



DEFENCE FORCE REMUNERATION TRIBUNAL

NINETEENTH REPORT

2003 – 2004

(Period from 1 July 2003 – 30 June 2004)



Australian Government

Defence Force Remuneration Tribunal

29 October 2004

The Hon Kevin Andrews MP
Minister for Employment and Workplace Relations
Parliament House
CANBERRA ACT 2600

My dear Minister

I have great pleasure in presenting to you the Nineteenth Report of the Defence Force Remuneration Tribunal, which covers the period of the Tribunal's operations from 1 July 2003 to 30 June 2004.

Yours sincerely

The Honourable Senior Deputy President R N Cartwright
President

DEFENCE FORCE REMUNERATION TRIBUNAL

President: The Honourable Senior Deputy President R N Cartwright

Members: Air Vice Marshal F D Cox AO (Retd)

Mr G D John

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1. INTRODUCTION

The Tribunal has been operating for over 19 years, having been established in 1984 to determine the pay and allowances of members of the Australian Defence Force (ADF), considering the special nature of Defence Force service.

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:

“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:	The Honourable Senior Deputy President R N Cartwright
Members:	Air Vice Marshal F D Cox AO (Retd) Mr G D John

Senior Deputy President Robert Cartwright has been a presidential member of the Australian Industrial Relations Commission since February 2001. Prior to this appointment he held a number of senior management positions in civil industry. Senior Deputy President Cartwright was appointed as President of the Tribunal by the Governor General from 8 March 2004 to 7 March 2009.

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 has been reappointed by the Governor General until 11 August 2005.

Mr Greg John was appointed as a member of the Tribunal by the Governor General for the period 8 March 2004 to 7 March 2008. Mr John is currently a director of an industrial relations consultancy and previously held senior management positions in both the public and private sectors.

His Honour Judge Frank Cawthorne relinquished his appointment as President of the Tribunal on 7 March 2004. Judge Cawthorne served with distinction on the Tribunal over the four years in which he presided. He was highly respected by all associated with the work of the Tribunal and made an invaluable and lasting contribution to its operation.

Commissioner Adrian Dangerfield's appointment as a member of the Tribunal expired on 7 March 2004. During his almost three years with the Tribunal, Commissioner Dangerfield made a significant contribution to the work of the Tribunal and gained a deep understanding of service life and conditions.

3. THE PARTIES

The main parties in matters before the Tribunal are the ADF and the Commonwealth. The Returned and Services League of Australia, the Armed Forces Federation of Australia and the Regular Defence Force Welfare Association seek leave to intervene 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 30 June 2005.

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 Ms Helen Marshall, Mr Joshua Shingles and Ms Lisa Cox.

The Returned and Services League of Australia, the Armed Forces Federation of Australia and the Regular Defence Force Welfare Association have been granted leave to intervene in matters before the Tribunal.

Group Captain Phil Morrall AM, CSC (Ret'd) has represented the Returned and Services League of Australia and the Regular Defence Force Welfare Association.

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

4. THE WORK OF THE TRIBUNAL

The complexity of the ADF and its higher activity level ensures that the Tribunal continues to have a significant workload. A number of major matters have been dealt with over the period covered by this Report and continue into the following period.

Under the Act, the Tribunal may regulate the conduct of its proceedings as it thinks fit. However, given its obligations to determine the salaries and allowances paid to ADF members, subject only to requests from the Minister, the Secretary or the Chief of the Defence Force to reconsider a determination, the Tribunal continues to conduct its proceedings in public, by way of hearings at which the parties are able to argue their case and to lead and test evidence, and to publish reasons for decision in each case. Transparent process and independent judgement are, in the Tribunal's view, necessary conditions for confidence by ADF members and stakeholders in the integrity of determinations.

To that end, the Tribunal has signalled a more active role in having matters brought forward for consideration. While much of the work of the Tribunal deals with matters initiated by the parties, the Tribunal's work programme now also includes items initiated by the Tribunal, such as a review of Flying Allowance which is relevant to the determination of the Remuneration Reform Project (RRP).

Consideration of such matters is aided by inspections, allowing the parties to address service or workplace specific needs.

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 welcomed by ADF members. The visit program during the period of this report has not been as extensive as in past years. This has primarily been due to the large number and complexity of the matters considered by the Tribunal. The Tribunal intends to increase the number of visits to ships, establishments and units in the next reporting period. The Chief of the Defence Force, General P J Cosgrove, AC, MC, has affirmed his strong support of the continuation of the Tribunal visits. All visits and inspections conducted by the Tribunal are detailed in Parts 6 and 7 of this report.

The Tribunal in all its work has regard to the special nature of ADF employment and the need to ensure that ADF members are treated fairly and equitably. The independent judgement which the Tribunal brings to the determination of matters coming before it is an important safeguard both for the ADF and its members.

The Tribunal continues to be impressed by the hard work and dedication of members of the ADF, in particular at a time of unprecedented operational activity.

