proposed by the ADF.

MATTER SUMMARY

[61] In conclusion we agree the ADF proposal for amendments within the Special Forces, Paratrooper and Allowance for Specialist Operations as detailed individually in this decision with the exception of the roll-in of separation allowance to SFDA.

[62] We agree to establish discrete allowances for both UEA and CD allowances and abolish ASO as a specific allowance.

[63] We note that our decisions, when collated, will require substantial changes to the structure, definitions and operation of the relevant determinations. Subject to any issues and, per the terms of those determinations, we will issue individual determinations related to each allowance in due course.

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

Appearances:

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

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

Witnesses:

Special Forces Disability Allowance

Major General P. Gilmore AO DSC, Deputy Chief of Army.

Brigadier D. McDaniel AM DSC DSM, Special Operations Commander Australia.

Commanding Officer, 2 Commando Regiment

Clearance Diving Allowance:

Commander D. Scully-O'Shea RAN, RAN Mine Warfare and Clearance Diving Capability Manager.

Lieutenant Commander J. Hissink RAN, Officer in Charge Submarine and Underwater Medicine Unit; Senior Medical Advisor Diving Medicine.

Unpredictable Explosives Allowance:

Major E. Sheridan, OIC Darwin Detachment 1st Psych Unit.

Corporal T. O'Connor OAM, School of Military Engineering.

Hearings and/or conferences were conducted in Canberra on the following dates:

- 3 December 2013
- 6 and 7 May 2014
- 22 July 2014
- 11 and 12 November 2014
- 23 June 2015
- 8 September 2015^{lii}

We also conducted inspections in conjunction with this matter on:

- 8 and 9 April 2014 to Tobruk Lines, Holsworthy Barracks
- 10 April 2014 to Defence Establishment Orchard Hills, and
- 14 October 2014 to:
 - HMAS *Penguin*
 - RAN Diving School
 - Submarine Underwater Medical Unit
 - HMAS *Waterhen*
 - Clearance Diving Team One, and
 - HMAS *Gascoyne*

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- ⁱ Transcript 12 November page 100 lines 35-42.
- ⁱⁱ Matter 3 of 2012 – Salary Related Allowance Review decision of 16 July 2013 page 21 paragraph 108.
- ⁱⁱⁱ ADF 4 – ADF Review of Special Forces Disability Allowance Proposition – Matter 16 of 2013 dated 6 May page 13 paragraph 2.11.
- ^{iv} Affidavit MAJGEN Gilmore of 1 May 2014 page 2 paragraph 8.
- ^v Transcript of 3 December 2014.
- ^{vi} ADF 4
- ^{vii} ADF Letter dated 10 June 2015.
- ^{viii} Commonwealth letter dated 3 July 2015.
- ^{ix} Matter 7 of 2015 – Special Forces Officer Category Review and Matter 8 of 2015 – SAS Trooper ECN 353 Category Review.
- ^x ADF 4 page 14 paragraph 2.15
- ^{xi} Affidavit of MAJGEN Gilmore page 5 paragraph 23.
- ^{xii} ADF 4 page 31 paragraph 3.17
- ^{xiii} Commonwealth 2 - Matter 16 of 2013 – Review of Special Forces, Paratrooper and Specialist Operations Allowances dated 16 July 2014.
- ^{xiv} Transcript 22 July 2014 page 3 line 28.
- ^{xv} Commonwealth letter dated 22 August.
- ^{xvi} Transcript 22 July 2014 pages 6 – 16.
- ^{xvii} Affidavit MAJGEN Gilmore page 1 paragraph 4.
- ^{xviii} Affidavit MAJGEN Gilmore pages 5 and 6 paragraphs 21-23.
- ^{xix} Affidavit of BRIG McDaniel of 2 May 2014 page 3 paragraph 11.
- ^{xx} Transcript 6 May 2014 page 61 lines 9 – 17.
- ^{xxi} Transcript 6 May 2014 page 65 line 1.
- ^{xxii} Affidavit BRIG McDaniel page 7 paragraph 28.
- ^{xxiii} Transcript 6 May 2014 page 62 line 44.
- ^{xxiv} Transcript 6 May 2014 page 63 lines 33 – 36.
- ^{xxv} Commonwealth 2 page 4 para 12.
- ^{xxvi} ADF 4 page 14 paragraph 2.15
- ^{xxvii} ADF 1 – Review of Paratrooper Allowance - Matter 16 of 2013 dated 11 November 2014.
- ^{xxviii} ADF1 page 10 Table 2
- ^{xxix} Matter 16 of 1993 - Review of ADF employment categories - granted a qualification and skill payment for all parachute jump instructors capped at three years after they were posted out of parachute unit in order to provide incentive to retain their skills.
- ^{xxx} Transcript 12 November page 105 lines 1- 25
- ^{xxxi} ADF 2 - Supplementary submission - Paratrooper Allowance dated 12 November 2014.
- ^{xxxii} ADF1 – Review of Clearance Diver Allowance dated 11 November 2014
- ^{xxxiii} ADF 1 – page 7 Table 1.
- ^{xxxiv} Affidavit LCDR Hissink of 11 November 2014.
- ^{xxxv} Affidavit CMDR Scully-O’Shea of 11 November page 10 para 35
- ^{xxxvi} Commonwealth 1 – Review of Special Forces, Paratrooper and Specialist Operations Allowances – Matter 16 of 2013 – 31 October 2014.
- ^{xxxvii} Transcript 12 November 2014 page 59 line 20.
- ^{xxxviii} Commonwealth letter of 16 December 2014.
- ^{xxxix} ADF letter of 19 January 2015.
- ^{xl} Transcript Matter 3 of 2015 – Annual Review of Allowances of 8 September 2015 page 16 lines 4 – 10.
- ^{xli} Affidavit CMDR Scully-O’Shea page 7 paragraphs 25 and 26.
- ^{xlii} Transcript 12 November page 61 62
- ^{xliii} Transcript 11 November pages 47 and 48.
- ^{xliv} Defined as ‘not a significant chance of injury or death as a result of the search environment’.
- ^{xlv} Capped at three per day or 40 per year.
- ^{xlvi} Defined as ‘the search environment involves a high risk of death or injury to the searcher’.
- ^{xlvii} Defined as ‘search and disposal’.

^{xlviii} ADF 1 – Review of Unpredictable Explosives Allowance page 6 Table 1.

^{xlix} Commonwealth 1 page 5 paragraph 11.

ⁱ Affidavit CPL T O’Connor of 11 November 2014 page 3 paragraph 11.

ⁱⁱ Affidavit MAJ E Sheridan of 11 November 2014 page 5 paragraph 19.

ⁱⁱⁱ In conjunction with Matter 3 of 2015 – Annual Review of Allowances.