



DEFENCE FORCE REMUNERATION TRIBUNAL

TWENTY-FOURTH REPORT

2008 – 2009

(Period from 1 July 2008 – 30 June 2009)



Australian Government

Defence Force Remuneration Tribunal

30 October 2009

The Hon Julia Gillard, MP
Minister for Education Employment and Workplace Relations
Parliament House
CANBERRA ACT 2600

My dear Minister,

I have pleasure in presenting to you the Twenty-Fourth Report of the Defence Force Remuneration Tribunal, which covers the period of the Tribunal's operations from 1 July 2008 to 30 June 2009.

Yours sincerely,

A handwritten signature in dark ink, appearing to be 'P L Leary', with a long horizontal stroke extending to the right.

The Honourable P L Leary
President

<i>DEFENCE FORCE REMUNERATION TRIBUNAL</i>

President: **The Honourable Patricia Leary**

Members: **Rear Admiral B L Adams AO, RAN (Ret'd)**

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1. INTRODUCTION

The Tribunal has been operating for over 24 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) 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”.*

In addition, at the request of the Minister for Education 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 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 *Defence Act 1903* 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 Act, 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 Patricia Leary

Member: Rear Admiral B L Adams AO, RAN (Ret'd)

The Governor General appointed The Honourable Patricia Leary to the Tribunal for a period of 5 years commencing on 17 July 2008. On 27 March 2009, The Hon Julia Gillard, MP, Minister for Employment and Workplace Relations appointed The Honourable Patricia Leary, as Acting President of the Tribunal for a period of three months or until a permanent appointment was made, whichever occurs first. Patricia Leary has held senior positions in both the private and public sectors. In October 1984 she was appointed as a Commissioner of the Australian Conciliation and Arbitration Commission (now Fair Work Australia). In January 2001 she was appointed a Deputy President of the Commission and continues in that capacity. Patricia was also appointed as the President of the Tasmanian Industrial Commission in January 2001 and also continues in that position. On 18 June 2009 the Governor General appointed her as the President of the Defence Force Remuneration Tribunal from 27 June 2009 to 30 June 2010.

Rear Admiral Brian Adams AO, RAN (Ret'd) served in the RAN from 1968 to 2005. His last two appointments in the ADF were as the Deputy Chief of Navy from 2000 to 2002 and Head of the Defence Personnel Executive from 2002 to 2005. The Governor General in Council appointed Rear Admiral Adams as a member of the Tribunal for a period of 5 years commencing on 1 August 2006.

The Honourable Robert Cartwright was appointed as President of the Tribunal by the Governor General from 8 March 2004 and concluded his term on 7 March 2009. During his tenure, Senior Deputy President Cartwright oversaw a comprehensive restructure of salaries for ADF members from trainees through to Star Rank Officers.

3. THE PARTIES

The main parties in matters before the Tribunal are the ADF and the Commonwealth. The Returned and Services League of Australia (RSL) and the Defence Force Welfare Association (DFWA) 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 roles and functions are set out in section 58T of the *Defence Act 1903* and include:

- “(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 subsection 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”.*

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 2011.

The Commonwealth is represented in proceedings before the Tribunal by the Department of Education Employment and Workplace Relations. In the period of this report the Commonwealth was represented by Mr Mark O'Neill.

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

4. THE WORK OF THE TRIBUNAL

During the period of this report the Tribunal continued with the review of the ADF salary structure.

The Tribunal has completed a fundamental review of the Other Ranks salary structure resulting in a contemporary placement for all the Other Ranks employment categories.

Salaries for Trainees also are now set on a more contemporary basis with the introduction of a trainee allowance.

The work undertaken by the Tribunal over the last year has been complex and intense. It is the diligence and high standard of presentations by the ADF and the Commonwealth which has assisted the Tribunal and has allowed all matters to be dealt with in a timely fashion. Likewise those members of the ADF who have provided presentation and demonstrations for the Tribunal when on inspections and visits do so with much enthusiasm and skill. We thank them for their valuable contributions.

The Tribunal would particularly like to acknowledge the engagement of the CDF and his senior leadership team in matters before the Tribunal. The support of the CDF and his senior leadership team this last year in a number of very complex and important matters for determination before the Tribunal has been much appreciated.

