



Defence Force Remuneration Tribunal

DECISION

Defence Act 1903

s.58H—Functions and powers of Tribunal

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

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

ADF WORKPLACE REMUNERATION ARRANGEMENT 2020-2023

(Matter 12 of 2020)

MS I. ASBURY, PRESIDENT

MR A. MORRIS, MEMBER

CANBERRA, 17 SEPTEMBER 2020

RADM J. GOLDRICK AO CSC RAN RTD, MEMBER

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

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

A joint submission titled ‘2020 Workplace Remuneration Arrangement’ (WRA) seeks to have effect given to the terms of an agreement reached in accordance with s58KD of the Act.

[2] Section 58K(9) of the Act provides for:

“the Defence Force Advocate and a person representing the Commonwealth are entitled to be present, and to make submissions to the Tribunal, during any proceeding before the Tribunal.”

A hearing was held in Canberra and by video links with Brisbane and Sydney on 21 August 2020 where Mr J. Phillips SC, the Defence Force Advocate, appeared on behalf of the Australian Defence Force (ADF) and Mr P. Hoang appeared on behalf of the Commonwealth. Major General N. Fox AM CSC, Head People Capability, Defence People Group, appeared as a witness.

[3] Section 58K(10) of the Act deals with the circumstances in which a person or body may be permitted to appear before the Tribunal:

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

The Defence Force Welfare Association (DFWA) sought leave to intervene in the proceedings² and was granted permission to be heard in this matter.³

[4] It is worth remarking at this point that this matter was dealt with during the COVID-19 pandemic which has clearly had a detrimental effect on the Australian community and economy. We also note the impact of current ADF operational service and deployments caused not only by COVID 19, but the national bushfires, flood and drought that has seen the Services respond across all levels of the community since late 2019. ADF members have been ‘essential workers’ throughout these times and their contribution to the welfare of the Australian community has, and will continue to be, significant.

[5] In the context of COVID-19, on 26 March 2020 the Government requested a ‘stay’ on increases to remuneration, entitlements and allowances for all senior executive service employees of the Australian Public Service (APS). Additionally, the Government requested the Remuneration Tribunal to institute a stay on any increase to remuneration entitlements and allowances for all office holders within its jurisdiction. The Chief of the Defence Force (CDF) subsequently advised the ADF Star Ranked officers of his intention to mirror the Government’s direction for the pause on the senior executive service. The parties propose that, when the Government decides to lift the pause on remuneration increases in the senior executive service, the parties would seek to vary the Arrangement for Star Ranked officers.

[6] Additionally, on 9 April 2020 the Government decided that any salary increases for Commonwealth employees⁴ that had been due take effect during the 12 month period from 14 April 2020 would be deferred for six months from the date they would have taken effect. CDF directed that the proposed first instalment of this WRA should therefore also be deferred so as to mirror the APS salary increase deferral.

Background and provisions of the WRA

[7] The WRA is a framework that allows for annual wage adjustments for members of the ADF. There have been 13 previous arrangements considered by the Tribunal; the most recent is the WRA 2017-2020.⁵ It is proposed that this WRA will wholly replace that Arrangement.

[8] The WRA applies to all ADF members of the Permanent Force and Reserves (excluding statutory office holders).⁶ Each Arrangement historically contains a range of provisions which include ADF members' contribution to defence capability; any reforms anticipated during the operation of the Arrangement; and requirements for consultation and communication with ADF members.

[9] The salary and allowance provisions in the WRA do not stand alone. They complement the other conditions of service providing monetary and non-monetary benefits to ADF members, including those made and administered by the ADF under s58B of the Act.

[10] The WRA expressly notes that the Arrangement is not intended to limit the range of responses that might arise because of strategic circumstances or personnel issues which may significantly affect military capability. To that end it is acknowledged that further submissions may be made seeking the arrangement be varied or replaced at any time by a further s58KD agreement between the parties.

[11] It is not intended that the WRA will preclude the ADF from reviewing remuneration structures or employment categories during its operation. Nor does the arrangement preclude the ADF from seeking review of any salary and salary related allowances, or from making submissions to the Tribunal regarding the establishment of capability or retention allowances and bonuses.

The joint submission of the ADF and the Commonwealth

[12] The key features of this proposed WRA are that:

- a. it applies to all ADF members of the Permanent Forces and Reserves of Other Ranks and Officers up to and including Colonel (O6) equivalent ranks (excluding those officers paid salary under a Remuneration Tribunal determination);
- b. it provides for a three-year duration, operating from 12 November 2020 to 8 November 2023;
- c. it applies to salary and salary related allowances;⁷
- d. it provides an adjustment in the rates of salary for all Other Ranks and Officers up to and including O6 ranks and salary related allowances of 6 per cent over the life of the Arrangement via three instalments of 2 per cent payable in May 2021 (deferred from November 2020), November 2021 and November 2022.
- e. Star Ranked senior officers are not included in the general salary increases and so it provides for no adjustment (zero per cent) in the rates of salary for Star Ranked senior officers;
- f. it does not trade off, remove or offset any conditions of service or retention initiatives to fund the Arrangement;
- g. the Arrangement is based solely on the performance of the ADF and has no links to productivity offsets achieved by the Defence APS in the context of bargaining; and

