



Australian Government
Defence Force Remuneration Tribunal

STATEMENT

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

REVIEW OF ALLOWANCES - 2015 (Matter No. 3 of 2015)

THE HON. A. HARRISON, PRESIDENT

THE HON. A. BEVIS, MEMBER

CANBERRA, 25 FEBRUARY 2016

REAR ADMIRAL J. GOLDRICK AO CSC RAN RTD,
MEMBER

[1] Section 58H(6) of the Defence Act 1903 (the Act) prescribes that “*where a determination of the Tribunal in respect of the salaries and relevant allowances to be paid to members is in force, the Tribunal shall inquire into and make a further determination in respect of those salaries and allowances:*

- a. within 2 years of the first-mentioned determination taking effect; or*
- b. if the Minister, by notice in writing given to the President, requests the Tribunal to make a further determination in respect of those salaries and allowances within a shorter period of the first mentioned determination taking place – within the shorter period”.*ⁱ

[2] Pursuant to this obligation, and at our direction, the ADF made applicationⁱⁱ to present a number of matters for consideration in two separate tranches – one each for salary and allowances. This statement will deal with only the allowances and a separate statement will be issued in regard to salariesⁱⁱⁱ.

[3] Historically, the approach taken by the Tribunal to its obligation under s.58H(6) has been referred to by it, and by the parties, as a ‘review.’ We note that the section does not contain that term; it refers to an obligation to ‘inquire into’ determinations. Nonetheless, we will adopt the term review in this statement noting however that the task before us is that set out in s.58H(6).

[4] At a hearing in this matter Mr J. Phillips SC appeared for the ADF and Mr J. O’Reilly for the Commonwealth.

Background

[5] Reviews have been conducted by the Tribunal since 1985.^{iv} In recent years the review has been subsumed within the major review of all allowances in Matter 3 of 2012 which is known as the *Salary Related Allowance Review* (SRAR).

[6] At the beginning of 2015 we directed the s.58H(6) review process be re-instituted as a discrete matter giving consideration to the fact that the Salary Related Allowance Structure was largely in place.

[7] The Secretariat and parties identified all allowances determined since the inception of SRAR and, in particular, those made two years prior to this review. Each determination was then divided into one of three phases:

- a. those that required no further action and were considered ‘no longer in force’ by way of them having determined either the repeal or establishment of an allowance or category;
- b. those upon which a ‘report back’ on the progress or function of the employment category would be provided; and,
- c. those categories which the ADF identified as requiring more ‘complex’ revision.

Submissions

[8] Following the allocation of determinations into one of the three phases referred to in paragraph [7], the ADF tendered written submissions addressing each relevant allowance and also made oral submission at the hearing in respect to the following relevant allowances:

- Service Allowance
- Trainee Allowance
- Diving allowance
- Clearance Diving Allowance
- Submarine Escape Disability Allowance
- Officer Aviation Remuneration Scheme
- Separation Allowance
- Flying Disability Allowance
- Arduous Conditions Allowance
- Adventurous Training Allowance
- Language Proficiency Allowance^v

[9] The Commonwealth also tendered written submissions and made oral submissions at the hearing. It supported “*the majority of the ADF’s position on these allowances*” while seeking a commitment from the ADF to bring forward the review of others.^{vi}

[10] The ADF and Commonwealth positions on the allowances are summarised in the table below:

Allowance	ADF intention	Commonwealth position
Service Allowance	Defer review awaiting Project <i>Suakin</i> ^{vii} development	Review
Trainee Allowance	Amend	Reserve support
Diving Allowance	Preserve	Seek review
Clearance Diving Allowance	Preserve	Reserve support and raise open water ascent as a component requiring review
Submarine Escape Disability Allowance	Preserve	Seek review
Officer Aviation Remuneration Scheme (OARS)	Defer to 2016	Review
Separation Allowance	Defer to 2016	Review
Flying disability allowance	Defer to 2016	Review
Arduous Conditions Allowance	Defer review	Review
Adventurous Training Instructor Allowance	Preserve	Preserve
Language Proficiency Allowance	Defer	Review