Over the 2003/2004 financial year the Tribunal has considered matters relating to Arduous Conditions Allowance, the Specialist Salary Structure for Medical Officers, the Combat Clerk and Storeman Categories Trade Restructure, Specialist Operations Allowance, Seagoing

Allowance, Language Proficiency Allowance, Submarine Escape Training Facility Allowance, Deep Diving Allowance, the Army Catering Corps Trade Restructure, Experimental Diving Allowance, Special Action Forces Allowance, the Navy Hydrographer Surveying Category Restructure, the Specialist Salary Structure for Legal Officers, Paratrooper Allowance, Adventurous Training Instructor Allowance, Redundant Navy Employment Categories, Salary of Head of Capability Development and Assessment Group, the Specialist Salary Structure for Dental Officers, the ADF Workplace Remuneration Arrangement: 2004 – 2006, the ADF Star Ranks Remuneration Arrangement: 2004 – 2006, the Salary of Senior Officers – Reserve Forces, Diving Allowance, the Specialist Salary Structure for Legal Officers and the RAN Electronic Warfare Technician Category.

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 Decisions and Reasons for Decisions 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.

ADF Remuneration Reform Project (RRP)

The RRP commenced in early 2002 with the purpose of introducing a new flexible pay structure for ADF officers. The RRP affects all ADF officers excepting ADF specialist officers who are remunerated according to specialist officer career and salary structures set by the Tribunal and officers of the rank of three star and above whose remuneration is determined by the Commonwealth Remuneration Tribunal. Accordingly, the RRP potentially impacts upon approximately 97% of the ADF's officer population.

The introduction of a revised remuneration structure has been the subject of developmental work by the ADF for approximately ten years and the Tribunal has been informed as to the proposed models for restructure via a series of informal presentation by the ADF. The most recent of these presentations took place on 17 March 2004.

The ADF informed the Tribunal that it has taken a fresh approach to the RRP, insofar as it:

- assumed that the Officers Common Scale, as the extant officers pay structure, is the foundation on which any flexible model can be built;
- took the approach that the RRP is a pay reform process, not a process designed to achieve across the board pay rises;
- looked to use existing industrial benchmarks as the basis for pay grades, rather than re-benchmark all officers simultaneously;
- sought to make Qualification & Skill elements of existing environmental allowances superannuable early in the reform process;
- provided the Defence Senior Leadership Group with a highly structured, modular approach to minimise risk and cost; and

-
- progressed cases for Chaplains, Doctors and Dentists under a separate Specialist Officers Salary Structure.

Development of the RRP has been broken into three main phases:

Phase 1 of the RRP was to identify the specific quanta of each element of Disability, Attraction & Retention and Qualification & Skills in each of the major environmental allowances. The Tribunal suggested that this matter be advanced by means of a test case and so in February 2003 a case based on Submarine Service Allowance and Seagoing Allowance was presented. Upon consideration of the test case, the Tribunal expressed difficulties with the disaggregation of an Attraction & Retention element, but strongly supported the aims of the RRP, encouraging further development.

Phase 2 of the RRP involves the development of mechanisms to have the Qualification & Skill elements of existing environmental allowances recognised for the purposes of calculating superannuation benefits. In addition, this Phase encompasses seeking an amendment to the Defence Force Retirement and Death Benefits Regulations and the Military Superannuation and Benefits Scheme rules. These amendments were gazetted on 1 July 2004 and are expected to take effect in August 2004.

Phase 3 of the RRP involves the development of a flexible pay structure for officers, and to make concomitant adjustment to the current other ranks pay structure to make it more flexible and contemporary. A hearing date for Phase 3 has been set for late August 2004.

5. MATTERS CONSIDERED

A. Matter 9 of 2003 – Arduous Conditions Allowance

In July 2003, the Tribunal conducted a formal review of Arduous Conditions Allowance. This allowance is paid on an ‘on occurrence’ basis to compensate ADF members for particular disabilities incurred in the performance of their duties. The allowance is payable to members who work in confined spaces, in exceptionally hot conditions or with hazardous substances.

The ADF submitted that the existing structure and quanta of the allowance were current and, therefore, proposed no change. The ADF submitted that there had been no change in the work value or work environment to warrant any additional increase to the rates and that the quantum of the allowance was comparable to those payable generally in industry.

The Commonwealth and the Armed Forces Federation of Australia supported the ADF proposal.

The Tribunal decided that, at this time, there was no warrant for change to the quanta or structure of the allowance.

B. Matter 10 of 2003 - Specialist Salary Structure for Medical Officers

In July 2003, the ADF sought the introduction of a specialist career and salary structure for ADF Medical Officers. This was the fourth specialist structure that the ADF had asked the Tribunal to approve, the first being the Legal Officer structure introduced in February 2000, the second for Chaplains in February 2003 and the third for Dental Officers in May 2003.

The ADF submitted that the existing rank-based structure for Medical Officers did not acknowledge competency development and limited career and salary progression to the attainment of rank. Additionally, the ADF submitted that the lack of post graduate training was at odds with developments in civilian medical training and was a significant disincentive to retention.

The proposed structure put forward by the ADF moved from a rank-based system to one founded on competency levels with a rank overlay, consistent with other specialist structures. The new structure was based on undergraduate qualifications followed by intern and residency, leading to medical registration and then progression through four levels of competency for Permanent Medical Officers and finally, a fifth competency for Reserve Procedural Specialists.

The Commonwealth and the Armed Forces Federation of Australia supported the ADF proposal.

The Tribunal approved the structure as sought by the ADF noting that it recognised the significant increase in work value of Medical Officers since the last effective review of the category in 1990, including the expansion of their roles and responsibilities.

