



DEFENCE FORCE REMUNERATION TRIBUNAL

SEVENTEENTH REPORT

2001 – 2002

(Period from 1 July 2001 – 30 June 2002)



DEFENCE FORCE REMUNERATION TRIBUNAL

16 September 2002

The Hon Tony Abbott MP
Minister for Employment and Workplace Relations
Parliament House
CANBERRA ACT 2600

My dear Minister

I have great pleasure in presenting to you the Seventeenth Report of the Defence Force Remuneration Tribunal, which covers the period of the Tribunal's operations from 1 July 2001 to 30 June 2002.

Yours sincerely

His Honour Judge F K Cawthorne
President

DEFENCE FORCE REMUNERATION TRIBUNAL

President: **His Honour Judge F K Cawthorne**

Members: **Air Vice Marshal F D Cox AO (Retd)**
Commissioner A J Dangerfield

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1. INTRODUCTION

The Tribunal was established in 1984 to enable the pay and allowances of members of the Australian Defence Force (ADF) to be determined having regard to the special nature of Defence Force service. The Tribunal has now been operating for over 17 years.

The functions of the Tribunal are set out in section 58H of the Defence Act 1903 (the Act) as follows:

- a. *to inquire into and determine the salaries and relevant allowances to be paid to members of the ADF; and*
- b. *to inquire into and make determinations in respect of prescribed matters that have been referred to the Tribunal.*

In addition, at the request of the Minister for Employment and Workplace Relations, the Tribunal shall inquire into and report on relevant matters.

Section 58H also provides that:

“Where a determination of the Tribunal in respect of the salaries and relevant allowances to be paid to members [of the Defence Force] 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 effect - within that shorter period.”*

Section 58KD of the Act 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.”

The relevant sections of the Defence Act 1903, as amended, which refer to the functions and powers of the Tribunal are set out in **Appendix 1** to this Report.

The statement required in accordance with section 8 of the Freedom of Information Act 1982 is included as **Appendix 2** to this Report.

2. MEMBERSHIP OF THE TRIBUNAL

The Tribunal consists of three members who are appointed by the Governor General. In accordance with the relevant legislation the President is a presidential member of the Australian Industrial Relations Commission. The other members are a person who is experienced in industrial relations matters and a person who has been a member of the ADF.

The composition of the Tribunal at the time of this Report was:

President:	His Honour Judge F K Cawthorne
Members:	Air Vice Marshal F D Cox AO (Retd) Commissioner A J Dangerfield

Judge Frank Cawthorne is a Deputy President of the Australian Industrial Relations Commission. His primary appointment is as a Judge of the Industrial Relations Court of South Australia and Deputy President of the Industrial Relations Commission of South Australia. He has held judicial office in industrial tribunals for over 25 years.

Judge Cawthorne was appointed as President of the Tribunal for one year from 8 March 2000. The Governor General reappointed Judge Cawthorne for a further three years commencing on 8 March 2001.

Air Vice Marshal Frank Cox was appointed by the Minister as an acting member of the Tribunal from 11 August 1999 and was subsequently appointed by the Governor General as a member for a period of one year commencing on 11 August 2000. Air Vice Marshal Cox was reappointed by the Governor General for the period 11 August 2001 until 7 March 2004.

Commissioner Adrian Dangerfield was appointed as a member of the Tribunal by the Governor General for the period 5 August 2001 until 7 March 2004.

Commissioner Dangerfield is a Commissioner of the Australian Industrial Relations Commission as well as the Industrial Relations Commission of South Australia. He brings to the Tribunal considerable experience in industrial relations matters both from his Commission appointment as well as his previous employment.

Deputy President Patricia Leary's appointment as a member of the Tribunal expired on 4 August 2001.

3. THE PARTIES

The main parties in matters before the Tribunal are the ADF and the Commonwealth. The Returned and Services League of Australia and the Armed Forces Federation of Australia appear as interveners in most matters coming before the Tribunal. The rights of parties to appear before the Tribunal are set out in section 58K of the Defence Act 1903.

The ADF is represented by the Defence Force Advocate whose role and functions are set out in section 58T of the Defence Act 1903 and include:

- . advising the Chief of the Defence Force in relation to matters that have been, or may be, referred to the Tribunal pursuant to sub-section 58H(3);
- . preparing submissions to be made to the Tribunal on behalf of the Defence Force concerning any matter that is being considered by the Tribunal; and
- . representing the Defence Force in proceedings before the Tribunal.

The office of Defence Force Advocate has always been filled by eminent legal practitioners of high calibre. The present Defence Force Advocate is Mr Richard Kenzie QC who was originally appointed by the Minister for Defence Science and Personnel on 1 June 1996 and has been reappointed until 7 March 2004. The Assistant to the Defence Force Advocate is Lieutenant Commander Abigail Bradshaw.

The Commonwealth is represented in proceedings before the Tribunal by the Department of Employment and Workplace Relations. In the period of this report the Commonwealth was represented by Mr Michael Frawley and Mr Anthony O'Brien.

The Returned and Services League of Australia and the Armed Forces Federation of Australia have been granted leave to intervene in matters before the Tribunal. The Returned and Services League has been represented by Mr John Dainer AM, RFD.

The Armed Forces Federation of Australia has been represented by Mr Graham Howatt.

4. THE WORK OF THE TRIBUNAL

The Tribunal continues to have a significant workload with a number of major matters being dealt with over the period covered by this Report.

The work of the Tribunal is predominantly determined by the matters brought before it by the parties, in particular, by the ADF. The Tribunal sits, as and when required, to deal with those matters. The Tribunal also, under its statutory obligation must review determinations in respect of salaries and relevant allowances every two years.