- h. the Arrangement is affordable and will be funded from within Defence's existing budget.⁸

Submission of the Defence Force Welfare Association

[13] The DFWA made a written submission supporting "*the offer made by the Commonwealth and the ADF while outlining the intent to seek to intervene in any consideration of changes that may be made during the life of the Arrangement.*"⁹

[14] The DFWA provided a summary of feedback received from ADF members which outlined the following concerns:

- a. that the 2 per cent *per annum* quantum would in reality not keep up with the real cost of living increase (which is different to CPI) and indeed, had not done so in the past;
- b. given the increased tempo of operations in recent years, specifically noting the demands put on members by ADF involvement in flood relief in late 2019, bushfires in early 2020 and more recently COVID-19, that the CDF should have sought a higher increase for its members; and
- c. that, should a six month delay in the first 2 per cent increase occur, Defence should not increase any of its charges generally, and particularly in regard to rental on Defence Housing via the Group Rental Scheme, during that time.¹⁰

The DFWA expanded these matters in its submissions stating that: "*Whilst the Association understands that control of such charges are not within the mandate of the Tribunal, we wish to emphasise them as consideration of the Parties' WRA proposal without corresponding awareness of other Defence charges directly affecting ADF members would be, in our view, unacceptable. This would be particularly true should the normal timeframe of a salary increase be fettered for economic reasons whilst imposition of higher charges are not similarly fettered.*" The DFWA committed to maintaining a watching brief on the matter raised in 14c above.¹¹

Witness Evidence

[15] Major General (MAJGEN) N. Fox AM CSC, Head People Capability, Defence People Group, gave written and oral evidence in support of the application. She submitted that the "*development of the proposed 2020 ADF Workplace Remuneration Arrangement has been informed by the disruption COVID-19 has caused across all facets of the Australian community and economy.*"¹²

[16] MAJGEN Fox outlined that the WRA "*once again signals the ADF's commitment to its workforce*" and that "*such a proposition is fundamental to the ADF's goals and continued delivery of capability*" while also recognising that "*the general wage increases it provides across salary and salary related allowances is but one significant way that the ADF signals to its members that their contribution is valued over platforms, and that they are of vital importance to the overall health of the ADF.*"¹³

[17] Further, MAJGEN Fox commented on the expectation that the WRA will assist the ADF to retain its workforce and also assists with a value proposition to people who may wish to join the Defence Force stating “*it is absolutely essential that we remain competitive in the market.*”¹⁴

Consultation and engagement

[18] It is axiomatic that the requirement for ADF member engagement has been curtailed by the pandemic restrictions and that the ADF has had to amend its approach to communication with the workforce. We accept the evidence that Defence has done this through a variety of online platforms and media communications and has “*developed and launched a dedicated WRA website that’s accessible to both ADF members and their families.*”¹⁵

[19] MAJGEN Fox gave evidence that “*generally the feedback from ADF members through all channels has been supportive and indicates that members appear to be pragmatic about the proposal.*” She outlined that “*the majority have been broadly accepting, given the current financial climate and the ‘no loss of conditions’ aspect underpinning the proposal*” expanding that “*this is also true of feedback from Star Ranked senior officers who are not getting any increase under this Arrangement.*”¹⁶

[20] Feedback collated has been summarised by the ADF as:

- a. Units indicated that most members were supportive of the proposition proposed by ADF, including acceptance and understanding of the six month delay for the first salary increase;
- b. several Units noted that the proposition included no loss of conditions of service to fund the Arrangement; and
- c. members were appreciative that CDF was proposing a WRA at this time, despite the current economic environment and complexities of COVID-19.

[21] Of note, a small number of members, however, noted the following concerns in their comments and feedback including the:

- a. perceived loss of six months of a pay increase, due to the delayed first salary increase;
- b. impact of the six month delay on superannuation benefits for those considering transfer from the Permanent Force in the next three years, particularly the impact on defined benefits funds where retirement benefits are linked to salary; and
- c. perception that a 2 per cent *per annum* increase is not sufficient in real terms to cover actual cost of living increases.¹⁷

Consideration

[22] Throughout our deliberations we gave consideration to the pause on Star Ranked senior officer salary increases and the deferral of the first instalment of 2 per cent by six months. We are supportive of the CDF’s consideration that it is appropriate that the ADF adhere to the Government

intent to share the financial uncertainty and instability while Australia is facing grave economic and financial hardships.