The Tribunal would like to acknowledge the dedication and professionalism of the women and men of the ADF. They are wonderful ambassadors for our country.

The Tribunal continues to be well served by our small, but highly professional and competent Secretariat.

5. MATTERS CONSIDERED

A. Graded Other Ranks Pay Structure (GORPS)

The Tribunal's Reasons for Decision on the Remuneration Reform Project Phase 3, on 27 February 2006, stated "*work must now progress, as a matter of urgency, to complete a pay structure for the Other Ranks which also includes the Qualification and Skill (Q&S) elements of allowances*".

On 5 December 2006, the ADF and Commonwealth jointly proposed a revised 16 pay group structure incorporating the Q&S allowances and increasing the differentials between pay groups above Pay Group 3.

In approving the revised structure the Tribunal commented:

"We are satisfied that the proposed structure forms a sound basis for remunerating Other Ranks. The structure not only accommodates the incorporation of allowances but also reduces compression at higher ranks. We have therefore decided to approve the structure as sought by the parties.

However, the Tribunal has, on a number of occasions, questioned the adequacy of salary progression for a Warrant Officer Class 2 (E) to Warrant Officer Class 1 (E), which was also commented upon by the RSL/RDFWA. We note that the parties are to bring a placement case for the new Warrant Officer pay scale in the first half of 2007.

We also note that the ADF and the Commonwealth, acknowledging the need for further remuneration reform, are considering the option to further consolidate the proposed 16 pay group structure to 8 pay groups, and encourage this sensible progression".

The new structure applied on and from 9 August 2007. However, the Tribunal also commented:

"We encourage the ADF to apply itself to the earliest possible implementation and would re-open the case to accommodate an earlier date of effect".

On 4 July 2007, the ADF and the Commonwealth provided a joint submission for the restructuring of pay grades for Warrant Officer Class 1 (Equivalents) including the Service Warrant Officers.

In the joint submission the ADF and the Commonwealth proposed the following arrangements:

- Increased differentials from Pay Grade 2 of the WO1(E) scale to provide consistent differentials of \$4,100.
- Recognition of the following employment groups at the WO1(E) rank:
 - **Tier A** - Direct application of trade skills at:
 - The unit level in the case of Army;
 - The squadron level in the case of Air Force; and
 - The department level in the case of Navy.
 - **Tier B** - Application of managerial skills (applied with or without reference to trade knowledge) at or higher than:

- The formation level in the case of Army;
- The wing level in the case of Air Force; and
- The unit level in the case of Navy.
- **Tier C** - High level managerial and representation duties, applied generally at a function or environmental command level.
- **Tier D** - Service Warrant Officers.
- Accommodation of WO1(E) within Tier A at a Pay Grade informed by the trade to which the WO1(E) belongs; and
- Separate arrangements for the Service Warrant Officers.

Specific Placements sought were:

- Tier B appointments at Pay Grades 3 to 5.
- Tier C appointments at Pay Grade 6.
- Accommodation of the Army Regimental Sergeant Major (RSM) at:
 - Tier A of Pay Grade 4;
 - Tier B at Pay Grade 5; and
 - Tier C at Pay Grade 6.
- Air Force Warrant Officer Discipline (WOD) Tier A at Pay Grade 4.
- Air Force Warrant Officer Engineer appointments Tier A at Pay Grade 4.

It was submitted that the proposed placement structure recognises that WO1(E) on promotion are predominantly employed in jobs that rely on direct application of trade related skills. The proposed translation from the 16 Pay Group Other Ranks structure to the 8 graded WO1(E) structure was:

Placement within OR Structure	Placement within WO1(E) Structure
Pay Group 2,3 and 4	Pay Grade 2
Pay Group 5 and 6	Pay Grade 3
Pay Group 7 and 8	Pay Grade 4
Pay Group 9 and 10	Pay Grade 5
Pay Group 11 and 12	Pay Grade 6
Pay Group 13 and 14	Pay Grade 7
Pay Group 15 and 16	Pay Grade 8

The ADF acknowledged the need for future remuneration reform of the Other Ranks pay structure and submitted consolidation of the sixteen pay group structure to eight pay groups would further align the Other Ranks and Warrant Officer Class 1 (E) pay structures.