Various matters brought to the Tribunal have been dealt with by a single member pursuant to section 58KA of the Defence Act 1903. However the more significant matters continue to be dealt with by all members of the Tribunal.

In the period covered by this Report the Tribunal has considered a number of allowance reviews and trade restructures including: Submarine Service Allowance, Seagoing Allowance and Hard Lying Allowance; Field Allowance; the Army Groundcrewman Trade; the Geospatial Imagery Intelligence Analyst trade; the Royal Australian Navy Supply Categories restructure; the Assistant Medical/Nursing and Crewman trades; the Navy Fighter Controller category; the Special Air Service Regiment trade restructure; the RAAF Firefighters restructure; Special Action Forces Allowance; Specialist Operations Allowance and the Two Yearly Review of salaries and allowances.

A summary of each of the matters considered by the Tribunal is detailed in the next part of this Report. For more detailed information regarding the matters reference should be made to the reasons published by the Tribunal in each matter and to the determinations made. A list of determinations made by the Tribunal is included as Appendix 3 to this Report.

Service Allowance

Service Allowance was to be reviewed as part of the ADF Enterprise Productivity Arrangement: 1999 – 2002 but the ADF sought deferral of the review. The Tribunal reluctantly agreed to defer the matter and in a statement issued on 22 May 2002 the Tribunal stated that “for the future the Tribunal expresses its expectation that commitments and undertakings in Enterprise Productivity Arrangements will be adhered to unless there are extraordinary circumstances that could not possibly have been anticipated in advance.” The matter is now listed for hearing in April 2003.

Review of Australian Defence Force Remuneration – the Nunn Report

On 5 October 2001 the Minister for Veterans Affairs wrote to the President of the Tribunal welcoming his views on the Nunn Report. Although the President considered that a formal submission on the Report would not be appropriate given the fact that the Report proposed fundamental changes to the Tribunal's role, he wrote to the Minister in March 2002 providing observations and comments on several issues from an administrative and operational perspective.

Approach of the Tribunal

The Tribunal adopts a flexible approach as to the manner in which matters are dealt with. Where matters are straightforward the Tribunal may, if appropriate, deal with them on the basis of written material from the parties and interveners and/or through convening conferences. This obviates the need for the Tribunal to conduct formal hearings in relation to some matters.

The process of inquiry and determination by the Tribunal is important because it provides an opportunity for scrutiny of allowances, trade restructures and other proposed changes in order to ensure that the needs of the relevant Service or area of employment are met and that ADF members are treated fairly and equitably. The Tribunal also seeks to ensure that there is consistency in salary and allowance determinations across the ADF and that adequate regard is had to developments in outside industry.

In addition the Tribunal of recent times has adopted a more active role in having matters brought forward for consideration. This has occurred where matters have not been reviewed for a lengthy period; where they have been impacted upon by other reviews and there is a need to consider whether anomalies or inequities have developed; or where significant concerns have been raised by ADF members during visits and inspections. Relevant matters in this regard are Special Action Forces Allowance, Submarine Service Allowance, Unpredictable Explosives Allowance and Clearance Diving Allowance. The trade structures of the Special Air Service and Clearance Divers have also been raised by the Tribunal as matters needing review.

Visits to ADF establishments have become a regular part of the Tribunal's work in recent years. The visits allow members of the Tribunal to have discussions with ADF members and their spouses about conditions of service matters generally and, in particular, about pay and allowances. These visits have been warmly welcomed by ADF members. All visits and inspections conducted by the Tribunal are detailed in Parts 6 and 7 of this report.

The Tribunal continues to be impressed by the hard work and dedication of members of the ADF.

5. MATTERS CONSIDERED

A. Submarine Service Allowance, Seagoing Allowance and Hard Lying Allowance

The ADF sought a restructure of Submarine Service Allowance, Seagoing Allowance and Hard Lying Allowance.

Submarine Service Allowance (SSA) is paid to submariners who are posted to, or available for posting to a seagoing submarine. The trainee element of the allowance is paid to members undergoing training to qualify as submariners.

Seagoing Allowance (SGA) is paid to members of the ADF for the duration of a posting to a seagoing ship or a ship in refit. The allowance is paid as compensation for the particularly uncomfortable living and working conditions encountered in ships, for the inability of members to use their leisure time effectively, for the exceptionally long hours worked and for the curtailment of home contacts.

Hard Lying Allowance (HLA) is paid to ADF members who are not posted to a seagoing ship, but are required to live on board an ADF vessel for at least 48 hours. It is paid to compensate members for the discomfort experienced.

The Tribunal undertook inspections of the work of sailors at the Australian Submarine Corporation, HMAS FARNCOMB, HMAS RANKIN and participated in a sea ride on HMAS WALLER. The Tribunal also participated in sea rides on HMAS MELBOURNE (FFG), HMAS WARRAMUNGA (ANZAC) AND HMAS MANOORA (LPA). The Tribunal also visited HMAS TOBRUK (LSH) in refit.

The ADF sought a restructure of SSA based on the quantum leap in technology with the introduction of the Collins Class submarine which has resulted in the requirement for submariners to have a greater level of skill, knowledge and responsibility than their Oberon counterparts.

In respect to SGA the ADF submitted that there has been a significant increase in minimum-manned ships which has had an adverse impact in responsibilities of those going to sea.

The proposed restructures of the allowances were supported by the Commonwealth, the Returned and Services League of Australia and the Armed Forces Federation of Australia.

