

DEFENCE FORCE REMUNERATION TRIBUNAL

WORKPLACE REMUNERATION ARRANGEMENT (WRA) 2011 - 2014

MATTER 9 OF 2011

DECISION

[1] The Australian Defence Force (ADF) and the Commonwealth have presented to the Tribunal the Workplace Remuneration Arrangement (WRA) 2011-2014 which will have application to all ADF members of the Permanent and Reserve Forces up to and including the rank of Colonel (and equivalent). The arrangement is made pursuant to s.58KD of the Defence Act (the Act) *“and gives effect to an agreement made between the Chief of the Defence Force (CDF), acting on behalf of ADF members and the Special Minister of State, acting on behalf of the Commonwealth.”*

[2] In a joint submission the ADF and the Commonwealth said that there had been agreement to a *“package which recognises the continuing and significant program of workplace reform within the ADF under the 2009 Defence White Paper, the Defence Strategic Reform Program and related initiatives that acknowledges the commitment of ADF members to ensuring the effective implementation of those reforms.”*

[3] The Tribunal was advised that the process of consultation with ADF members had resulted in a minority support for the WRA offer. Nonetheless it was said that the WRA has been put to the Tribunal *“in circumstances where the senior leadership have taken a position that it is the right thing to do....”*

[4] The arrangement provides for a 36 month duration and provides increases in salary and allowances which total 9 per cent over its life but *“in a frontloaded way as a result of the consultation process and the reconsiderations of the matter by the senior leadership....”*

[5] This WRA is the 11th such arrangement considered by the Tribunal under section 58KD of the Act and provides a framework for across-the-board salary increases and salary related allowance adjustments during the period of operation as follows:

- (i) 4% increase to salary and salary related allowances effective from 10 November 2011;
- (ii) 2.5% increase to salary and salary related allowances effective from 8 November 2012; and
- (iii) 2.5% increase to salary and salary related allowances effective from 7 November 2013.

[6] The adjustments will apply to all ADF members of the Permanent and Reserve Forces up to and including the rank of Colonel (and equivalent).

[7] The wage increases proposed are consistent with the Commonwealth Government's policy on the level of wage and salary adjustment for the Australian Public Service and reflect

the same offer made to Defence Force public servants. Further it is consistent with Government *“policies in relation to Defence and in maintaining effective consultative processes between the CDF and members of the Chain of Command”* and requires the *“linking of improvements in pay with ADF productivity and/or efficiency gains noting the concepts of ADF productivity include the capability of the ADF to meet defined military capability requirements.”*

[8] The Parties submitted that nothing in the WRA precludes the ADF from seeking a review of any salary related allowance, progression of employment category pay grade placement cases where appropriate, nor submissions in regard to the reintroduction of capability allowances.

[9] It was submitted that *“the ADF remains committed to an ongoing program of consultation and communication with its members in developing and implementing productivity based pay arrangements. Responses representing the views of over 26,000 ADF members were taken into account in assessing the level of acceptance of this Arrangement.”*

[10] Further it was submitted that *“In developing this Arrangement and assessing the level of acceptance for the proposal, the views of all ADF members were sought. Data was captured by an online reporting tool and where this facility was unavailable a ‘show of hands’ after a Commanding Officers briefing.”*

[11] A formal measure of support to the offer was conducted over the period 23 September 2011 to 7 October 2011. The result being that 38% of those members who responded supported the offer whereas 62% of those members who responded rejected the offer.

[12] The Tribunal was informed that the Chiefs of Staff Committee (COSC) met on 20 October 2011 to consider the low level of support to the offer. It was submitted that the increases proposed were affordable and consistent with Commonwealth and Defence policy guidelines for pay increases. COSC noted that the majority of members who responded to the survey had rejected the offer however it was the view of COSC that any delay in seeking the Tribunal’s approval of the WRA would disadvantage ADF members inasmuch as the proposed pay increase scheduled for 10 November 2011 would not be available.

[13] COSC also noted that if the Defence Employees Certified Agreement (DECA) outcome was materially better than the WRA, COSC would review the circumstances having regard to the past practice of maintaining parity between the WRA and DECA.

[14] Accordingly, and taking into account the current circumstances, COSC decided that the interests of ADF members would best be served by proceeding to the DFRT on 27 October 2011 with the WRA as proposed.

[15] Major General Paul Fogarty, Head of People Capability, provided evidence in regard to the Public Service Bargaining Framework and ADF Remuneration Framework, the ADF offer as proposed to members and the consultation process and COSC consideration of the consultation responses.

[16] The Tribunal sought further clarification about the process for a reconsideration of the proposed WRA in the event that the DECA offer was increased in any way. The submissions indicated that in the event of those circumstances occurring that COSC would consider whether any further increase would be granted to Defence members but there was no automatic right for a ‘flow on’ of any further increase, if one were to be granted, in the DECA.

[17] To be satisfied that ADF members understood the intention of the ADF proposal in the event of a change in the DECA offer the Tribunal invited further evidence from ADF members.

[18] Commander J Clough, a member of the Directorate of Military Salaries and Allowances – Policy, testified that his task had been the preparation of the WRA and the agenda papers to COSC. He also delivered presentations and conducted briefings over the course of the consultation period. It was his evidence that the result of voting by ADF civilian employees to reject the wages offer proposed for the DECA was known to ADF members and was a matter discussed in briefings as part of the consultation process.