The Tribunal considered that the following factors justified the proposed structure:

- evidence of significant changes in the nature of the work, skill and responsibility required of the category since 1990;
- incorporation of a competency based structure with a rank overlay;
- new rates that have been appropriately set based on benchmarking against the remuneration packages of like categories and competencies in civilian employment;
- provision for well defined career progression;
- recognition of the competencies of clinical specialists within the Reserve; and
- enhancement of the ability of the ADF to attract and retain dedicated and experienced Medical Officers.

C. Matter 11 of 2003 - Combat Clerk and Storeman Categories Trade Restructure
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In November 2003, the ADF sought a restructure and revised pay groups for the Royal Australian Infantry Combat Clerk and Storeman employment categories.

An infantryman is a skilled soldier who fights the enemy at close quarters in all phases of warfare using a variety of weapons. All infantrymen are trained as riflemen and are initially employed in a rifle section before transferring to one of the specialist streams; mainstream rifleman, specialist rifleman (such as sniper or mortarman), clerks, storeman or bandsman.

The Tribunal undertook an inspection of the work of the Combat Storeman and Clerk categories at 1 Brigade, Robertson Barracks, Darwin on 10 and 11 November 2003. During the inspection the Tribunal was briefed on the roles and responsibilities of both categories.

The ADF sought to replace the existing structure, which identifies two skill grades at Pay Groups 2 and 3, with a three tiered structure at Pay Groups 2, 3 and 4. The ADF also sought to rename the categories Infantry Operations Clerk and Infantry Resource Storeman to reflect more closely the changed roles and responsibilities of clerks and storemen. It submitted that the demands placed on members of both categories have increased significantly since the Committee of Reference Review in 1979 and were consistent with those that necessitated restructuring of both the Royal Australian Infantry and Royal Australian Army Ordnance Corps trades in the late 1990s.

The Commonwealth supported the structure and pay groups proposed by the ADF on the basis that there had been an expansion in training, responsibilities, duties performed and the skill sets required. The Commonwealth did, however, seek a reduction in the transitional arrangements proposed by the ADF.

The Armed Forces Federation of Australia supported the structure and pay groups proposed by the ADF.

Having regard to the evidence and submissions, the Tribunal approved the ADF proposal on the grounds of the increased level of skills and the requirement for acquisition and use of both trade skills and core infantry skills. In regard to the transitional arrangements put forward by the Commonwealth, the Tribunal did not agree that differential treatment of the two groups of members was warranted in this case, as to do so would raise issues of equity.

D. Matter 12 of 2003 – Specialist Operations Allowance

In October 2003, the ADF reported to the Tribunal on the relevancy of aspects of Specialist Operations Allowance. The report back was sought by the Tribunal following an earlier review of the allowance in May 2002 which incorporated pre-existing and new elements into a single structure.

Specialist Operations Allowance is paid in recognition of the unique demands placed on Special Forces members that cannot be adequately reflected in the salary structure.

The ADF submitted that there were three broad areas of the allowance that required attention:

- Variation of delegations. Changes in the command structure through the maturation of the special operations organisation necessitated varying some delegations.
- Refinement of definitions. Some definitions included in the 2002 determination were more restrictive than originally anticipated.
- Capability development. Operational experience over the past year had resulted in capability development at a rate not previously envisaged, with concomitant impact on qualification and skill and disability levels.

The Tribunal acknowledged the report and agreed to some minor administrative changes sought by the ADF.

E. Matter 13 of 2003 – Seagoing Allowance

In July 2003, the ADF sought the introduction of a new element within Seagoing Allowance for ADF members directly engaged in the boarding, holding or steaming of foreign vessels being investigated or apprehended during illegal fishing, customs or immigration activities within Australian Territorial waters or the Australian Exclusive Economic Zone.

The Tribunal undertook an inspection on board HMAS LAUNCESTON in Darwin on 10 June 2003.

The ADF submitted that the introduction of a new element of Seagoing Allowance would acknowledge and compensate members engaged in boarding operations for disabilities experienced by ADF personnel not currently comprehended by the ADF salary and allowance structure. The disabilities identified included:

- the requirement to work in confined spaces;
- exposure to extremely hot or cold temperatures for prolonged periods of time;
- exposure to potentially harmful substances including dangerous chemicals, diseases and unhygienic conditions;
- exposure to physical dangers and risk of harm by means including unknown sharp objects and booby-traps; and
- the requirement to work with, and around, the crews and personnel on the foreign vessel who are at least unpredictable and potentially hostile to the presence of ADF personnel.

The Commonwealth supported the introduction of the new element of Seagoing Allowance and the daily rate proposed by the ADF. While the Armed Forces Federation of Australia favoured an on-occurrence rate for the allowance and a higher rate for the boarding of Suspected Illegal Entry Vessels (SIEVs), it supported the ADF proposal at this time.

Having considered the submissions and evidence, the Tribunal was satisfied that the disabilities encountered by members of the ADF involved in boarding Foreign Fishing Vessels and SIEVs should be compensated by the payment of an allowance under the auspices of Seagoing Allowance. A rate of \$40 was determined for members directly involved in the boarding, holding or steaming of foreign vessels on a per day of occurrence basis.

F. Matter 14 of 2003 – Language Proficiency Allowance
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In September 2003, the ADF sought an amendment to Language Proficiency Allowance to provide for payment in circumstances where members qualify at the lower level of language proficiency and where they possess skills in a language other than those specified in the Determination.