The Tribunal approved the new structures and rates as proposed by the ADF. In its decision the Tribunal stated that in approving the substantial increases to SGA and SSA it was mindful of the relationship of these allowances with other ADF allowances and directed that Special Action Forces Allowance and Clearance Diving Allowance be reviewed without delay.

B. Field Allowance

The ADF sought increases to the rates of Field Allowance and the introduction of a discretionary provision to enable payment of the higher rate of Field Allowance in special circumstances.

Field Allowance is paid as compensation for the uncomfortable living and working conditions experienced during field service. The allowance is paid where members are required to undertake duty and live in the field without access to facilities ordinarily available in barracks or domestic dwellings.

The Tribunal undertook inspections on 20 and 21 November 2001 at the Land Command Battle School, Queensland to observe the conditions experienced by soldiers in the field. Briefings were conducted on the disabilities experienced in the field and the Tribunal inspected the equipment used by soldiers. A demonstration of the Technology Enhanced Simulation System was provided.

The ADF sought an increase of 20% to both tiers of Field Allowance and submitted that a new discretionary provision be introduced for the payment of the higher rate of the allowance during periods of extended field service. The ADF submitted that the changes were justified based on the shift in operational doctrine away from low level conventional onshore operations to unconventional offshore operation in a coalition environment, the increase in night fighting equipment, introduction of new technology and disabilities experienced while on field service.

The Commonwealth and the Returned and Services League of Australia supported the ADF proposal.

The Tribunal approved the new rates of disability sought by the ADF on the basis of the increase in the level of stress, discomfort and disability experienced in the field.

C. Army Groundcrewman

The ADF sought the introduction of a new structure and the determination of appropriate pay groups for members of the Army Groundcrewman category.

The category was previously designated Handler Aircraft.

The Tribunal inspected the work of the Groundcrewman on 21 November 2001 at RAAF Base Townsville and at the High Range Training Area. The Tribunal was provided with briefings and inspections on the roles and responsibilities of both the Mission Support and Aircraft Support branches.

The ADF stated that the transfer of control and ownership of the battlefield helicopter to Army resulted in a need for increased training and more specialisation of the Aircraft Handler trade and the name was changed to Groundcrewman to better reflect the role of the trade.

The Tribunal approved the new structure and pay groups sought by the ADF.

D. Geospatial Imagery Intelligence Analyst

The ADF sought a new structure and pay groups for the RAAF Imagery Analyst and a change in the title to Geospatial Imagery Intelligence Analyst.

The Tribunal inspected the work of the mustering at the Target Analysis Facility, RAAF Base Fairbairn on 13 February and at 82 Wing, RAAF Base Amberley on 14 February 2002.

The ADF proposed a restructure of the existing single tiered structure to a five tiered structure which recognises completion of training prerequisites and accomplishment of levels of competency.

Evolutionary changes in strategic, operational and tactical organisations have necessitated an expansion in analyst skills. Technological advances in the collection, manipulation and distribution of digitally based imagery and geospatial information have increased the volume of imagery and the degree to which it can be exploited. Analysts have been required to develop new skills and training and there has been a significant increase in work value and responsibilities.

The Tribunal approved the new structure and pay groups as sought by the ADF and supported by the Commonwealth and parties.

E. Royal Australian Navy Supply Categories Trade Restructure

The ADF sought a restructure and the determination of new pay groups for the RAN Supply Categories. The supply categories consist of the Cook, Officer Steward, Writer and Naval Stores trades.

The Tribunal undertook inspections at HMAS KUTTABUL on 26 March 2002 and at sea on HMAS MELBOURNE on 15 April 2002.

The ADF sought to provide a revised category career progression model with pay group movements being associated with the increased levels of skills, qualifications and responsibilities required to perform the redefined tasks across the trades. The Supply Categories have undergone significant changes in their employment profiles as a result of initiatives such as the Commercial Support Programme and the introduction of the Defence Corporate Support organisation.

The ADF proposed restructure was supported by the Commonwealth, the Returned and Services League of Australia and the Armed Forces Federation of Australia.

The Tribunal approved the new structure on the grounds of increased levels of skill, the whole of ship responsibilities of the categories, the devolution of responsibility and accountability and increases in multi-skilling

F. Assistant Medical/Nursing and Crewman Trades - Army

The ADF sought consideration by the Tribunal for the establishment of a base grade employment skill grade for the Assistant Medical/Nursing and Royal Australian Armoured Corps Crewman categories within the Reserve Force.

The introduction of the new skill grade would provide an avenue for Reservists to transition from the training force to the productive workforce at a skill level consistent with their employment needs.

The Tribunal approved the ADF proposal as supported by the Commonwealth and interveners noting that such a restructure would provide a retention incentive for Reservists in these trades.

G. Navy Fighter Controller

The ADF sought the extension of Flying Allowance to Navy Fighter Controller personnel who form part of the Airborne Early Warning and Control crew under the same structure and on the basis as the RAAF Fighter Controllers.

There are currently two personnel qualified as Navy Fighter Controllers with this figure to be progressively increased to six at the completion of the platform procurement and test and evaluation phases. The principal role of these personnel is to coordinate the complex and sophisticated process of target detection, performing non co-operative target identification and communication of the overall air situation to all required parties in the combat area.

The Tribunal approved the extension of Flying Allowance to these Officers.

H. Special Air Service Regiment – Trade Restructure

The ADF sought a trade restructure and new pay groups for Special Air Service Regiment members.

The ADF proposed the introduction of a work value based tiered structure that recognised increased capabilities and skills and complemented the new structure for Commandos and Infantry.

The Tribunal approved the new structure as proposed by the ADF and supported by the parties.

I. RAAF Firefighters Restructure

The ADF sought the introduction of a new structure and the determination of appropriate pay groups for the RAAF Firefighting mustering. The category provides rescue and firefighting services within the RAAF.

