



Australian Government
Defence Force Remuneration Tribunal

DECISION

Defence Act 1903

s.58H—Functions and powers of Tribunal

s.58H(2)(a) – Determination of the salaries and relevant allowances to be paid to members.

s.58KD – Determination giving effect to agreement between the parties

ADF WORKPLACE REMUNERATION ARRANGEMENT

2017 - 2020

(Matter 6 of 2017)

MS I. ASBURY, PRESIDENT

MR A. MORRIS, MEMBER

CANBERRA, 11 OCTOBER 2017

RADM J. GOLDRICK AO CSC RAN RTD, MEMBER

[1] This decision concerns an application¹ for a determination to be made under Section 58KD of the *Defence Act 1903* (the Act) which provides that:

“The Tribunal may, in making a determination, give effect to any agreement reached between the Minister, acting on behalf of the Commonwealth, and the Chief of the Defence Force, acting on behalf of the members of the Australian Defence Force, in relation to a matter to which the determination relates.”

A joint submission² titled ‘2017 Workplace Remuneration Arrangement’ (WRA) seeks to give effect to the terms of an agreement reached in accordance with s.58KD.

[2] A hearing was held in Canberra on 16 August 2017 where Mr J Phillips SC, the Defence Force Advocate, appeared on behalf of the Australian Defence Force (ADF) and Ms P Morrison appeared on behalf of the Commonwealth. Section 58K(9) of the Act provides that *“the Defence Force Advocate and a person representing the Commonwealth are entitled to be present, and to make submissions to the Tribunal, during any proceeding before the Tribunal.”*

[3] The Defence Force Welfare Association (DFWA) and the Returned and Services League of Australia Limited (RSL) sought to intervene in the proceedings. Section 58K(10) of the Act deals with the circumstances in which a person or body may be permitted to appear before the Tribunal:

“Where the Tribunal thinks that a person or body should be heard in relation to a matter that is being, or is to be, considered by the Tribunal, the Tribunal may permit the person or body to be present, and to make submissions to the Tribunal, during proceedings before the Tribunal in relation to that matter.”

The DFWA and the RSL were granted permission to be heard in this matter. At the hearing Captain M Peake CSC RAN Rtd appeared on behalf of the DFWA and Mr P McDermott AM CSC for the RSL.

Background and provisions of the WRA

[4] The WRA is a framework that allows for annual wage adjustments for members of the ADF. There have been 12 previous arrangements considered by the Tribunal; the most recent is the WRA 2014 – 2017. It is proposed that this WRA will wholly replace that Arrangement.

[5] The WRA applies to all ADF members of the Permanent Force and Reserves (excluding five statutory office holders). It contains provisions dealing with ADF members’ contribution to defence capability, any reforms anticipated during the operation of the arrangement, and details requirements for consultation and communication with ADF members.

[6] The salary and allowance provisions in the WRA do not stand alone. They complement other conditions of service providing monetary and non-monetary benefits to ADF members, including those made under s.58B of the Act.

[7] The WRA expressly notes that the arrangement is not intended to limit the range of responses that might arise because of strategic circumstances or personnel issues which may significantly affect military capability. To that end it is acknowledged that further submissions may be made that the arrangement be varied or replaced at any time by a further s.58KD agreement between the parties.

[8] It is not intended that the WRA will preclude the ADF from reviewing remuneration structures or employment categories during its operation. Nor does

the arrangement preclude the ADF from seeking review of any salary and salary related allowances, or from making submissions to the Tribunal regarding the establishment of capability or retention allowances and bonuses.

The joint submission of the ADF and the Commonwealth

- [9] The key features of this proposed WRA are that it:
- a. provides for a three year duration, operating from 2 November 2017 to 11 November 2020;
 - b. provides an adjustment in the rates of salary and salary related allowances of 6 per cent over the life of the WRA via three annual instalments of 2 per cent;
 - c. applies to all ADF members of the Permanent Forces and Reserves (excluding statutory office holders);
 - d. applies to salary and salary related allowances;
 - e. does not trade off, remove or offset any conditions of service or retention initiatives to fund the arrangement or propose to do so;
 - f. is based solely on the performance of the ADF and has no links to productivity offsets achieved by Defence Australian Public Service in the context of bargaining; and
 - g. is affordable and to be funded from within Defence's existing budget.³

[10] We document that we were provided with updates on the progress of the development of the submission in March and July 2017 without mention of the proposed remuneration increases. These conferences were conducted with the parties and an invitation was extended to the interveners to attend.