The ADF submitted that the allowance, as drafted, precluded some members who had completed language courses and had achieved proficiency at the lower standard. The ADF also sought to clarify the application of the allowance to languages other than those specified (such as Pidgin or Tetum).

The Commonwealth and Armed Forces Federation of Australia supported the proposed amendment.

The Tribunal was satisfied that the changes sought by the ADF were justified and approved the changes.

G. Matter 15 of 2003 – Submarine Escape Training Facility Allowance
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In October 2003, the Tribunal conducted a review of Submarine Escape Training Facility Allowance. This allowance is paid to instructors in recognition of the additional skills, stress and responsibility involved in their work, and to members undertaking courses in recognition of the disabilities associated with submarine escape training.

The ADF submitted that, since the content and length of training had not changed significantly since the allowance was last formally reviewed in 1995, and that as no new equipment had been introduced since that time, the quanta and structure of the allowance was current.

The Tribunal decided that, at this time, there was no warrant for any change to the allowance.

H. Matter 16 of 2003 – Deep Diving Allowance

In October 2003, the Tribunal conducted a review of Deep Diving Allowance. This allowance, which is included as an additional disability under Specialist Operations Allowance, is paid to Navy Clearance Divers for dives in excess of 54 metres and for recompression/ decompression treatment in a compression chamber.

The ADF submitted that no new developments have taken place since the allowance was last reviewed in 1999 that would necessitate an increase in relevant disabilities, or provide a basis for change in the existing structure or quanta of the allowance.

The Tribunal decided that, at this time, there was no warrant for any change to the allowance.

I. Matter 17 of 2003 – Army Catering Corps Trade Restructure

In September 2003, the ADF sought a category restructure and new Pay Groups for the Australian Army Catering Corps (AACC).

The AACC consists of approximately 550 Cooks and Stewards employed in postings across Australia. The role of the AACC is to prepare, present and serve meals at fixed installations and on deployment and provide technical advice to Commanders on all catering matters. The AACC is responsible for ordering, receiving, storing, preparing and serving rations.

The ADF sought to introduce a revised career structure for the Cooks and Steward categories by providing tiered structures linking increased skill levels and competency attainment to progressive remuneration levels. The ADF submitted that the proposal contained elements of both structural efficiency and work value change and provided a revised career structure capable of satisfying Army's ongoing catering requirements.

It was submitted that there had been a number of significant changes influencing the current catering levels. These included the introduction of tri-Service training, the outsourcing of certain training elements and the alignment of military catering skills with those of the broader civilian workforce. Greater emphasis had been placed on hygiene, nutrition, food science and dietary programs.

The introduction of mobile field kitchens powered by various forms of fuel and operated by complex equipment had led to a need for greater training. Furthermore, the challenging environmental conditions associated with mobile field kitchens had placed much greater demands on the skill and general abilities of Army Cooks and Stewards.

The Commonwealth and the Armed Forces Federation of Australia supported the ADF proposal.

On the basis of the submissions and evidence, the Tribunal approved the new structure and Pay Groups as sought by the ADF.

The Tribunal considered the factors which justified the proposed structure included:

- evidence of changes in the nature, skill and responsibility required of the category;
- the tiered structure provided for well defined career progression;
- the changed operational environment; and
- the addition of new skills with the introduction of new equipment.

The Tribunal was also satisfied that the proposed structure was consistent with that for the Navy Supply Cook and Steward Categories approved by the Tribunal in August 2002.

J. Matter 18 of 2003 – Experimental Diving Allowance

In October 2003, the Tribunal conducted a review of Experimental Diving Allowance. This allowance is paid to Navy Clearance Divers who perform experimental dives.

The ADF submitted that the structure and quanta of the allowance was current. The ADF proposed, however, that the provisions of Experimental Diving Allowance be incorporated within the Specialist Operations Allowance. This is consistent with the treatment of Deep Diving Allowance, the provisions of which were incorporated into Specialist Operations Allowance in 2002. The ADF submitted that Experimental Diving rates have a historical nexus with the rates of Deep Diving Allowance and can only be performed by Clearance Divers.

The Tribunal decided to include Experimental Diving within Specialist Operations Allowance. No change was made to the structure or quantum.

K. Matter 19 of 2003 – Special Action Forces Allowance – Amendment

As a consequence of its inclusion into the Specialist Operations Allowance Determination, references to Experimental Diving Allowance were removed from the Special Action Forces Allowance Determination.

L. Matter 20 of 2003 – Navy Hydrographic Surveying Category Restructure
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In December 2003, the ADF sought a new structure and new Pay Groups for sailors in the Hydrographic Surveying category.

Members in this category are responsible for the provision of hydrographic, meteorological and oceanographic information used to formulate an understanding of the battle environment and necessary for all stages of operational planning and execution. The category also has a civilian role in that its members provide information on Australia's maritime areas to permit safer and more efficient navigation, as well as promoting sustainable development of the maritime environment.

The Tribunal had the benefit of an inspection of the Hydrographic Surveying capability at HMAS CAIRNS on 12 October 2003. The Tribunal toured the Leeuwin Class Hydrographic Survey Ship HMAS MELVILLE and witnessed a laser airborne depth sounding operation sortie in a modified Fokker F27 aircraft.