On 15 February 2002 the Tribunal inspected the work of RAAF Firefighters at the RAAF Security and Fire School located at RAAF Amberley.

The restructure was sought as there have been changes to the roles and responsibilities of category members and significant changes have also occurred as the result of new technologies, equipment and firefighting procedures. There has also been a significant devolution of responsibility and accountability as a result in the decrease in the number of firefighters.

The Commonwealth, the Returned and Services League of Australia and the Armed Forces Federation of Australia supported the new structure and pay groups sought by the ADF.

The Tribunal approved the ADF proposal noting that the new structure will provide a skill-related career path that will provide an incentive of on-going skill development.

J. Special Action Forces Allowance

In April 2002 the ADF sought a new structure and rates for Special Action Forces Allowance (SAFA).

SAFA is paid to members of the Special Air Service Regiment in recognition of the work requirements which cannot be remunerated adequately in the ADF salary structure. These requirements include additional skills which must be acquired and maintained in an environment of hazard and stress.

The restructure was sought due to a significant increase in the responsibilities for operational service, an unprecedented increase in operational tempo, the introduction of new technology and sophisticated equipment and changes to organisations and employment.

The Tribunal inspected the work of the Special Air Service Regiment members at Campbell Barracks in Perth in November 2001.

The Commonwealth, the Returned and Services League of Australian and the Armed Forces Federation of Australia supported the proposed structure and rates.

The Tribunal approved the new allowance structure and rates with the exception of an on-occurrence rate which is to be the subject of further consideration.

K. Two Yearly Review of Salaries and Allowances

On 30 May 2002 the Tribunal called on for hearing a review of ADF pay and pay related allowances. Under sub-section 58H (6) of the Defence Act 1903, the Tribunal is required to inquire into salaries and allowances each two years.

The ADF made initial submissions and the matter was adjourned until July 2002.

L. Specialist Operations Allowance

In April 2002 the ADF sought the introduction of a Specialist Operations Allowance. The allowance sought encompasses members involved in the search for and rendering safe of unpredictable explosives; members of a new Incident Response Unit; members of the 4th Battalion Royal Australian Regiment (Commando); members of a second Tactical Assault Group and Clearance Divers.

During the period covered by the report the Tribunal conducted inspections of the work of the Incident Response Unit and Commandos.

The matter is on-going.

6. INSPECTIONS

The Tribunal regularly carries out inspections in order to inform itself about matters before it.

These inspections are generally made in response to a request by the parties and demonstrate changes in the work performed by ADF members or show the conditions that are being experienced by members.

The inspections carried out by members of the Tribunal in the period of this report were as follows:

As part of its review of Special Action Forces Allowance and the structure and pay groups for Special Air Service categories the Tribunal undertook an inspection on 12 November 2001 at Campbell Barracks in Perth. The Tribunal was provided with briefings on the roles and skills of these members and on the changes to work value and disability. The Tribunal also witnessed a number of displays.

On 20 and 21 November 2001, as part of its review of Field Allowance, the Tribunal undertook inspections at the Land Command Battle School at Tully in Queensland. The Tribunal was provided with briefings and demonstrations regarding the conditions experienced by soldiers in the field. The Technology Enhanced Simulation System was demonstrated and the Tribunal experienced the disabilities of operating in a rainforest environment at night using Night Vision Goggles.

As part of its inquiry into the Army Groundcrewman Trade Restructure the Tribunal undertook an inspection on 21 November 2001 at RAAF Base Townsville and the High Range Training Area. The Tribunal was provided with detailed briefings and practical demonstrations of the roles and responsibilities of both the Mission Support and Air Support branches.

On 13 February 2002 the Tribunal inspected the work of the Geospatial Imagery Intelligence Analyst category at the Australian Theatre Joint Intelligence Centre Target Analysis Facility at Fairbairn ACT. On 14 February 2002 the Tribunal continued the inspection at 82 Wing RAAF Amberley in Queensland. The Tribunal was briefed on developments in the role of the mustering and the changes to their work value and responsibility.

The Tribunal inspected the work of the RAAF Firefighter mustering on 15 February 2002. The inspection was part of a consideration of a proposed new trade structure and took place at the RAAF Security and Fire School at RAAF Amberley. The Tribunal was provided with practical demonstrations of the work of RAAF Firefighters.

As part of its consideration of a new allowance for Commandos, the Tribunal undertook inspections in the Nowra and Jervis Bay areas. On 12 March 2002 the Tribunal visited the Parachute Training School at HMAS ALBATROSS where it was provided with briefings and static displays. On 13 March 2002 the Tribunal inspected the 4th Battalion Royal Australian Regiment (Commando) carrying out parachute load follow, cliff assault, beach landing and building entry demonstrations in the Beecroft Range area.

On 20 March 2002, as part of its consideration of a new allowance for members of the Incident Response Unit, the Tribunal undertook inspections at Jordan Lines, Holsworthy Barracks. The Tribunal was provided with briefings on the courses, roles, responsibilities and disabilities and was provided with demonstrations of the work of the unit.

As part of its inquiry into the Navy Supply Trade Restructure the Tribunal inspected the work of these categories on 26 March 2002 at HMAS KUTTABUL and on 15 April 2002 at sea on HMAS MELBOURNE. The Tribunal was briefed on developments in the roles of the trades and changes to their work value and responsibility.

7. VISITS

The Tribunal carries out familiarisation visits to gain and maintain an understanding of the living and working conditions experienced by members of the ADF as well as programmed visits to units and establishments.