In coming to its decision regarding the proposed tiers and placements of WO1(E), the Tribunal commented that:

“We have taken into account: the strong support of those WO1(E) with whom we met; the fact that WO1(E) at Tier A are directly applying their trade skills; that there is a recognisable hierarchy within the employment of WO1(E) and the new structure addresses the inherent relativity difficulties between WO2(E) and WO1(E), a matter that we have commented on in the past”.

The new structure for WO1(E) applied on and from 9 August 2007.

Further, in the Tribunal’s Reasons for Decision in the Graded Officer Pay Structure, the Tribunal commented:

“The next step is to further refine the Other Ranks scales, by rationalising the 16 pay groups, temporarily created, to a lesser number, in a structure with more significant differentials for skill progression. We have scheduled dates for this review in the first half of 2008, but encourage the parties to expedite the matter”.

The hearing timetable proposed by the parties was to conclude the case at the end of August 2008. In the event, the final hearing took place on 9 November 2008.

The Case During the Reporting Period

The ADF submitted that its proposals in relation to the revised OR and WO1(E) pay structures are underpinned by the following propositions:

- The existing OR pay structure does not meet the requirements of the ADF.
- The existing WO1(E) structure requires some structural adaptation to provide an equitable interface with the proposed GORPS.
- The proposed structures for both the OR (PTE to WO2) and WO1 are architecturally sound, capable of accommodating all OR/WO1(E) employment categories/management groups in a logical and appropriate manner, and meeting the ADF’s organisational needs.

During submissions in regard to the proposed 16-group OR structure, the ADF and Commonwealth foreshadowed the need for further reform. In particular that:

- The 16-group structure provided a large number of pay groups that were, in many cases, sparsely populated.
- The 16-group structure had not provided substantial remunerative increases for a large proportion of OR at a time when segments of this workforce were known to be disadvantaged in comparison with outside industry and were under stress in terms of retention.
- The new structure still provided relatively small differentials between pay groups, which provided little incentive for up-skilling.
- In the development of the 16-group structure no work had been done on recalibrating (or otherwise testing) relative values between all ADF OR categories, and that such a calibration exercise had not been done since 1978. Only 3% of ORs occupy PG8 – 16.

- The new structure retained the rank differentials of the PSR 95 structure, which did not necessarily meet the needs of the ADF any more.
- There was a complete lack of contemporaneous policy and principles to guide pay placement.
- Further reform of the WO1 and Officer's structures were underway, and subsequent alignment to the outcome of this work would be advantageous as the final step in the totality of the Remuneration Reform Project.

It was further submitted that the ADF carefully considered the requirements to overcome these limitations, and determined that a new structure was required. It said that it was guided in its development of the new structure by the following principles:

- The structure needed to provide a sufficient number of pay grades to maintain the ADF's ability to differentiate its workforce (i.e. it must have the necessary differential granularity);
- The differential element of the structure (the horizontal) would not seek to provide wholesale salary improvement;
- The structure would not promote further remunerative incursion into the WO1(E) or GOPS;
- The structure must be capable of accepting many of the employment categories' existing relative value constructs inherent in current placement;
- The structure must be capable of accepting any revised relative value constructs inherent in proposals to further adjust pay placements for some ADF categories; and
- The structure must reflect changed levels of responsibility at some ranks.

The Other Rank Structure

In regard to placement policy and principles, the ADF submitted that it took the following into consideration in populating the new structure:

- Unless there was other compelling evidence, extant internal relativity would inform placement in the new structure, to the extent that formulaic translation from 16 groups to 10 grades would allow.
- Where additional movement/adjustment was considered justifiable, it would be undertaken as part of the population process of the new model.
- Skill Grades should be consolidated and or realigned to provide identifiable points where skill grade movement is properly aligned to PG movement, and was commensurate with the differential value inherent in that movement.
- Like work should be rewarded with like pay unless capability or operational impact drivers became an imperative.
- Movement from the 16-group structure to the 10-grade structure would be governed, in the first instance, by a 'transition formula' that dictated which pay groups in the extant structure would equate to which pay grades in the new one.
- Where capability drivers are common across the three Services, they can inform placement movement, providing that they do not substantially distort internal relativities within the structure, or the integrity of the structure itself.
- Where capability drivers are unique only to one or two Services, pay grade placement can only occur:

- With the agreement of all Services;
 - Having regard to the effect of that movement on internal relativities of groups providing like work, both within a Family and across all Families (i.e. within the entire structure); and
 - Movement will be limited to that which is structurally sustainable and affordable.
- Other remunerative mechanisms such as s58B or s58H payments will continue to be necessary to accommodate payment for capability pressures that cannot be accommodated in salary.
 - Employment Categories will be placed in ‘Families’ within the pay structure to assist in the transition from one pay structure to another, and to provide greater granularity in relative value consideration into the future.
 - Families are not a limiting factor in the ability to reconsider the relative value of any particular employment category or group of categories, nor is their own bandwidth or relative position in the structure inviolate.
 - Employment categories subject to a review will not be placed in the new structure until that review is complete (in the sense of having an agreed Defence recommendation in regard to the employment categories in question).
 - Those other rank employment categories being examined by the Aircrew Sustainability Project (ASP) would be held in abeyance until the results of that project (in terms of pay grade placement) are known at the end of 2008, provided that there is reasonable assurance that the structure can accommodate any likely outcomes.
 - Nothing in the ADF’s placement process or in its recommended outcomes precludes a category from being reviewed and placed elsewhere in the future, provided proper process is followed.
 - Initial placement was subject to confirmation by the Employment Category Review Committee, Category Managers and endorsement by the Steering Group/COSC.

The ADF proposed that placement of categories within the structure should be dealt with on a tri-Service ‘Family’ approach rather than on an individual basis. The family groupings that were proposed are:

- The Health, Logistic/Support Family
- Combat 1 and Combat 2 Family
- Engineering/Technical Family
- Electronic Warfare, Intelligence and Communications Family

The remaining Aviation Family was considered as a separate exercise in Matter No 26 of 2008, Aircrew Sustainability Project.

It was submitted that the *“principal purpose of the Family Approach is to allow employment categories who have similar roles/work to be grouped together for analysis purposes. This not only facilitates the presentation of GORPS material to the Tribunal in digestible ‘blocks’ in a logical way, but also offers the following important advantages:*

- *Each family group provides an initial appreciation of the relative value of the categories contained within them to assist in their logical placement in a more granular way.*

- *It identifies where categories that are superficially regarded as similar across the ADF are, in fact, different. Photographers are a good example, where the work that photographers do in each of the Services is sufficiently different to have them placed in different Family groups depending on Service.*
- *The methodology provides some utility beyond the initial introduction of the new pay structure, insofar as Category Managers will be better informed by a more focussed and relevant relative value construct (i.e. the Family), rather than have to consider the relevance of their categories in the broader whole-of-ADF arena in the first instance. The Family construct is not, however, a limiting factor in the further review/placement process”.*

The ADF submitted that the characteristics of the Families are as follows:

- Employment categories are allocated to a Family on the basis of their role within each Service.
- The number of categories in each Family is not constrained.
- The pay grade span of each Family is largely driven by the collective needs of the categories within it, but once set, its bandwidth will only be changed after careful consideration.
- The Family approach does not constrain the progression of individual category submissions in the future - but it does provide the initial check of relativities in the first instance.

In regards to the placement process the ADF identified two distinct groups of employment categories:

- simple transition employment categories that are mapped to the new structure as a result of a transition formula only, with no other pay grade adjustment; and
- value added employment groups that are mapped by means of the transition formula and then subject to adjustment as a result of work value change.

Reserves

Navy and Air Force do not have a discounted placement methodology as those Services regard Reserve members to be at the same level of training and competence as their Permanent members. The ADF therefore proposed that these categories be placed within GORPS in the same manner as for their Permanent Force counter-parts.

The ADF submitted that Army proposed shifting paradigms from a 15% discount methodology to a deliberate valuation, placing each Reserve category with reference to its Permanent Force counter-parts. Currently 75% of Army Reserve categories are placed in accordance with the 15% discount methodology. It is Army's future intention to seek placement of all Reserve categories with reference to the Permanent counterparts.