[23] We accept that while the ADF has not been able to conduct face-to-face consultation with the workforce there has been a “*mass virtual communications approach*.”¹⁸ Additionally we considered the oral evidence of MAJGEN Fox in regard to an ‘Optimising the Defence employment package’ program which she submitted is “*a program of work that we conduct every year before WRA is in train so that we can work out with our workforce what aspects of their remuneration that they value. So, that is we are making adjustments in terms of modernising activities, we know what is of most importance to the workforce.*”¹⁹

[24] We considered the evidence that the increase is likely to attract and retain personnel. We accept it is more likely than not to assist in retaining the middle-ranking cohorts to assist in “*that experience base to build from, to help train the junior people to give them experience, to bring in all these new future platforms*” and that the WRA is “*quite significant as a pathway*” to the future force requirements.²⁰

[25] We gave consideration to the submission of the DFWA and are always encouraged by their commitment to the welfare of ADF personnel during each WRA process. We comment on the evidence raised by the DFWA and confirm that housing charges “*are not within the mandate of the Tribunal.*”²¹ We accept that this has been raised as a concern by the DFWA however we stress that Group Rental Scheme adjustments remain a matter for the Defence Housing Association.

[26] In regard to the DFWA submission we also comment that the CPI has never been intended as a determinant in considering the quanta of any WRA due to its volatility. Having said that, we accept it is given regard in the development of each WRA within the fiscal circumstances of the time.

[27] We note the evidence that the parties also engaged with the National Convenor of Defence Families Australia. We accept that the Association advised that the proposition had not been raised within their fora and appears to be overshadowed by the impact of COVID-19 restrictions on ADF families.²²

[28] We considered the impact of the stay in Star Rank remuneration and sought advice from the ADF in the hearing on the divergence of pay grades between O6 officers on the highest pay grades and the related pay grades for Star Rank officers on promotion. We accept the oral advice that the gap is presently sufficient to avoid any overlap. At the same time we sought confirmation on the number of senior officers across the ADF impacted by the stay on salary increases and note this to be in the vicinity of 500²³ – not an inconsequential financial impact on the ADF and those members affected. We will engage with the ADF and examine the impact on these senior officers depending on the length of the delay.

Conclusion

[29] We are encouraged that the ADF workforce, Star Ranks included, are broadly supportive of the Arrangement’s proposal given the current difficult economic climate and outlook.

[30] We accept that when the Government lifts the pause on remuneration increases the parties will seek to vary this Arrangement for Star Ranked senior officers and welcome that submission when possible.

[31] We agree that the proposed Arrangement quantum is reflective of the current budget and fiscal environment and that the joint submission delivers a remuneration increase that is affordable. We consider the adjustment to be appropriate having regard to these circumstances and accept it is “*within the forecast personnel expenditure for the next three years.*”²⁴

[32] In conclusion, we accept all of the elements of the joint submission detailed in paragraph 12 of this decision. A determination giving effect to this will be published closer to the intended date of effect in May 2021.

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

Appearances

Mr J Phillips SC assisted by Mr P. Blady for the ADF

Mr P. Hoang assisted by Ms E. Beresford-Jones for the Commonwealth

Witness:

Major General N. Fox AM CSC Head People Capability, Defence People Group

¹ DMR/OOUT/2020/BN18179077 Listing Application – *2020 Workplace Remuneration Arrangement* dated 16 July 2020.

² DFWA letter Request to intervene in Defence Force Remuneration Tribunal proceedings dated 28 January 2020.

³ Tribunal letter dated 3 August 2020.

⁴ Including the Australian Public Service Defence employees.

⁵ <https://www.dfrt.gov.au/sites/default/files/WRA-2017-2020-decision-as-issued.pdf>

⁶ The Chief of Defence Force, Vice Chief of Defence Force, Chiefs of Service and military justice positions who are remunerated under provisions of the *Remuneration Tribunal Act 1973*.

⁷ Excluding the Officer Aviation Remuneration Structure Allowance, the Submarine Capability Assurance Payment and the Navy Retention Incentive Payment

⁸ Joint Submission ‘*2020 ADF Workplace Remuneration Arrangement*’ undated (Exhibit 1) page 3 paragraph 15

⁹ DFWA submission *ADF Workplace Remuneration Arrangement 2020-2023* dated 10 August 2020 (Exhibit 3) page 2 paragraph 7.

¹⁰ EXH3 page 2 paragraph 5.

¹¹ Ibid

¹² EXH1 page 3 paragraph 15.

¹³ Affidavit of Major General N A Fox AM CSC dated 7 August 2020 (Exhibit 2) paragraph 41.

¹⁴ Transcript of 21 August 2020 page 6 line 41.

¹⁵ EXH2 page 11 paragraph 50.

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- ¹⁶ EXH2 page 12 paragraph 54.
¹⁷ EXH1 pages 6 and 7 paragraphs 28 and 29.
¹⁸ EXH2 page 11 paragraph 52.
¹⁹ Transcript page 4 lines 1 -7.
²⁰ Transcript page 8 lines 1 to 5.
²¹ EXH3 page 2 paragraph 5c.
²² EXH1 page 7 paragraph 30.
²³ Permanent and Reserve officers.
²⁴ EXH1 page 14 paragraph 55.