In August 2001 the Tribunal carried out a visit to units and establishments in Western Australia in order to ascertain an understanding of the conditions of service issues that are of concern to members and spouses. The visits also provided members and spouses with an opportunity to meet the Tribunal and discuss its role and work.

The visit to Western Australia was one of a series carried out by the Tribunal. The visits comprise a series of open forums with groups of personnel and spouses with each meeting including a presentation about the role and function of the Tribunal and the matters that are presently before it. The presentations are followed by a discussion period in which the ADF members and spouses participating have the opportunity to ask questions or raise issues. The meetings are informal so as to encourage the exchange of ideas and information.

On 21 August 2001 the Tribunal visited the Pilbara Regiment at Karratha.

On 22 August 2001 the Tribunal visited RAAF Pearce and on 23 August 2001 the Tribunal visited HMAS STERLING.

The 13th Brigade was visited on 24 August 2001 at Irwin Barracks, Karrakatta.

Such visits continue to be a valuable part of the work of the Tribunal and further visits have been programmed.

In September 2001 Commissioner Dangerfield undertook a number of familiarisation visits in the Sydney area. On 20 September 2001 the Commissioner visited HMAS KANIMBLA and HMAS WATERHEN and on 21 September 2001 he visited RAAF Base Richmond.

8. FINANCIAL MATTERS

The Tribunal's financial requirements are met through the Department of Employment and Workplace Relations, sub-program 2.2.7 Defence Force Remuneration Tribunal. There is no separate form of accounts applicable to the Tribunal.

Budget funds, allocated through the Departmental process, may be expended by the authority of the Tribunal under the headings of: salaries to the authorised staffing level, including holders of public office; and administrative and incidental expenditure.

9. INDUSTRIAL DEMOCRACY

The Tribunal has a strong commitment to the adoption of participative practices involving staff in decision-making about office administration and management. This can be achieved through structures and processes which involve the sharing of information, authority and responsibility in the workplace.

10. OCCUPATIONAL HEALTH AND SAFETY

The obligations of the Tribunal under the provisions of the Occupational Health and Safety (Commonwealth Employment) Act 1991 are met by the Department of Employment and Workplace Relations on behalf of the Tribunal.

11. ENERGY MANAGEMENT

The Tribunal occupies space at 12 Moore Street, Canberra. In relation to those energy matters which are within the control of the Tribunal, such as lighting, every effort is made to reduce energy consumption consistent with the requirements for every day administration.

12. ADVERTISING AND MARKET RESEARCH

The Tribunal does not have a requirement to advertise or conduct market research.

13. DISCRETIONARY GRANTS

There are no discretionary grants administered by the Tribunal.

14. ACCOMMODATION

In addition to the use of the premises for the operations of the Tribunal, the Hearing and Advocates' rooms continue to be used by the Departments of Defence; Employment and Workplace Relations and other Government Departments; and by the Australian Industrial Relations Commission and other Tribunals. The facilities are made available subject to the Tribunal's own requirements.

15. WEB SITE

The Defence Force Remuneration Tribunal released its Web Site in November 1999. The Web Site includes the role and operation of the Tribunal, current membership and contains decisions and determinations made in the matters that have come before it and matters scheduled for hearing. The Tribunal's Annual Report is also available on the site.

Along with the visits to ADF establishments detailed in Part 7 of this Report, the Web Site provides an important opportunity to familiarise ADF members with the role, operations and decisions of the Tribunal.

***EXTRACT FROM THE DEFENCE ACT 1903
SECTIONS 58F TO 58Q***

Division 2 - The Defence Force Remuneration Tribunal

Interpretation

58F.

In this Division, unless the contrary intention appears -

"President" means the President of the Tribunal appointed under section 58G;

"Commission" means the Australian Industrial Relations Commission established by section 8 of the *Industrial Relations Act 1988*;

"Defence Force Advocate" means the Defence Force Advocate appointed under section 58S;

"Member of the Tribunal" means a member of the Tribunal appointed under section 58G, and includes the President;

"Presidential member of the Commission" means the President of the Commission or the Vice President, a Senior Deputy President or a Deputy President of the Commission appointed under section 9 of the *Industrial Relations Act 1988*;

"Relevant allowances", in relation to a member, means allowances by way of remuneration payable to the member and, without limiting the generality of the foregoing, includes any allowance payable to the member -

- (a) in respect of the service of the member on a ship or aircraft;
 - (b) as general compensation for the disadvantages of rendering naval, military or air force service;
 - (c) in respect of particular skills or qualifications possessed by the member;
- or
- (d) as compensation for the hazardous nature of the duties that the member is required to perform or for the conditions under which the member is required to perform his duties;

"Remuneration Tribunal" means the Remuneration Tribunal established by sub-section 4(1) of the *Remuneration Tribunals Act 1973*;

"Salary" includes pay;

"Single member" means a member of the Tribunal specified in a direction made under subsection 58KA(1);

"Tribunal" means the Defence Force Remuneration Tribunal established by section 58G.

58G.

- (1) There is established by this section a Defence Force Remuneration Tribunal.
- (2) The Tribunal shall consist of -
 - (a) a President;
 - (b) a person who is experienced in industrial relations matters; and
 - (c) a person who has been a member.
- (3) The members of the Tribunal shall be appointed by the Governor-General on a part-time basis.
- (4) The person appointed as President shall be a presidential member of the Commission.
- (5) A person shall not be appointed as a member of the Tribunal if he has at any time during the year preceding his appointment been a member.
- (6) The performance of the duties and functions and the exercise of the powers of the Tribunal are not affected by reason only of there being one vacancy in the membership of the Tribunal.

58H.