The ADF submitted that a new structure for the Hydrographic Surveying category should be introduced to reflect recent operational changes including:

- The introduction of new platform and equipment. The recently introduced Leeuwin class vessels have significantly increased computing capabilities, allowing more data to be captured, which must be analysed and processed.
- The expansion of roles and responsibilities. Sailors within the hydrographic category are continually learning new skills and becoming more proficient in both core and non core tasks. Additionally, the practice of minimum manning on ships combined with the new technologies has brought with it greater responsibility for more junior personnel.
- The requirement for increased accuracy in survey reports. With more than 90% of Australia's trade imports and exports being transported by sea, it is essential that shipping lanes are accurately surveyed. This has been especially important in the past ten years with the trend towards building larger ships with increased drafts operating with minimum under keel clearances.
- The changes in content and quantity of training. As a result of the expansion of the hydrographic capability, sailors within the category have seen a significant increase in the complexity and quantity of their training.

The Commonwealth and the Armed Forces Federation of Australia supported the ADF proposal.

The Tribunal approved the new structure and associated Pay Groups as sought by the ADF, noting that the nature and role of the category had changed substantially since its structure was last reviewed in 1993.

M. Matter 21 of 2003 – Specialist Salary Structure for Legal Officers
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In December 2003, the ADF submitted to the Tribunal in conference that there were inadequate pay points within the Specialist Salary and Career Structure for ADF Legal Officers to remunerate appropriately members who are either required to act in positions for which they do not hold the requisite competency level and/or rank, or promoted in rank but do not meet the competency level requirement.

The Legal Officers structure was introduced in March 2000 and was the first specialist structure to come before the Tribunal.

The ADF also sought transitional arrangements for a small number of legal officers who were currently being paid above their competency level while acting in higher ranks.

The Commonwealth supported the ADF proposal.

The Tribunal was satisfied that the additional salary points were appropriate and were consistent with the other specialist structures and, therefore, approved the rates as sought. The Tribunal did not, however, support the transitional arrangements proposed by the ADF, on the basis that it is not appropriate for members who are remunerated within a specialist structure to be paid at a rate beyond their actual competency level.

N. Matter 22 of 2003 – Paratrooper Allowance

In November 2003, the ADF sought to amend the provisions of Paratrooper Allowance to clarify eligibility for the payment of sunset rates.

The sunset rates were introduced by the Tribunal in 1992 to provide for a continuing payment to instructors to ensure they maintained their skills and remained qualified and available for future Parachute Jump Instructor postings.

The ADF submitted that the wording in the Paratrooper Allowance Determination was unclear as to whether members, who were no longer employed in a Paratrooper position, were required to perform at least one jump every six months to remain eligible for the sunset rates. According to the ADF, such an interpretation would be anomalous with other allowances and would mean the sunset rate had little practical utility.

The Commonwealth supported the amendments to the Paratrooper Allowance Determination, as proposed by the ADF.

The Tribunal agreed that it was never intended for the sunset provisions to be dependent upon members performing a jump at least every six months and, therefore, amended the Determination to clarify the matter.

O. Matter 23 of 2003 – Adventurous Training Instructors Allowance
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In November 2003, the ADF sought a minor amendment to the Adventurous Training Allowance Determination to reflect the change in name of the Army Adventurous Training Centre to the Adventurous Training Wing. The Tribunal agreed to the change.

P. Matter 24 of 2003 – Redundant Navy Employment Categories
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In December 2003, the ADF sought to have a number of redundant Navy Employment Categories removed from the Salaries Determination. There were no salary implications. The changes were approved by the Tribunal.

Q. Matter 25 of 2003 – Salary of Head Capability and Assessment Group
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In December 2003, the ADF sought the establishment of an annual salary rate for a new Lieutenant General (equivalent) appointment as Head, Capability Development and Assessment Group.

An annual rate of \$197,560 was determined by the Tribunal.

R. Matter 26 of 2003 – Specialist Salary Structure for Dental Officers

In December 2003, the ADF sought the establishment of a pay point for ADF Dental Officers at the Brigadier (or equivalent) rank.

When the Specialist Salary Structure for Dental Officers was established in May 2003, there were no serving Dental officers at that rank. However, the Air Force had since identified a Reserve Dental Officer for promotion to assume the duties as Air Force Assistant Surgeon General.

The ADF proposed amounts of \$133,541 (Competency Level 3) and \$137,475 (Competency Level 4). These were supported by the Commonwealth.

The Tribunal agreed that the proposed amounts were appropriate and determined accordingly.

S. Matter 1 of 2004 – ADF Workplace Remuneration Arrangement: 2004 – 2006
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In March 2004, the Tribunal approved an application by the ADF and the Commonwealth for the introduction of the ADF Workplace Remuneration Arrangement: 2004 – 2006. The Arrangement applies to the ranks of Colonel (and equivalent) and below.

The ADF and the Commonwealth developed and agreed a package which “recognises the continuing and significant program of workplace reform within the ADF under the Defence White Paper and related initiatives” and “acknowledges the commitment of ADF members to ensuring the effective implementation of these reforms.”

The Arrangement is an agreement between the ADF and the Commonwealth. The Tribunal was asked to give effect to the Arrangement pursuant to section 58KD of the *Defence Act 1903* 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.