Interveners' submissions

[11] The DFWA made written and oral submission, with the RSL making oral submission in the hearing only: We will refer to the DFWA submission first.

[12] In separate correspondence⁴ prior to making a submission, the DFWA queried the application of the WRA under s.58KD and the 'custom' for the WRA to be addressed in a joint submission. The DFWA was advised in reply that the Tribunal has no power to determine how parties bring forward any application and must deal with each application as the relevant legislation requires.⁵

[13] The DFWA subsequently made a written submission⁶ outlining the process it undertook to engage with members and recorded that "*most of the people*" who sent feedback understood the current economic climate "*but made*

valid points nonetheless to suggest the offer may be considered inadequate compared to anticipated wage growth and cost of living pressures.”⁷

[14] The DFWA examined forecast inflation trends for the next three years to explain their “*concern for more junior members of the ADF whose dollar increase is smaller because of their lower wage*” but who “*are subject to the same cost increases as higher ranking members*”.⁸

[15] In the hearing the DFWA expanded on this stating “*that while those on higher pay grades will be less vulnerable to these pressures, all will find their standard of living compromised if the projected and modest CPI increases come to pass*” and that “*a pay increase that fails to keep pace with inflation will eventually impact on morale, retention and recruitment and will ultimately affect the ability to deliver capability.*”⁹

[16] In the hearing the DFWA again raised the matter of using s.58KD for WRA applications. We confirmed our previous formal advice that we are unable to dictate how the application is brought forward by the parties.

[17] In summary the DFWA state that it gives “*reluctant support*” to the proposed offer.¹⁰

[18] The RSL made oral submission during the hearing. Mr McDermott stated that its “*overall position was that Australia and the ADF is currently in an economic environment of low wage growth*” and that “*they would prefer to see an offer based on a realistic prospective rather than a retrospective wages growth*” while noting “*that is a difficult thing to do*”. On this basis the RSL states that it “*reluctantly*”¹¹ supports the joint submission.

Witness Evidence

[19] Rear Admiral (RADM) B S Wolski AM RAN, Head People Capability, Defence People Group, was called to give evidence in support of the application. He submitted that the WRA had regard to a “*number of aspects, including budgetary constraints, the Government wage setting framework, ADF ‘Your Say’ survey data, focus group data and the current economic climate,*”¹² and noted the importance of feedback through these avenues.

[20] RADM Wolski described the consultation and engagement process which had commenced in March 2017 and included 72 information sessions held around Australia. RADM Wolski gave evidence that, in a session he had attended, the “*discussion at the time was robust and not constrained by Command or rank protocols.*”¹³ He expanded on this, stating that “*a lot of people are willing to put forward their opinions and would generally speak freely about the matters that were discussed.*”¹⁴

[21] RADM Wolski noted that the consumer price index (CPI) had been raised in a ‘few’ different locations during the consultation and engagement period. He outlined that the ADF had “*looked to wage movements that are occurring outside*” and acknowledged that CPI forecasts are “*taken into*

account” while also making data comparisons where “*the CPI forecast is higher than what actually occurred.*”¹⁵

Consultation and Engagement

[22] Detailed evidence in regard to the consultation and engagement process with ADF members was provided in submissions and in the hearing.