- (1) The functions of the Tribunal are to inquire into and determine, in accordance with this section, the matters referred to in sub-section (2).
- (2) The Tribunal shall, as provided for by this section -
 - (a) inquire into and determine the salaries and relevant allowances to be paid to members; and
 - (b) inquire into and make determinations in respect of prescribed matters that have been referred to the Tribunal.

-
- (3) The Minister or, subject to sub-section (4), the Secretary or the Chief of the Defence Force may, by notice in writing given to the President, refer a prescribed matter to the Tribunal.
 - (4) The Secretary or the Chief of the Defence Force shall not, without the approval in writing of the Minister, refer a prescribed matter to the Tribunal pursuant to sub-section (3) if -
 - (a) at any time during the preceding 12 months, the Minister has made a determination under section 58B that relates, in whole or in part, to that matter; or
 - (b) the Secretary or the Chief of the Defence Force is aware that, at any time during the preceding 12 months, submissions have been made to the Minister requesting the Minister to make a determination that relates, in whole or in part, to that matter and the Minister has not made such a determination.
 - (5) The Tribunal shall, within 2 years of the commencement of this section or within such shorter period as the Minister, by notice in writing given to the President, determines, inquire into and make a determination in respect of the salaries and relevant allowances to be paid to members.
 - (6) 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 effect - within that shorter period.
 - (7) A determination of the Tribunal shall be in writing and shall take effect, or shall be deemed to have taken effect, on such day as the Tribunal specifies for the purpose in the determination.
 - (8) The Tribunal shall not specify as the day on which a determination of the Tribunal takes effect a day earlier than the day on which the determination is made in any case where, if the determination so took effect -
 - (a) the rights of a person (other than the Commonwealth) which existed immediately before the last-mentioned day would be affected in a manner prejudicial to that person; or

-
- (b) liabilities would be imposed on a person (other than the Commonwealth) in respect of anything done or omitted to be done before that last-mentioned day, and where, in a determination of the Tribunal, any provision is made in contravention of this sub-section, that provision shall be of no effect.
- (9) The President shall give a copy of each determination made by the Tribunal to the Minister, to the Secretary and to the Chief of the Defence Force.
- (10) Where the Tribunal has made a determination (not being a determination made pursuant to sub-section (12)), the Minister, the Secretary or the Chief of the Defence Force may, by notice in writing given to the President within 28 days of the determination being made, request the Tribunal to reconsider the determination.
- (11) A notice of request under sub-section (10) shall set out the grounds on which the reconsideration is being sought.
- (12) As soon as practicable after a request is made under sub-section (10) for reconsideration of a determination, the Tribunal shall reconsider the determination and shall make a further determination affirming, varying or replacing the first-mentioned determination.
- (13) The Minister shall cause a copy of each determination of the Tribunal to be laid before each House of the Parliament within 15 sitting days of that House after the determination is received by him.
- (14) Any regulation made under this Act. the *Air Force Act 1923* or the *Naval Defence Act 1910*, and any determination made under section 58B of this Act, has no effect to the extent that it is inconsistent with any determination of the Tribunal.
- (15) In this section, "prescribed matter" means a matter in relation to which the Minister may make determinations under section 58B, not being a matter referred to in paragraph (2)(a).

Hearings in relation to discriminatory determinations

58HA.

- (1) If a determination is referred to the Tribunal under section 50E of the *Sex Discrimination Act 1984*, the Tribunal must hold a hearing to review the determination.
- (2) Unless the hearing takes place before a single member of the Tribunal, sub-sections 58K(1) to (6) apply to the hearing as if it were a meeting of the Tribunal.
- (3) The Tribunal must decide whether or not the hearing is to be held in public.

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- (4) If the Tribunal decides that the hearing is not to be held in public, then, subject to sub-section (5) and sub-sections 58K(9) and 58KB(5), the Tribunal may decide the people who may be present.
 - (5) The Sex Discrimination Commissioner is entitled to notice of, and to be present at, the hearing and may make submissions to the Tribunal.
 - (6) In this section:

Determination includes a variation to a determination.

Tribunal includes a single member conducting the Tribunal's business under a direction under sub-section 58KA(1).

Review of discriminatory determinations

58HB.

- (1) If:
 - (a) a determination has been referred to the Tribunal under section 50E of the *Sex Discrimination Act 1984*; and
 - (b) the Tribunal considers that the determination is a discriminatory determination;the Tribunal must take the necessary action to remove the discrimination, by setting aside the determination, setting aside terms of the determination or varying the determination.

- (2) In this section:

Determination has the same meaning as in section 58HA.

Discriminatory determination means a determination that:

- (a) has been referred to the Tribunal under section 50E of the *Sex Discrimination Act 1984*; and
- (b) requires a person to do an act that would be unlawful under Part II of the *Sex Discrimination Act 1984* except for the fact that the act would be done in direct compliance with the determination.

Tribunal has the same meaning as in section 58HA.

- (3) For the purposes of the definition of *discriminatory determination* in sub-section (2), the fact that an act is done in direct compliance with the determination does not of itself mean that the act is reasonable.

58J.

- (1) The Minister may, by notice in writing given to the President, request the Tribunal to inquire into and report to the Minister on a matter specified in the notice, being a

matter in relation to which the Tribunal may make a determination pursuant to section 58H.

- (2) When a request is made under sub-section (1), the Tribunal shall inquire into the matter concerned and give to the Minister a report in writing on the matter.

58K.