It was therefore proposed that the transition of Army Reserve be as follows:

- “a. Categories that are currently in a discounted PG and are transitioning via the “Simple Transition”, will be placed according to the simple mapping principles within GORPS;*
- b. Categories that are currently simple mapping and are on a 15% discount methodology will be placed in a discounted schedule that applies the 15% discount to their resultant “simple mapped” PG outcome; and*

- c. *Army reserve category in the “Value Added Transition” group will be subject to analysis and placed in the new structure according to the placement principles that govern GORPS (that may or may not be discounted by PG placement)”.*

Warrant Officers

The ADF proposed to convert the 8 grade Warrant Officer structure and placement methodology adopted in August 2007 to a 10 grade structure. The Tribunal raised questions in hearing and in a meeting with the Chiefs of Service Committee on 19 August 2008 about consistency in rationale between the proposals. Attention was directed to:

- the proposed remuneration structure, placement and management of the Warrant Officer Class 1 population and the degree of resulting Tier A intrusion into Tiers B and C of the structure; and
- the resultant relationship between the Graded Other Ranks Pay Structure, the Warrant Officer Class 1 (WO1 (E)) Structure and the Graded Officer Pay Structure (GOPS).

The ADF, in a supplementary submission to the Tribunal, proposed a revised structure for WO1(E) that, whilst remaining as a 10 graded structure, substantially reduces the level of incursion of WO1(E) in Tier A into Tiers B and C, provides a constant differential of 2% for rank increments and provides an appropriate interface with GOPS.

Those Consulted

On 22 July 2008 the Tribunal held discussions with Category Sponsors at the Royal Military College of Australia, Duntroon.

On 29 July 2008 the Tribunal held discussions with a wide range of Other Rank Category members at HMAS KUTTABUL to ascertain their views on the GORPS and the proposed placements. The Tribunal also held discussions with the Service Warrant Officers and sought their views on the proposals.

On 19 August 2008 the Tribunal met with the Chief of the Defence Force, Vice Chief of the Defence Force, Chief of Navy, Chief of Army and Deputy Chief of Air Force to discuss details of the proposed placements and to explore any cross service issues.

The Commonwealth

The Commonwealth supported the ADF GORPS proposal and was instrumental in the preparation with the ADF of joint submissions on Trainees and Warrant Officers.

The Returned and Service League of Australia (RSL) and The Defence Welfare Association (DFWA)

In a written submission to the Tribunal, the RSL and DFWA supported the ADF GORPS proposal.

Consistent with the approach to Graded Officers Pay Structure placements, the Tribunal sought from the ADF a plan to place the majority of Other Ranks categories simultaneously in the new 10 graded structure. The alternative was to consider categories in isolation, a process that would have stretched over several years, involving an unacceptable delay.

This review completes a continuum of contemporary structures for ADF members, covering Trainees, Other Ranks up to and including Warrant Officer Class 2 (Equivalents), Warrant Officer Class 1 (Equivalents), and Officers, including Senior Officers. While this decision covers the Other Ranks component, to the extent possible consistent principles have been

applied across the whole and the Tribunal has focused particularly on the interfaces between the various rank groups.

Other Rank Structure and Placements

Dealing first with the proposed salary structure, the Tribunal considered that the ADF, with the support of the Commonwealth, proposed a sensible progression in dealing with placements.

Working within the salary bounds already established by the current 16 grade structure and the upper limits imposed by the Officer and Warrant Officer structures, the ADF's proposed structure gives greater weight to trade or skill progression, to reduce salary compression with increasing seniority. Progression in rank has so far reflected an increasing shift to management roles, with consequent reducing differentiation for trade progression. For example, promotion from Sergeant (E) to Warrant Officer Class 2 (E) previously carried more than three times the weight of a change in pay group. That same promotion is now to carry about one and a half times the weight of a pay grade change, partly as a result of maintaining a percentage difference between pay grades rather than a constant dollar figure.

The Tribunal was careful to confirm with the senior leadership team that this policy change, to increase the recognition of trade progression relative to rank, accorded with the realities of work in the ADF.