[19] Wing Commander G B Kimmins testified that he had attended a briefing on the WRA and was aware that the offer to civilian ADF employees had been rejected. He also understood that if employees covered by the DECA received a further offer then COSC would reconsider the position of ADF members. It was his evidence that there would not be an automatic ‘flow on’ but that *“there was a desire to make sure they (the increases) were as similar as possible.”*

[20] The evidence of Leading Seaman P D Bleach addressed the consultation process and he discussed his understanding of any future process in the event that the offer to DECA employees was improved. He agreed with the other witnesses that if such occurred the matter would be considered by COSC.

[21] Having heard the further evidence the Tribunal is satisfied that ADF members are aware of the terms on which any further increase in the offer to employees covered by the DECA will be considered in regard to ADF members. There is no proposed direct ‘flow on’ but the matter will be the subject of further consideration by COSC.

[22] Commodore S Lemon (Ret’d), who sought and was granted leave to intervene on behalf of the Returned and Services League of Australia (RSL), submitted that as a *“matter of principle we don’t think that our soldiers, sailors and airmen should be paid at a lower rate than the cost of inflation”* but noted the ADF offer and said that it was *“inclined not necessarily to support the proposal but not to oppose it.”*

[23] Mr G Nelson sought and was granted leave to intervene on behalf of the Defence Force Welfare Association (DFWA). Mr Nelson submitted that there had been considerable discussion by senior members of DFWA with the CDF, senior staff officers, senior public servants and the Defence Force Advocate in regard to the content and process of the WRA. Further he submitted that the *“consultation, polling, voting whatever you like has stirred up the members of the Association”* as there is the perception that the WRA offer is not consistent with CPI and he had been instructed to seek *“quantum in the order of 12 per cent over three years as well as productivity bonuses of 1.5 per cent each year for the three years together with a consequent rise in allowances, including service allowance.”*

[24] DFWA raised concerns in respect to the consultation process and the possible creation of an expectation that ADF members are in a ‘bargaining’ process when of course that is not the case. ADF members do not have the ability to ‘bargain’ as allowed under the Fair Work Act.

[25] The DFWA submitted that they did not *“oppose the determination sought by the Parties”* and said that the *“Tribunal should go ahead and make a determination in accordance with the relevant section of the Act.”*

Consideration:

[26] The ADF Workplace Remuneration Arrangement 2011-2014, like its predecessors, is just that, an “Arrangement” not an “Agreement”. ADF members do not have the right to ‘bargain’ with the employer as do employees subject to the jurisdiction of the Fair Work Act (FWA). As noted previously the WRA is an “*agreement made between the Chief of the Defence Force (CDF), acting on behalf of ADF members and the Special Minister of State, acting on behalf of the Commonwealth*” which is very different to an agreement negotiated between an employer and employees.

[27] It seems to us that such a situation presents some difficulty for the senior ADF leadership group in regard to the consultation process. The outcome of a “vote” on an offer, if negative as was the case with this WRA, may well create the expectation of an increased or better offer as would perhaps be the expectation of employees participating in genuine ‘bargaining’ but such is not the case for ADF members who are not in a position to ‘bargain’. It seems that the expectation of ADF members in respect to this WRA was that a better offer should have been made, albeit the consultation process undertaken explained Government policy and the ADF position as to potential wage increases. Nonetheless the process, as was identified by the DFWA, could well have created an expectation of a further improved offer.

[28] This then raises the question as to whether the current process is appropriate when ADF members do not have the same rights as other employees under the FWA inasmuch they do not participate in a bargaining process, they are unable to take protected industrial action and any final arrangement is not subject to the Better Off Overall Test (BOOT).

[29] The Tribunal therefore recommends that the Parties explore the possibilities of an alternate method and process for considering and determining future wage arrangements.

[30] It was submitted that the ADF is committed to maintaining parity of outcome for uniformed and non-uniformed members and that should there be an increased offer made in regard to the DECA then the ADF will review the circumstances and consider whether a further increase for ADF members will be sought and any revised proposal brought to the Tribunal.

[31] The Tribunal will watch the progress of the DECA with interest.

[32] While we understand that the expectation of the ADF membership may have been that a more favourable increase would be offered we share the concern of COSC that any delay in submitting the WRA to the Tribunal would have disadvantaged ADF members. We therefore agree absolutely with COSC that the matter proceed when it did. We also encourage and support the comprehensive consultation and information process undertaken by ADF, it is important that ADF members are consulted fully and understand any offer, and the reason for such offer, being made so they are properly informed and able to make their own individual decision. However the expectation, be it perception or reality, that rejection of an offer will invite a better offer, is perhaps a topic worthy of further discussion between the Parties.

[33] The WRA does not preclude other matters coming to the Tribunal for consideration or determination.

[34] The Tribunal therefore has approved the increase to salary and salary related allowances as follows:

- (i) 4% with effect from 10 November 2011;
- (ii) 2.5% with effect from 8 November 2012; and
- (iii) 2.5% with effect from 7 November 2013.

Appearances:

MR R. KENZIE AM, QC with MS ROBERTSON for the ADF

MR M. O'NEILL for the Commonwealth

COMMODORE S.P. LEMON (Ret'd) on behalf of the RSL

MR G. NELSON for the Defence Force Welfare Association

Date and Place of Hearing:

27 October 2011 Canberra ACT