- (1) The President shall convene such meetings of the Tribunal as he considers necessary for the efficient performance of its functions.
- (2) Meetings of the Tribunal shall be held at such places as the President determines.
- (3) The President shall preside at all meetings of the Tribunal at which he is present.
- (4) If the President is not present at a meeting of the Tribunal, another member of the Tribunal nominated by the President shall preside at the meeting.
- (5) The Tribunal shall keep records of its meetings.
- (6) At a meeting of the Tribunal -
- (a) 2 members of the Tribunal constitute a quorum;
 - (b) all questions shall be decided by a majority of votes of the members of the Tribunal present and voting; and
 - (c) the member of the Tribunal presiding has a deliberative vote and, in the event of an equality of votes, also has a casting vote.
- (7) The Tribunal shall, in making a determination, have regard to any decision of, or principles established by, the Commission that is or are, in the opinion of the Tribunal, relevant to the making of that determination.
- (8) In the performance of the functions of the Tribunal -
- (a) the Tribunal may regulate the conduct of its proceedings as it thinks fit and is not bound to act in a formal manner; and
 - (b) the Tribunal may inform itself on any matter in such manner as it thinks fit and is not bound by the rules of evidence.
- (9) The Defence Force Advocate and a person representing the Commonwealth are entitled to be present, and to make submissions to the Tribunal, during any proceedings before the Tribunal.
- (10) 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.

58KA

- (1) Subject to sub-section (2), the President may:
 - (a) if a person referred to in sub-section 58K(9) requests the President to do so and the President considers it appropriate; or
 - (b) in any case, on the President's initiative;direct, in writing, that a member of the Tribunal specified in the direction is to conduct the Tribunal's business in relation to any matter that is specified in the direction, being a matter that is being, or is to be, dealt with by the Tribunal.
- (2) The President must not, in a direction made under sub-section (1), direct that a single member is to deal with a request made under sub-section 58KC(1).
- (3) The President may, at any time, in writing, terminate a direction made under sub-section (1).
- (4) Where a single member is conducting the Tribunal's business in relation to a matter:
 - (a) the single member may exercise any powers or perform any functions of the Tribunal in relation to that matter; and
 - (b) any act of the single member in relation to that matter is taken to be an act of the Tribunal.
- (4) In this section, a reference to a matter that is being, or is to be, dealt with by the Tribunal includes a reference to any part of such a matter.

58KB.

- (1) Where a single member is conducting the Tribunal's business:
 - (a) section 58K does not apply to the single member's conduct of such business; and
 - (b) the following provisions apply.
- (2) The single member may conduct such proceedings relating to the matter to which the direction relates as he or she considers necessary.
- (3) In the conduct of the Tribunal's business"
 - (a) the single member is not bound to act in a formal manner; and
 - (b) the single member may inform himself or herself on any matter in such manner as he or she thinks fit and is not bound by the rules of evidence.

-
- (4) The single member must, in making a determination, have regard to any decisions of, or principles established by, the Commission that is or are, in the opinion of the single member, relevant to the making of that determination.
 - (5) The Defence Force Advocate and a person representing the Commonwealth are entitled to be present, and to make submissions to the single member, during any proceedings conducted by the single member.
 - (6) Where the single member thinks that a person or body would be heard in relation to a matter that is being, or is to be, considered by him or her, the single member may permit the person or body to be present, and to make submissions to the single member, during proceedings conducted by the single member in relation to that matter.

58KC.

- (1) Where:
 - (a) a single member is conducting the Tribunal's business in relation to a matter; and
 - (b) in dealing with the matter, the single member exercises a power or performs a function of the Tribunal;

the Minister, the Secretary or the Chief of the Defence Force may, by notice in writing given to the President within 28 days after the single member has completed his or her conduct of that business, request the Tribunal to reconsider the exercise of the power or performance of the function.
- (2) The notice must specify the exercise of the power or the performance of the function requested to be reconsidered and the grounds for seeking the reconsideration.
- (3) As soon as practicable after the request is made, the Tribunal must:
 - (a) reconsider the exercise of the power or performance of the function specified in the request; and
 - (b) make a determination affirming, varying or replacing anything done by the single member in exercising that power or performing that function.

58KD.

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.

58L.

- (1) Subject to this Division, a member of the Tribunal holds office for such period, not exceeding 5 years, as is specified in his or her instrument of appointment, but is eligible for re-appointment.
- (2) A person shall not continue to hold office as a member of the Tribunal if -
 - (a) he becomes a member of the Defence Force;
 - (b) he becomes the Defence Force Advocate; or
 - (c) in the case of the President, he ceases to be a presidential member of the Commission.

58M.

A member of the Tribunal may resign his office by writing signed by him and delivered to the Governor-General.

58N.

The Governor-General may terminate the appointment of a member of the Tribunal by reason of misbehaviour or physical or mental incapacity.

58P.

- (1) The Minister may appoint a person to act as a member (including the President) of the Tribunal -
 - (a) during a vacancy in the office of that member; or
 - (b) during a period, or during all periods, when the member is absent from duty or from Australia or is, for any other reason (including the reason that, in the case of a member not being the President, he is acting as President), unable to perform the duties of his office,

but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.
- (2) While a person is acting as President or as a member of the Tribunal other than the President, he has and may exercise all the powers, and shall perform all the functions, of the President or that member, as the case may be.
- (3) An appointment of a person under sub-section (1) may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.

