



Defence Force Remuneration Tribunal

DECISION

Defence Act 1903

s.58H—Functions and powers of Tribunal

AUSTRALIAN DEFENCE FORCE: ALLOWANCE MODERNISATION – TRANCHE 1

(Matter 16 of 2020)

MS I. ASBURY, PRESIDENT

MR A. MORRIS, MEMBER

CANBERRA, 12 NOVEMBER 2020

RADM J. GOLDRICK AO CSC RAN RTD, MEMBER

[1] This decision concerns a listing application¹ made by the Australian Defence Force (ADF) under s.58H of the *Defence Act 1903* (the Act) to simplify and modernise ADF remuneration to better support current and future workforce capability. In particular, the application seeks to establish the ADF Military Salary by recognising unique service conditions by the absorption of Service, Reserve, Trainee and Uniform Allowances into salary.

[2] In circumstances where the current COVID-19 pandemic limits the capacity of the Tribunal from conducting in-person hearings and with the consent of the parties, we considered this matter by video in a hearing on 5 November 2020. We had previously been briefed by the ADF on the matter on both 15 August 2019 and 18 February 2020. Mr J. Phillips SC appeared for the ADF. Mr P. Hoang appeared for the Commonwealth. Colonel K. Lloyd OAM, Director Allowance Reform, ADF Employment Offer Modernisation Project gave evidence as a witness in the hearing.

Background

[3] The ADF has a diverse workforce that exposes individuals to varying levels of hardship and danger; regularly places people in difficult situations; and limits the freedoms and agency of its members. To recognise this, the ADF compensates members through the provision of ‘disability’ allowances in relation to a range of conditions members might experience throughout their career.

[4] The current ADF remuneration package is very broad and complicated. It comprises salary and allowances and other benefits such as housing, medical and dental costs, removals and travel all provided by determinations made under both s.58H and s.58B of the Act. This Tribunal is specifically responsible under s.58H of the Act for salary and the salary related allowances which compensate for environmental factors associated with conditions under which work is performed (e.g. at sea, in the field, or flying).

[5] In October 2019 Defence established the ADF Modernisation Program to review the remuneration available to ADF members with the aim of simplifying and modernising the ADF remuneration package.

Submissions

ADF

[6] As a result of the Modernisation Review the ADF submits that the allowances which compensate for the universal elements of military service should be absorbed into general salary.

[7] Specifically the ADF seeks to:

- a. subsume Service Allowance and Uniform Allowance into Permanent (trained) Force salary rates;
- b. remove Service Allowance, Trainee Allowance and Reserve Allowance from ADF remuneration;
- c. recalculate the daily rate of Reserve salary rates;
- d. revise the discounting percentages underpinning trainee salary rates; and
- e. recalculate trainee salary rates.²

Commonwealth

[8] The Commonwealth “*supports the ADF proposal with some caveats.*”³

[9] However, while accepting the intent of Tranche 1 in simplifying the ADF Remuneration package into Military Salary, the Commonwealth does not accept the ADF’s argument that Reservists now experience an equivalent level of disability to Permanent members for the following reasons:

- a. presently when Reservists are subject to compulsory call outs they are remunerated and subject to the same conditions as Permanent members including allowances;
- b. the possibility of call out was factored into the current rate of Reserve Allowance set at 75 per cent of Service Allowance;
- c. Reservists set their own pattern of service; and
- d. Reservists have less cumulative impact of disability.

Despite this view, the Commonwealth submits it “*does not oppose removing the discount on Service Allowance for Reservists given the administrative efficiencies that will be achieved by streamlining these allowances into salary as per the intent of Tranche 1.*”⁴ Further the Commonwealth states it “*supports rolling in all allowances into salary to create the Military Salary and simplify remuneration, including for Reservists and Trainees.*”⁵

Witness Evidence

[10] Colonel (COL) Kirk Lloyd OAM, Director Allowance Reform, ADF Employment Offer Modernisation Program gave evidence by affidavit and at the hearing. He summarised the establishment of the Military Salary construct as “*an important foundation step in the modernisation of the ADF Remuneration Package*” stating “*Defence needs clear and transparent remuneration policy/conditions of service that can be easily communicated and understood by current and future ADF members. In this regard, effective remuneration policy is paramount to achieving the desired recruiting and retention objectives of the ADF.*”⁶