Similarly, the ADF sought rank differentials which better recognise the experience and value gain at Corporal (E) and Sergeant (E) levels.

The Tribunal is satisfied that the changes in balance in this salary structure represent current ADF management policy.

Turning to placements, many of those now approved by the Tribunal are directly mapped across from the previous structure into the corresponding placement in the new. However, at least four other considerations have affected category placements.

Firstly, several Army Reserve categories are being placed for the first time according to detailed review of their work and training requirements. Secondly, the Tribunal has incorporated a number of category restructures into new placements. Thirdly, there are some categories whose placement has not been considered for a very long time, such as military police. The opportunity is taken here to update those placements. Lastly, in considering the relative placement of all Other Rank trades, the ADF sought some changes in existing relativities. Particularly, it sought greater recognition for many trade manager and supervisor roles, especially in the highly technical trades.

This process of evaluating the relative placements of such a large number of categories or trades has been assisted by grouping them into 'Families'. Several ADF witnesses gave evidence that such grouping had assisted cross-Service consideration and provides a reliable means for the future in reviewing relative placements as work changes or new categories, such as Air Force Special Tactics, are developed.

The Tribunal was satisfied on the basis of the detailed material provided and all the evidence and consultations in this case, that the structure and placements proposed were sound and should be approved.

Warrant Officers

The Tribunal was satisfied that the revised structure and placement of Warrant Officers proposed by the parties should be approved.

The new structure and placements:

- provide a reasonable reward on promotion from WO2(E);
- recognise the continuing application of trade skills for those categories at Tier A;
- appropriately remunerate trade supervisors and managers, particularly for technical trades;
- maintain acceptable relativities between Tiers A, B and C Warrant Officers; and
- continue a reasonable relationship between the WO1(E) structure and the Graded Officer Pay Structure, of a similar order to that applying pre-GORPS.

With the finalisation of the Graded Other Ranks Pay Structure, the ADF has completed a major task in reviewing the salary structures for all rank levels within its jurisdiction. It is a considerable achievement, given the scale of work required to recast a complex set of inter-relating structures. It has been assisted by the collaborative approach of the Commonwealth and would not have been possible without the engagement of the ADF leadership team.

In summary, the Tribunal:

- Approved the 10 graded structure and placement of Other Rank trades, with effect from 4 September 2008; and
- Approved the 10 graded structure for WO1 (E), with effect from 4 September 2008.

Further work is required to complete the placement of Army Reserve categories.

B. Aircrew Sustainability Project (ASP)
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On 15 April 2008, the ADF briefed the Tribunal on the Aircrew Sustainability Project (ASP), its primary purpose being to “*establish a sustainable workforce model for ADF aircrew capable of delivering the required capability with effective return on investment*”.

The ADF listed three primary objectives for the project: delivery of an acceptable and sustainable aircrew remuneration system; delivery of a non-financial initiatives framework; and the delivery of sustainable workforce structures in order to meet ADF/Defence capability requirements. To achieve these objectives, the ADF presented a “*Total Employment Package*” concept, which included remunerative elements within the jurisdiction of the Tribunal.

During the Graded Other Ranks Pay Structure (Matter 3 of 2008) hearings, the ADF proposed that the Family of Other Ranks Aircrew jobs (“Aircrew Family”) be dealt with as a separate matter. The Tribunal agreed to this.

In a joint submission on 18 and 19 November 2008, the ADF and the Commonwealth proposed placements for the ADF Aircrew Family across Pay Grades 3 – 8 of the Graded Other Ranks Pay Structure.

The ADF and Commonwealth submitted that the proposal for the Aircrew trades completes a fundamental shift in the way the Aircrew trades had been traditionally remunerated via Flying Allowance (Q&S). It is to apply to three categories of members as follows.

Firstly, for prospective entrants to the Aircrew Family, the ADF and Commonwealth proposed changing the pay advancement model from ‘time based’ criteria, applied at the same rates for all Aircrew trades, to ‘competency based’ criteria linked to achievement of key milestones for each Aircrew trade.