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- (4) The Minister may -
- (a) determine the terms and conditions of appointment, including fees and allowances, of a person acting as a member of the Tribunal; and
 - (b) terminate such an appointment at any time.
- (5) Where a person is acting as a member of the Tribunal in accordance with paragraph (1)(b) and that office becomes vacant while that person is so acting, then, subject to sub-section (3), that person may continue so to act until the Minister otherwise directs, the vacancy is filled or a period of 12 months from the date on which the vacancy occurred expires, whichever first happens.
- (6) The appointment of a person to act as a member of the Tribunal ceases to have effect if the resigns his appointment by writing signed by him and delivered to the Minister.
- (7) The validity of anything done by a person purporting to act under this section shall not be called in question on the ground that the occasion for his appointment had not arisen, that there was a defect or irregularity in or in connection with his appointment, that the appointment had ceased to have effect or that the occasion for him to act had not arisen or had ceased.
- (8) A reference is section 58H, 58J, or 58K to the President or to a member of the Tribunal shall be read as including a reference to a person acting as the President or as a member of the Tribunal, as the case may be.

58Q.

- (1) A member of the Tribunal shall be paid fees and allowances as the Remuneration Tribunal determines.
- (2) The appointment of the holder of a prescribed office as a member of the Tribunal, or service by the holder of a prescribed office as such a member, does not affect his tenure of that prescribed office or his rank, title, status, precedence, salary, annual or other allowances, or other rights or privileges as the holder of that prescribed office and, for all purposes, his service as a member of the Tribunal shall be taken to be service as the holder of the prescribed office.
- (3) This section has effect subject to the *Remuneration Tribunals Act 1973*.
- (4) In this section, "prescribed office" means an office, appointment or other employment which is referred to in sub-section 7(11) of the *Remuneration Tribunals Act 1973* as an office, appointment or other employment or a full-time basis or a judicial office referred to in sub-section 7(12) of that Act.

FREEDOM OF INFORMATION

Establishment

The Tribunal was established in 1984 under Part IIIA, Division 2, of the Defence Act 1903.

Organisation

The Tribunal comprises three part-time members. One of whom, the President, is required to be a presidential member of the Australian Industrial Relations Commission.

Functions

The functions of the Tribunal are:

- a. to inquire into and determine the salaries and relevant allowances to be paid to members of the Australian Defence Force; and
- b. to inquire into and make determinations in respect of prescribed matters that have been referred to the Tribunal.

In addition, at the request of the Minister, the Tribunal shall inquire into and report on relevant matters.

Power

The Tribunal makes determinations in respect of salaries and relevant allowances to be paid to members of the Australian Defence Force. 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 within 2 years of the first-mentioned determination taking effect or within a shorter period if requested to do so by the Minister.

Categories of documents

Documents maintained by the Tribunal include:

- submissions from interested parties, including the public;
- transcripts of Tribunal hearings;
- determinations made by the Tribunal, including reasons for decisions; and
- files dealing with matters that have been referred to the Tribunal.

FOI procedures and initial contact points

Persons wishing to gain access to documents held by the Tribunal should write to or contact the Secretary of the Tribunal at the following address:

Defence Force Remuneration Tribunal
GPO Box 2761
CANBERRA ACT 2601

Telephone: (02) 6257 3855

Inquiries

The Tribunal has not received any inquiries for access to its documents in the period covered by this Report.

<i>LIST OF DETERMINATIONS</i>

Determination	Subject	Date of Effect
11 of 2001	Employment Category Management – Introduction of Base Grade Skill Level for Certain Reserve Force Categories	9 July 2001
12 of 2001	Employment Category Name Change – RAAF Stewards	9 July 2001
13 of 2001	Royal Australian Navy and Royal Australian Air Force Electronic Warfare and Signal Trades	24 May 2001
14 of 2001	Submarine Service Allowance, Seagoing Allowance and Hard Lying Allowance	16 August 2001
16 of 2001	ADF Enterprise Productivity Arrangement: 1999 – 2002	8 November 2001
17 of 2001	Submarine Service Allowance	16 August 2001
18 of 2001	Salary Non-Reduction Provisions – Reserve Force Members Undergoing Training – Repeal	8 November 2001
19 of 2001	RAAF Ground Support Categories	20 December 2001
20 of 2001	Army Groundcrewman Categories	13 December 2001
21 of 2001	Language Proficiency Allowance	6 December 2001
22 of 2001	Special Action Forces Allowance	20 December 2001
23 of 2001	Special Air Service Regiment Trade Restructure	11 October 2001

Determination	Subject	Date of Effect
24 of 2001	Flying Allowance – Navy Fighter Controller	26 July 2001
25 of 2001	Specialist Operations Interim Training Allowance	20 December 2001
1 of 2002	Submarine Service Allowance & Hard Lying Allowance	22 February 2002
2 of 2002	Field Allowance	4 March 2002
3 of 2002	RAAF Firefighter Categories	11 April 2002
4 of 2002	RAAF Imagery Analyst Categories	25 April 2002
5 of 2002	Amendment to References to Salary Schedules	23 April 2002
6 of 2002	RAAF Imagery Analyst Categories Non-Reduction	25 April 2002
7 of 2002	ADF Enterprise Productivity Arrangement: 1999-2002	9 May 2002
8 of 2002	Navy Supply Sailors Categories	23 May 2002
9 of 2002	Salary of the Chief of the Defence Force Designate	29 June 2002

<i>SECRETARIAT</i>

Secretary:	Ian Hueston
Chief Executive Officer:	Chris J Wallace
Administrative Officer:	Samantha Beer
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The members of the Tribunal wish to pay tribute to the professionalism and work ethic of the members of the Secretariat. In such a small unit, it is essential that everyone pulls their weight and that relationships both between Secretariat staff and between the staff and the members of the Tribunal, are happy and productive.

It is to the credit of each member of staff that this has consistently been the experience of Tribunal members.

The Tribunal wishes to record formally its appreciation for what it considers to be the outstanding support of its Secretariat.

COMPLIANCE INDEX

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