[11] COL Lloyd also stated that “*it’s in the interests of the ADF member and Defence for members to make their own financial decisions and as such we should deliver remuneration in a manner that enables them to do so.*”⁷

[12] COL Lloyd advised us of the change to the application of Higher Duties Allowance (HDA) included in Tranche 1. HDA is paid under s.58B of the Act to a member when they are directed to act at the next rank. Noting this allowance is outside the remit of this Tribunal, we simply record the intent of the ADF to change from paying the member at the next rank up for the period of higher duties (which does not necessarily reflect the role being performed) to paying a flat 5 per cent salary loading for every ADF member performing higher duties regardless of their rank or the role.⁸

Consideration

[13] Service, Trainees and Reserve allowances are provided to cover the baseline level of compensation paid for the disability elements inherent in Service life. In order to outline our considerations in this matter we will address each allowance in sequence as submitted.

Service Allowance.⁹ The five major disability elements for which Service Allowance is paid are;

- a. Working hours - the requirement to be on call and the liability to work long and irregular hours;
- b. Posting turbulence – the likelihood of being posted to different locations frequently and the impact on the member and their family;
- c. Discipline and control – the requirement to submit to discipline and control in personal and employment matters;
- d. Living conditions – the requirement to live and work in uncomfortable conditions for short periods of time; and
- e. Impact on home life – the requirement to be away from home frequently.

Reserve Allowance.¹⁰Compensates for the same five core disabilities of Service Allowance and is paid while undertaking Reserve (day) duties. A 25 per cent reduction of Service Allowance compensates for the absence of posting turbulence, the reduced impact of cumulative disabilities, and the nature of Reserve Service conducted over full or part days of service.

Trainee Allowance. Is paid to compensate for the exigencies of Service life while undertaking prescribed training (e.g. recruit training) and is set at 75 per cent of Service Allowance. The difference in rate accounts for the reduced expectations and demands of trainee members in comparison to trained members of the Permanent Force.

Uniform Allowance. Is paid under s.58B of the Act to maintain an approved standard and scale of uniform.

[14] Throughout our deliberations we made cross-reference to the Disability Elements Matrix (DEM). This is a decision making tool which, since 2012, has provided the Tribunal with a methodology for comparing the disability relativities across the spectrum of salary-related allowances.

[15] Additionally we had regard to the open letter from the Chief of Defence Force to all ADF members flagging his intent that “*the full package of ADF Remuneration (i.e. pay and allowances), conditions of service, housing policy and other benefits must be clear, relevant, recognise the unique nature of military service and importantly, meet your contemporary needs in today’s society.*” And that, “*compared to most in the Australian community, a higher proportion of members’ take home pay is made up of allowances versus salary.*”¹¹

[16] Our decision making was also informed by the Total Workforce System established by the ADF in 2017. We note it has provided increased ability for members to move between the Permanent Force and Reserves and ensured agility and flexibility in service; it was considered by us in Matter 13 of 2017 – *Flexible Service Determinations*.¹² Members of the Permanent Force on a Flexible Service Determination receive a pro rata payment of salary and allowances for their pattern of service, including Service Allowance. In comparison, Reserve members on ‘days’ receive a flat rate of Reserve allowance for the hours they attend for duty on each day. We agree this is inequitable.

[17] We considered the evidence in regard to the proposal to recalculate the daily rate of Reserve service to ameliorate this inequity and agree that attendance for Reserve service days results in the disabilities being more likely than not to only occur for the hours the member is undertaking duty. The ADF propose “*to cease the flat rate of Reserve Allowance, regardless of the number of hours performed on a day, and permit a pro rata payment.*”¹³

[18] We particularly note the evidence in regard to Reserve Allowance and the pay data gathered in the development of this matter. The data showed that if all Reservist paraded in the same way they did in financial year 2018/19 (considered a representative normal year) up to 15 per cent of people could be worse off.¹⁴ We agree with the proposal that, in order to address this, and 13 months after the commencement of Tranche 1, the ADF undertakes to review “*exactly what happens after the changes and, should the member be worse off, to provide a one-off transitional payment.*”¹⁵