The proposed Arrangement is for a thirty month duration, commencing on 6 May 2004 and concluding on 30 November 2006. The adjustments to salary and pay related allowances were:

- 2.5% with effect from 6 May 2004;
- 4.0% with effect from 4 November 2004;
- 2.0% with effect from 2 June 2005; and
- 1.5% with effect from 9 March 2006.

The Armed Forces Federation of Australia, the Returned and Service League of Australia and the Regular Defence Force Welfare Association supported the proposal in regard to quanta and duration. Some concerns were raised, however, regarding the provision of more data to the Tribunal and the level of participation by affected ADF members in the consultation and assessment stages of the Arrangement.

The Tribunal noted that the salary increases sought by the ADF and the Commonwealth were consistent with those for Defence civilian employees under the Defence Employees Certified Agreement: 2004 – 2006.

The Tribunal issued a Determination giving effect to the salary increases and adjustments to pay related allowances.

T. Matter 2 of 2004 – ADF Star Ranks Remuneration Arrangement: 2004 - 2006

In March 2004, the Tribunal also approved an application by the ADF and the Commonwealth for introduction of the ADF Star Ranks Remuneration Arrangement: 2004 – 2006. The Arrangement applies to 127 Officers in the ranks of Brigadier (and equivalent) and Major General (and equivalent).

The Arrangement has a thirty month duration, commencing on 6 May 2004 and concluding on 30 November 2006. The salary and pay related allowance adjustments provided the same outcome as for ADF members covered by the Workplace Remuneration Arrangement: 2004 – 2006. The increases sought were:

- 2.5% with effect from 6 May 2004;

-
- 4.0% with effect from 4 November 2004;
 - 2.0% with effect from 2 June 2005; and
 - 1.5% with effect from 9 March 2006.

It was also proposed that an amount of \$400 be rolled into salary in lieu of reimbursement of the home based computer Internet Service Provider costs.

The Returned and Services League of Australia, the Regular Defence Force Welfare Association and the Armed Forces Federation of Australia supported the Arrangement.

The Tribunal issued a Determination giving effect to the salary increases and adjustments to pay related allowances.

U. Matter 3 of 2004 – Salary of Senior Officers – Reserve Forces

In April 2004, the ADF sought an adjustment to the daily rate of pay for Reserve Force officers at the rank of General (or equivalent). This followed the Remuneration Tribunal's decision to increase the remuneration for the Chief of the Defence Force by 3.9%.

Historically, Reserve Force Members have been remunerated at 85% of their permanent force counterparts.

The Tribunal agreed to maintain this nexus and determined an increased daily rate of \$579.89.

V. Matter 4 of 2004 – Diving Allowance

In May 2003, the ADF sought to re-define diving duties to include a reference to diving in a recompression chamber and to pay the allowance to medical attendants who provide therapeutic treatment to members in a recompression chamber.

An inspection of the Underwater Medicine Unit at HMAS PENGUIN was scheduled for July 2004, with a formal hearing of the matter scheduled for August.

W. Matter 5 of 2004 – Specialist Salary Structure for Legal Officers Competency Review

In June 2004, the ADF sought a review of the Legal Officers Specialist Career and Salary Structure. The ADF sought to remove time based requirements, to de-link Legal Level 5 from promotion requirements and to recognise the qualifications of a small number of Reserve Legal Officers.

The Legal Officers' category was the first specialist officer career structure considered by the Tribunal and took effect from 16 March 2000. Members of the category are responsible for the provision of legal support throughout the ADF at both strategic and operational levels to commanders, base managers and ADF personnel.

The ADF submitted that the Legal Officers structure should be amended by:

- Replacing time based requirements for advancement to Legal Levels 3, 4 and 5 by competency achievement, assessed in accordance with a Competency Log Book. Under the current system of advancement, length of service as a Legal Officer went directly to advancement through the competency levels, notwithstanding the professional achievements and development of the Legal Officer throughout that period. The ADF proposed to improve the assessment of Legal Officers by requiring the performance of specific competencies prior to advancement, as opposed to automatic progression on expiration of a given period of time.
- Allowing officers at the Lieutenant Colonel (or equivalent) rank to attain Legal Level 5. The ADF submitted there were a number of circumstances where officers at that rank required the Legal Level 5 competency standard due to the complexity of their work. It was submitted that de-linking the requirement for rank in this regard is consistent with the frameworks for the other specialist structures.
- Recognising Reserve Legal Officers with specific qualifications. The ADF submitted that the specialised experience of certain Legal Officers, such as Judges, Queens Counsel, Senior Counsel and Professors, should be able to be taken into account when considering recruitment at Legal Level 4. Under the existing arrangements, members of the Legal Officer Reserve were required to meet the same competency standards as members of the Permanent Force.

The Commonwealth, the Armed Forces Federation of Australia, the Returned and Services League of Australia and the Regular Defence Force Welfare Association all supported the proposed amendments.

Having regard to the evidence and submissions, the Tribunal decided to approve the new Structure as sought by the ADF. The Tribunal noted that the new structure was more consistent with other specialist structures that have been approved by the Tribunal.

X. Matter 6 of 2004 – Navy Electronic Warfare Technicians Category

In May 2004, the ADF sought an extension to the non-reduction provisions that were granted to Navy Electronic Warfare Technicians when their trade was restructured in 2001. At that time, a non-reduction provision was included to allow members enough time to attain qualification under the new structure (without certain qualifications, they would not be eligible for remuneration at their current pay point and would have to revert to a lower salary).