[11] The ADF had sought advice from the individual Services, and they had responded “*in various ways to identify how that particular allowance is going, whether they believed that there was any particular changes warranted or if the allowance, as it had been in place, was meeting the current need of that particular Service or across the Services*”.^{viii}

[12] Additional submissions were made in respect to two allowances by the ADF; Trainee Allowance^{ix} and OARS^x. These responses from the ADF firstly raised an issue that Trainee allowance had made no provision for Reserve personnel on continuous full time service (CFTS) e.g. ADF gap year personnel. And secondly, in relation to OARS, advice that the Air Force intends to bring forward a “*fairly significant case in relation to how the allowance has operated over the four-year period...as being an appropriate period for consideration as to the effect the allowance has had upon the workforce*”.^{xi}

Consideration

[13] The parties did not seek any variation or amendment to any of the allowances as an outcome of this review. It was also the parties’ submission that in those circumstances there was no need for any further determination to be issued. Having inquired into each of the relevant allowances, and taking into account the parties’ submissions, we have decided, and in terms of the section we determine, there is no need for us to make any further determination.

[14] We should note that advice was given about the view of the Directors General of Personnel with respect to each of the Services.^{xii} A number of allowances have been identified as likely to be the subject of application and future consideration in 2016. In the context of this review we need say no more about this matter.

[15] We gave detailed consideration to trainee allowance and OARS noting the subsequent information supplied in relation to these allowances. We accept trainee allowance excluded reference to Reserve personnel on Continuous Full Time Service (CFTS) and we consider that a member rendering CFTS as a trainee is exposed to the same disabilities as Permanent Force or other Reserve Force personnel.

[16] We note that the Air Force intends to revisit OARS in 2016. We accept that there are two determinations that are now compensated for within OARS and are considered ‘no longer in force’ and accordingly there is a need to repeal those two determinations.

Conclusion

[17] An inquiry into the relevant allowances in accordance with s.58H(6) has been undertaken and completed. The outcome of that inquiry is that no further determination amending or varying any of the allowances is necessary^{xiii}. The existing determinations in respect of each of the relevant allowances remain in operation.

[18] This review does not preclude the ADF or the Commonwealth, in the future, filing an application in respect of any of the allowances or existing determinations for consideration by this Tribunal. Any application to do so should be made in the usual manner.

THE HON. A. HARRISON, PRESIDENT
THE HON. A. BEVIS, MEMBER
REAR ADMIRAL J. GOLDRICK AO CSC RAN RTD, MEMBER

Appearances:

Mr J. Phillips SC assisted by Ms Robertson for the ADF

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

ⁱ At no point has there ever been application made by the Minister under s.58H(6)b.

ⁱⁱ Listing Application – Biennial (sic) Review of Allowances and Salaries Determinations under Section 58H(6) of the *Defence Act 1903* dated 23 April 2015.

ⁱⁱⁱ Statement – Matter 4 of 2015 - Review of Salaries 2015 dated 25 February 2016.

^{iv} Matters 1 and 2 of 1985 – *General Review of Salaries and Relevant Allowances*.

^v All allowances addressed (with the exception of OARS) have had WRA increases applied over time.

^{vi} CWLTH1 – Matter 3 of 2015 – Annual Review of allowances - dated 4 September 2015.

^{vii} Project *Suakin* is a whole-of-Defence workforce model designed to contribute to ADF capability by providing the flexibility to manage the workforce using full-time, part-time and casual service arrangements.

^{viii} Transcript 8 September 2015 page 2 lines 21 to 26.

^{ix} DMR letter DMR/OUT/2015/AB23942018 dated 26 August 2015.

^x DMR Letter DMR/OUT/2015/27 dated 22 October 2015

^{xi} Transcript page 7 lines 29 – 33.

^{xii} Transcript page 2 line 28

^{xiii} With the exception of the repeal of two allowances mentioned in paragraph 16.