This part of the proposal was said to have the following additional characteristics:

- The pay placement band is reduced in span when compared to the band which would otherwise result from the ‘simple transition’ methodology applied in placing many Categories in the Graded Other Ranks Pay Structure (i.e. applying ‘simple transition’, the present pay dispersion of all Aircrew Categories over Pay Groups 3-11 would translate to Pay Grades 3–9, whereas the proposed Aircrew band spans Pay Grades 3 through 8).
- The highest points of the pay bands occupied by the RAN Aircrewman, ARA Aircrewman, RAAF Loadmaster and RAAF Crew Attendant Categories would reduce, in recognition of the relative capability and work value attributable to the Categories within the Aircrew Family and broader GORPS placements.
- Pay profiles would maintain a differential between the Aircrew trades performing a technical or Electronic Warfare (EW) function (i.e. RAN Aircrewman Sensor Operator and RAAF Airborne Electronic Analyst and RAAF Flight Engineer) and the Aircrew trades performing non technical EW functions, in recognition of distinctions in complexity of training, tasking and roles.
- There would be a common start point at Pay Grade 5 for all Aircrew trades (with the exception of the Crew Attendant trade), in recognition of the high levels of responsibility devolved to even the most junior Aircrew members and the need to draw Aircrew laterally from pre-existing ADF employment.
- The introduction of competency based criteria for advancement would change the disposition of Aircrew within the pay bands. While the centre of the pay band is heavily populated, only those members who obtain the highest levels of competency will reach the highest points of the pay bands.
- Secondly, for all existing members of the Aircrew trades and Army RAEME Aircrewman technician trades, the ADF and Commonwealth proposed to apply the ‘simple transition’ methodology and to maintain the existing criteria for advancement in each category.

Thirdly, for members of non Aircrew trades who perform transitory or temporary flying roles, the ADF and Commonwealth proposed a ‘plus one’ Pay Grade adjustment, to recognise additional skills and responsibilities associated with performance of flying roles. The practical results were:

- All prospective RAEME trade members employed as Aircrewmen Technicians on the Army CH47 (Chinook) aircraft would advance by one Pay Grade over parent trade placement, to a maximum of Pay Grade 7, for the period that competency and liability are maintained in accordance with the Graded Other Ranks Pay Structure management principles; and
- All Hydrographic Systems Operators employed within the Laser Airborne Depth Sensor unit would advance by one Pay Grade over parent trade placement, to a maximum of Pay Grade 6, for the period that competency and liability are maintained in accordance with the Graded Other Ranks Pay Structure management principles.

The ADF and Commonwealth proposed no differentiation between Reserve and Permanent Force members of the relevant trades on matters of placement or transition.

On 18 November 2008, the Tribunal met with a wide range of ADF Warrant Officers and Other Ranks Aircrew to hear views on the proposed placements and their rationale, and on any cross-Service issues. Members' comments on the merits of the proposed competency based and time based progression models and transition issues were particularly helpful.

At the conclusion of the Hearing on 19 November 2008 the Tribunal approved the placements as sought by the ADF and Commonwealth.

In summary, the Tribunal:

- approved the Other Ranks Aircrew Family placements to apply to prospective Aircrew members; and
- endorsed placements and transition arrangements to apply to current members in Aircrew categories.

C. Trainees

Following a visit to the Army Logistic Training Centre Bandiana, the Tribunal wrote to the Chief of the Defence Force on the issue of technical trainees being on trainees salary for a period of up to 24 months which could be seen as disincentive to undertaking such training. The Tribunal advised that this could be addressed quickly as a pay group placement exercise.

The CDF, in response, advised the Tribunal that the ADF would bring forward a comprehensive submission covering trainee pay across the three Services.

On 27 August 2008 the ADF and Commonwealth presented a joint submission to the Tribunal regarding the placement and progression for the remuneration of ADF Trainees.