The ADF identified a small number of members who, for reasons beyond their control, had been unable to complete the required training courses. The ADF submitted that a one year extension to the non-reduction period would give sufficient time to create new courses and for affected members to complete them.

The Tribunal approved the extension, but directed the ADF to provide a progress report to the Tribunal by November 2004.

6. INSPECTIONS

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

These inspections are generally made in response to a request by the parties in order to demonstrate the work performed by ADF members and/ or the conditions under which work is done.

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

As part of the July 2003 hearing of a new Boarding Party element of Seagoing Allowance, the Tribunal conducted an inspection of the work of members of boarding parties at Darwin Naval Base on 10 June 2003. The Tribunal was briefed on boarding procedures, equipment used in boardings, types of boardings and conditions under which boardings are conducted.

The Tribunal then boarded the Patrol Boat HMAS LAUNCESTON to witness a demonstration of a boarding operation on a previously captured Type III Foreign Fishing Vessel (FFV) manned by Darwin Naval Base personnel acting in the role of the FFV's crew. The Tribunal boarded the ship's Rigid Hull Inflatable Boat and was embarked on the FFV to observe more closely the processes and conditions under which such activities are conducted. A demonstration of a towing/steaming operation was also provided.

On 10 and 11 August 2003, the Tribunal reviewed 5/7 RAR at Robertson Barracks, Darwin, as part of the Infantry Operations Clerk and Infantry Resource Storeman trade restructure. On the first day of the inspection the Tribunal was briefed on the history of the Battalion and was provided with a strategic overview of the Infantry Operations Clerk and Infantry Resource Storeman trades. It then witnessed a demonstration of an Infantry Section followed by presentations by individual members on their administrative and logistical roles and responsibilities.

The second day of the inspection covered the employment of the trades in their operational environment. The Tribunal saw three separate simulated Command Post elements and demonstrations of physical training excises.

As part of the Navy Hydrographic Surveying Category restructure, the Tribunal had the benefit of an inspection of the hydrographic surveying capability at HMAS CAIRNS on 12 October 2003. The Tribunal toured the Leeuwin class Hydrographic Survey Ship, HMAS MELVILLE, and was briefed on the roles and responsibilities of each skill grade in conducting single and multi beam operations, as well as using towed array side scan sonar.

The Tribunal was also given a practical demonstration of the shallow water surveying capability of Survey Motor Launches using single beam operations.

Finally, the Tribunal was given an opportunity to witness the unique operating environment of laser airborne depth sounding through a sortie in a modified Fokker F27 aircraft.

7. VISITS

As part of its statutory obligation to inform itself on matters, the Tribunal undertakes visits to ADF units, establishments and ships. These visits comprise open forums with groups of ADF personnel at all rank levels and with spouses. Usually the meetings are informal and include a short presentation on the role and function of the Tribunal, followed by a discussion period in which ADF personnel and spouses have the opportunity to raise issues or ask questions.

At the conclusion of the visit, the President of the Tribunal writes to the Chief of the Defence Force outlining the nature of the issues raised during these forums. Matters raised by ADF members within the jurisdiction of the Tribunal are raised with the Defence Personnel Executive in conference.

The Tribunal also carries out familiarisation visits to ADF establishments to broaden its knowledge of the operations of the ADF. At the invitation of the Land Commander the Tribunal visited Exercise Crocodile 03 at the Shoalwater Bay Training Area on 14 and 15 September 2003. The aim of the exercise was to test the ADF's preparedness for tasks relevant to the defence of Australia.

On 29 April 2004, the Tribunal visited Headquarters Joint Operations Command, Maritime Headquarters and Land Headquarters where briefings on the command concept and mission, command arrangements, organisation and principal tasks were conducted.

The Tribunal also took this opportunity to tour HMAS SUCCESS and inspect the training facilities at HMAS WATSON.

On 30 April 2004, the Tribunal visited RAAF Wagga and was briefed on the clerical, technical and management training that is conducted there. The Tribunal also had the opportunity to talk with a number of training members. Also on 30 April 2004, the Tribunal visited the Army Recruit Training Centre at Kapooka. The Tribunal was briefed on the role and mission of the Centre and saw recruits at various stages of training.

During the period 3 – 7 May 2004 the Tribunal visited ADF establishments in Darwin which included: Headquarters Northern Command, Darwin Naval Base, 1st Brigade units, RAAF Darwin, RAAF Tindal and NORFORCE.

8. FINANCIAL MATTERS

The Tribunal's financial requirements are met through the Department of Employment and Workplace Relations, sub-program 2.2.6 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 supports participative practices involving staff in decision-making and process improvement through the sharing of information, and clarity of accountability 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 Government Departments, including the Department of Defence and the Department of Employment and Workplace Relations, 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, operation 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 Tribunal 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.

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- (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.

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- (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.
- (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.

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- (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.
- (5) 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.

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- (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 Tribunal 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 Tribunal 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.

Division 3 - The Defence Force Advocate

Interpretation

58R.

In this Division, unless the contrary intention appears:

"Advocate" means the Defence Force Advocate appointed under section 58S;
"Remuneration Tribunal" means the Remuneration Tribunal established by sub-section 4(1) of the *Remuneration Tribunal Act 1973*; "Tribunal" means the Defence Force Remuneration Tribunal established by section 58G;

Defence Force Advocate

58S.