[19] The current trainee salary schedule was established against ‘anchor points’ in the Permanent Force graded pay structures. The rates are determined in most situations by how many years of training the member has until graduation, and therefore being fully qualified. With regard to the proposal to revise the discounting percentages underpinning trainee salary rates and the recalculation of trainee salary rates, we were helped in particular by the evidence of COL Lloyd who stated “*because we’ve got the percentage anchor points with respect to the trainees already established and we’ve got the combination of an absolute value, being training allowance, when you put those two methodologies together you get an inconsistent outcome.*”¹⁶

[20] We accept that, as a result, the methodology used to recalculate trainee salary rates under the Military Salary construct have been guided by four principles:

- a. ensure trainees over a 12 month period are better off overall;
- b. discounting percentages are whole numbers and logical;
- c. there are consistent differentials in salary progression; and
- d. remuneration outcomes for trainees are as closely aligned to current rates as far as possible.

[21] We reviewed and noted, the outcomes from the workforce consultation and particularly the extensive workshops undertaken in the review. These workshops found the main themes and issues surrounding the remuneration package identified by members to include that:

- a. members do not understand the remuneration package;
- b. members cannot compare the ADF remuneration package with similar remuneration packages in the civilian sector; and
- c. financial institutions undervalue ADF salary.

Another consistent theme raised in the workshops and in Defence communiques was the misunderstanding of the ADF remuneration package by major financial institutions for lending purposes.

[22] We are also pleased to note that when developing this proposal the ADF also undertook an analysis of comparable remunerative frameworks, both within the military community and other Commonwealth Departments as part of due diligence. We note that “*the military arrangements for remuneration in the United States, Canada, New Zealand and the United Kingdom were examined to provide a general comparison for allowances.*”¹⁷

[23] We agree that the establishment of the Military Salary concept expands upon the elements of compensation currently captured in ADF salary (i.e. qualification and skills) to now include the unique nature of military service. We emphasise this does not mean that the nature of ADF service is no longer recognised, but that it will be delivered through salary rather than allowances.

[24] In regard to the recognition of the unique nature of military service we raised, during the hearing, that there remains a need to explicitly recognise the delineation between military service and ordinary employment and the way in which that is compensated for in military salary. For the purposes of the discussion we referred to this factor as the “*unlimited liability*”¹⁸ required of ADF members – more than just service discipline and control, it is the need to acculturate members to the understanding of potential fatal outcomes to their service – what the DEM calls catastrophic occupational risk. We stressed that there is clear need to ensure it is well communicated to, and understood by, members that their military salary encompasses the unlimited liability factor in the same way Service Allowance did. In reply the ADF requested the opportunity “*to provide some supporting material to that effect*”¹⁹ and consider how it will expand upon that factor in a form of easily understood communication.

Conclusion

[25] It is axiomatic that the ADF allowance construct is complex and difficult to explain when it comprises “*over 135 separate allowances and up to 18 000 combination options.*”²⁰ We strongly agree that the complexity limits the ability of the ADF to easily articulate to members the value of their remuneration package, and creates an enormous administrative burden on Defence. We agree the ADF Allowance Framework has not kept pace with the need for an agile system that remains equitable across the workforce.

[26] We commend the ADF on the research and consultation and in particular note the evidence from the workshops that “*indicate ADF members want a remuneration package that is flexible, needs based, fair, simple, and recognises the unique nature of military service. The report found that ADF members are asking for and seeking a system and package they can easily understand, access and suit their needs.*”²¹ We consider the ADF Employment Offer Modernisation Program is working to achieve this, and that Tranche 1 is consistent with that intent.

[27] In summary, we agree to the following:

a. **Step 1 - Roll in Service Allowance and Uniform Allowance into base salary rates in the Graded Other Ranks Pay Structure, Graded Officer Pay Structure and the Specialist Career Structure to create a new Military Salary for the Permanent Forces;**

- i. The annual rate of Service allowance is added to:
 1. all base salary rates for the Permanent Force in the GORPS;
 2. all base salaries for O4 ranks and below in the GOPS; and
 3. all base salary rates for O4 ranks and below in each of the specialist career structures (chaplain, legal, medical, dental and aviation)
- ii. removal of Service Allowance from the ADF Remuneration Package;
- iii. the relevant (rank based) annual rate of uniform allowance is added to:
 1. all base salary rates for the Permanent Force in the GORPS;
 2. all base salaries for O4 ranks and below in the GOPS;
 3. all base salary rates for O4 ranks and below in each of the specialist career structures (chaplain, legal, medical, dental and aviation); and
 4. all base salary rates for the Permanent Force in the Senior Officer Salary Structure for Brigadier (or equivalent) and Major General (or equivalent).