[23] We note the communication period included a range of messaging options and that information session consultations were only one of a series of methods used to inform members. We note the extensive and widespread consultation with members in respect to this WRA and consider that these fora have been conducted in a “*fair, open and timely way.*”¹⁶

Consideration

[24] The joint submission states that the following have been taken into account in establishing this arrangement¹⁷:

- a. The requirements of Defence policy, especially the delivery and maintenance of overall ADF personnel capability;
- b. Required capability enhancements as directed by Government in the *Defence White Paper 2016*;
- c. Affordability and delivery of greater performance;
- d. The need to ensure that the ADF remuneration package is consistent with the preservation of the capacity to deliver military capability;
- e. The overall levels of remuneration and benefits provided by other employers; and
- f. Budget limitation of the capacity of Defence to pay.

We have considered all of the above aspects in the context of the proposed arrangement with particular reference to the fact that no ‘off sets’ have been or will be made to funding this WRA. We note that the Workplace Bargaining Policy 2015¹⁸ informed, but did not govern, the arrangement.

[25] We have reflected on the importance of consultation with ADF members and accept this has been ongoing throughout this year via a broad range of methods. We note the advice provided to us by RADM Wolski in conference in March and July of this year which kept us apprised of the process to develop the WRA, and of feedback presented over that time.

[26] We have given consideration to the evidence provided in the hearing by the parties in regard to CPI¹⁹ as well as to the concerns of the DFWA and RSL. We note the difference in forecasts versus actual comparisons and accept that

the forecast figures have been taken into account, but have not been used as firm guides.

[27] We have considered the fact that the WRA is not the only source of possible remuneration growth in the ADF and that there are other ways members can obtain remuneration growth such as rank increments, promotion, training and skill increments, and in some cases, via postings.

Conclusion

[28] We accept that under s58KD we can make the determination sought, or decline to do so, and that we have no discretion to vary the quantum or timing of the proposed increases.

[29] We accept that there has been extensive and widespread consultation with ADF members in respect of this arrangement. We agree that there has been broad acceptance of the proposal as being fair and reasonable. We also accept that the arrangement does not trade off, offset or remove any conditions of service or retention initiatives and that it is not proposed that such steps be taken.

[30] We consider the proposal maintains a competitive arrangement, is affordable within Defence's budgetary constraints and is capability based.

[31] We have decided to make the determination sought and Determination 10 of 2017 will give effect to the first two per cent increase in salary and salary related allowances from 2 November 2017.

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

Appearances:

Mr J Phillips SC for the ADF with Mr P Blady

Ms P Morrison for the Commonwealth with Ms J Menaglio and Mr S Leung.

Captain M Peake CSC RAN Rtd for the Defence Force Welfare Association

Mr P McDermott AM CSC for the Returned and Services League.

Witness:

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

¹ DMR/OUT/2017/25 Listing Application – Workplace Remuneration Arrangement 2017 – 2020 dated 8 June 2017.

² Joint Submission 2017 Workplace Remuneration Arrangement dated 16 August 2017.

³ Joint Submission page 6 paragraph 14.

⁴ Defence Force Welfare Association letter of 15 February 2017

⁵ Defence Force Remuneration Tribunal letter of March 2017

⁶ Defence Force Welfare Association submission to the Defence Force Remuneration Tribunal on Matter 6 of 2017 – the 2017-2020 ADF Workplace Remuneration Arrangement dated 16 August 2017.

⁷ DFWA submission page 2 paragraph 6.

⁸ DFWA submission page 4 paragraph 16.

⁹ Transcript 16 August 2017 page 14 lines 44 -45; 15 lines 1, 9 -11.

¹⁰ Transcript page 16 line 18.

¹¹ Transcript page 18 lines 13-21; line 38.

¹² Affidavit RADM B S Wolski AM RAN dated 07 August 2017 page 1 paragraph 7.

¹³ Affidavit page 3 paragraph 16

¹⁴ Transcript page 7 line 30

¹⁵ Transcript page 8 lines 16 -19.

¹⁶ Transcript 16 August 2017 page 3 line 5.

¹⁷ Joint submission page 21 paragraph 3 and 4.

¹⁸ <http://www.apsc.gov.au/priorities/workplace-relations/australian-government-public-sector-workplace-bargaining-policy>

¹⁹ CPI and Wage Price Index – Forecast vs actual comparison – 2014 - 2018