- (1) There shall be a Defence Force Advocate, who shall be appointed by the Minister on a part-time basis.
- (2) The person appointed as the Advocate shall be a person who:
 - (a) is experienced in industrial relations matters; and
 - (b) has a knowledge of the nature of service in the Defence Force.
- (3) In making an appointment under sub-section (1), the Minister shall have regard to any recommendations made by the Chief of the Defence Force.

Functions of the Advocate

58T.

The functions of the Advocate are:

- (a) To advise the chief of the Defence Force in relation to matters that have been, or may be, referred to the Tribunal by the Chief of the Defence Force pursuant to sub-section 58H (3);
- (b) to prepare submissions to be made to the Tribunal on behalf of the Defence Force concerning any matter that is being considered by the Tribunal; and
- (c) to represent the Defence Force in proceedings before the Tribunal.

Tenure and terms of office

58U.

- (1) Subject to this Division, the Advocate holds office for 3 years, but is eligible for re-appointment.
- (2) A person shall not continue to hold the office of Advocate if he becomes a member of the Tribunal.

Resignation

58V.

The Advocate may resign his office by writing signed by him and delivered to the Minister.

Termination of appointment

58W.

The Minister may terminate the appointment of the Advocate by reason of misbehaviour or physical or mental incapacity.

Acting Defence Force Advocate

58X.

- (1) The Minister may appoint a person to act as the Advocate;
 - (a) during a vacancy in the office of the Advocate; or
 - (b) during any period, or during all periods, when the Advocate is absent from duty or from Australia or is, for any other reason, 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 the Advocate, he has and may exercise all the powers, and shall perform all the functions, of the Advocate.
- (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.
- (4) The Minister may:
 - (a) determine the terms and conditions of appointment, including remuneration and allowances, of a person acting as the Advocate; and
 - (b) terminate such an appointment at any time.

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- (5) Where a person is acting as the Advocate in accordance with paragraph (1) (b) and the 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 reappointment of a person to act as the Advocate ceases to have effect if he 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.

Fees and Allowances

58Y.

- (1) The Defence Force Advocate shall be paid such fees and allowances as the Remuneration Tribunal determines.
- (2) This section has effect subject to the *Remuneration Tribunal Act 1973*.

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.

LIST OF DETERMINATIONS

Determination	Subject	Date of Effect
12 of 2003	Service Allowance	3 July 2003
13 of 2003	Seagoing Allowance and Arduous Conditions	13 July 2003
14 of 2003	Specialist Officer Career and Salary Structure for Medical Officers	31 July 2003 & 12 August 2003
15 of 2003	Australian Regular Army Catering Corps Categories	14 August 2003
16 of 2003	Language Proficiency Allowance	15 September 2003
17 of 2003	Specialist Officer Career and Salary Structure for Medical Officers	31 July 2003
18 of 2003	Hydrographic Surveying Categories	18 December 2003
19 of 2003	Experimental Diving Allowance	13 October 2003
20 of 2003	Special Action Forces Allowance	13 October 2003
21 of 2003	Specialist Operations Allowance	13 October 2003
22 of 2003	Army Combat Storemen and Clerks	2 & 30 October 2003
23 of 2003	Specialist Officer Career and Salary Structure for Chaplains	17 November 2003
24 of 2003	Specialist Officer Career and Salary Structure for Dental Officers	31 October 2003
25 of 2003	Paratrooper Allowance	1 February 2001
26 of 2003	Adventurous Training Instructor Allowance	17 November 2003
27 of 2003	Specialist Officer Career and Salary Structure for Medical Officers	10 December 2003
28 of 2003	Redundant Navy Employment Categories	10 December 2003 & 10 March 2004

Determination	Subject	Date of Effect
29 of 2003	Salary of Head Capability Development and Assessment Group	10 December 2003
30 of 2003	Combat Clerk and Storeman Categories	18 December 2003
31 of 2003	Specialist Officer Career and Salary Structure for Dental Officers	16 December 2003
32 of 2003	Specialist Officer Career and Salary Structure for Legal Officers	1 January 2004
33 of 2003	Salary of Senior Officers – Reserve Forces	17 December 2003
1 of 2004	Specialist Officer Career and Salary Structure for Medical Officers	27 February 2004
2 of 2004	ADF Workplace Remuneration Arrangement: 2004 – 2006	6 May 2004
3 of 2004	ADF Star Ranks’ Remuneration Arrangement: 2004 – 2006	6 May 2004
4 of 2004	Salary of Senior Officers – Reserve Forces	2 May 2004
5 of 2004	Navy Electronic Warfare Categories	24 May 2004
6 of 2004	ADF Workplace Remuneration Arrangement: 2004 – 2006	6 May 2004

<i>SECRETARIAT</i>

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The Tribunal records its sincere appreciation to the officers of the Secretariat for the commitment and professionalism shown in their work for the Tribunal.

The challenges facing a part-time Tribunal with a busy workload could not be dealt with without the contribution of a hard working and able Secretariat.

Mr Ian Hueston, the former Secretary to the Tribunal retired in July 2003. Mr Hueston had been with the Tribunal since its inception in 1985. Mr Hueston was a font of knowledge on ADF matters and the work of the Tribunal. The Tribunal wishes to sincerely thank him for his advice and unstinting support over such a long period and we wish him well in his retirement.

COMPLIANCE INDEX

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