b. **Step 2 – Recalculate trainee salary rates with new discounts applied. This creates the new ‘Military Salary’ rates for trainees**

- i. the rates of salary set out in the trainee salary structure are recalculated using the new Military Salary rates established in Step 1 and their relevant anchor points; and
- ii. removal of trainee allowance from the ADF Remuneration Package.

c. Step 3 – Recalculate Reserve daily rates of salary. This creates the new ‘Military Salary’ rates for the Reserves.

- i. the rates of salary for Reserves in each of the salary structures in Step 1 are recalculated using the new Military Salary established in Step 1;
- ii. Reserve trainee daily rates will be calculated from the revised trainee Military Salary rates; and
- iii. removal of Reserve Allowance from the ADF Remuneration package.²²

[28] We agree with all of the following key policy changes:

- a. base salary across each of the salary structures (as per paragraph 27) will be increased by the value of Service Allowance ,and Service Allowance will be ceased;
- b. base salary across each of the salary structures (as per paragraph 27) will be increased by the value of uniform allowance according to rank, and uniform allowance will be ceased;
- c. Trainee Allowance and Reserve Allowance (per day) will cease;
- d. trainee salary rates will be adjusted using a revised discounting methodology;
- e. Reserve daily rates of salary across the salary structures will be recalculated; and
- f. salary rates across each of the salary structures will be identified as ‘Military Salary’.²³

[29] We note that the unlimited liability factor of service which is inherent in military remuneration is not clearly identified in the current proposals and ask the ADF to return to us in February 2021 with options to clearly communicate and explain this factor to the workforce.

[30] A determination giving effect to this decision from 13 May 2021 will be issued in early 2021.

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

¹ DMR letter DMR/OUT/2020/29 Listing Application: *ADF Allowance Modernisation – Tranche 1 – Military Salary* dated 28 September 2020.

² ADF Submission *ADF Allowance Modernisation Tranche 1* dated November 2020 (ADF 1)page 3 paragraph 1.10

³ Commonwealth Submission *ADF Allowance Modernisation – Tranche 1* dated 26 October 2020 (CWLTH 1) page 2 paragraph 3.

⁴ CWLTH 1 page 12 paragraph 58.

⁵ CWLTH 1 page 12 paragraph 59.

⁶ Affidavit of Colonel K.M Lloyd OAM dated 28 October 2020 (ADF 2) page 2 paragraph 11.

⁷ ADF 2 page 3 paragraph 12.

⁸ For members on HDA at the time of the change the current rate will be applied until they finish the prescribed HDA period.

⁹ Members at and above the rank of Lieutenant Colonel (or equivalent) do not receive Service Allowance – it has been incorporated into their salary since 1981.

¹⁰ Reserve personnel volunteer to serve either on continuous full time service (in which they are remunerated in exactly the same way as per Permanent Force members) or for days served (for which no part of the salary is taxed).

¹¹ Annex A to ADF 1 dated 4 October 2019.

¹² <https://www.dfrt.gov.au/sites/default/files/Decision-FSD.pdf>

¹³ ADF 1 pages 47 and 48 paragraphs 5.12 to 5.16.

¹⁴ Transcript 5 November 2020 page 12 lines 42 – 44.

¹⁵ Transcript page 13 lines 7 to 10.

¹⁶ Transcript page 9 line 43 to page 10 line 1.

¹⁷ ADF 1 page 44 paragraph 4.59.

¹⁸ Transcript page 19 line 17.

¹⁹ Transcript page 22 line 9.

²⁰ Annex A to ADF 1 - *Report of Discovery Workshops: Simplifying the Unique* November 2019 – February 2020 page 1 paragraph 1.2.

²¹ ADF 1 page 41 paragraph 4.48.

²² ADF 1 page 51 paragraph 5.31.

²³ ADF 1 pages 51 and 52 paragraph 5.31.