The ADF submitted that it had recently reviewed a wide range of matters pertaining to the structure and quanta of trainee pay, the findings of which included:

- ADF trainee pay had not been comprehensively reviewed since the *Committee of Reference for Defence Force Pay Inquiry* in 1982. Since that time, the structure of ADF Pay has substantially changed and the original industrial benchmarks, which assisted earlier Defence Inquiries in setting ADF trainee pay, have substantially evolved. These developments have not been considered in the setting of ADF Trainee pay.
- There is financial disadvantage for trainees attending long term technical courses compared to those who complete short term Initial Employment Training (IET) courses and move on to higher pay grades on completion of training.
- The current level of trainee remuneration may be a deterrent to recruitment.
- Demographic trends, changing community standards, different generational expectations and attitudes across Australian workforce age groups requires adjustment to trainee pay to make the ADF a more attractive career option.
- ADF Trainees are exposed to significant and continuous disabilities including the requirement to submit to discipline and control, the requirement to, at times to live and

work in uncomfortable conditions and the requirement to be on call and work long and irregular hours.

The ADF therefore submitted the following proposals:

- a. Private PG3 in the Other Ranks Permanent Pay Scale should remain the reference point for the rate for Other Ranks entry recruits and IET Trainees.
- b. Other Ranks Trainees rates should be set at 70% of the reference point for recruits, increase to 80% at commencement of IET, then increase to 85% after IET of 6 Months and 90% after IET of 12 months.
- c. Officer 01 rank (2LT), Increment 0 Pay Group 2 in the Permanent Officers' Pay Scale should serve as the reference point for the officer trainees' rate.
- d. Rates for Officers (based on attendance at ADFA) should be set at 45% of the reference point for those undertaking matriculation or equivalent studies and 55% in the first year of training, 65% in the second year of training, 75% in the third year of training and 85% in the fourth year of training.
- e. Rates for officers participating in the Undergraduate Entry Scheme should be set at 55% of the reference point with four years to graduation, 65% with three years to graduation, 75% with two years to graduation and 85% in the final year.
- f. Rates for members participating in the Officer Tertiary Recruitment Scheme should be set at 45% of the reference point with six years to graduation, 45% with five years to graduation, 55% with four years to graduation, 65% with three years to graduation, 75% with two years to graduation and 85% in the final year.
- g. Rates for members undertaking officer training (not a degree course at Single Service Officer Training institutions) should be set at 75% of the reference point for the first six months of the course and at 85% for the final twelve months of the course. In the case of Air Force or Army members, with or without a degree the rates should be similarly adjusted. In the case of a Navy member without a degree, the rate should be set at 75% in the first year and 85% in the second year. In the case of a Navy member with a degree, the rate should be set at 85%.
- h. A new trainee allowance of \$8000 per annum be paid from the date of enlistment until completion of training for members in the prescribed Training Capacities: Normal Entry Recruit, Member undergoing IET, Member undertaking a Degree Course in conjunction with Officer Training (ADFA), Member undertaking Officer Training and not undertaking a Degree Course (Single Service Officer training institutions).

The joint ADF and Commonwealth submission did not cover members participating in the Graduate Medical Scheme as they are aligned with Graded Officer Pay PG2, in the rank LT(E) pay increments 0, 1, 2 and 3 and CAPT(E) pay increment 0.

The ADF set out in a table its proposed relationship of Trainee Pay points to the reference point of PTE (E) PG3:

Trainee Pay Points	Previous relativity to PTE PG3	New relativity to PTE PG3
Pay Point 1	42%	45%
Pay Point 2	52%	55%

Trainee Pay Points	Previous relativity to PTE PG3	New relativity to PTE PG3
Pay Point 3	62%	65%
Pay Point 4	69%	70%
Pay Point 5	78%	75%
New pay point	N/A	80%
OT IET 0-6 months		
Pay Point 6 (To apply OR IET 6-12 Months)	83%	85%
New Pay Point OR IET 12 months +	N/A	90%

The ADF submitted that the proposed trainee pay rates offer advantages over the previous rates because:

- In the main, graduated changes are now applied to Trainee pay rates whereas the current model has irregular graduations which are difficult to understand and it is based upon the now superseded Apprentice structure referred to by the *Committee of Inquiry*.
- Six graduations are retained across the training categories, the relativities between the different categories of trainee are largely preserved. The ADF noted that Other Ranks undergoing IET utilise two new rates at 85% and 90%.
- Other Ranks undergoing long term IET are progressively rewarded, which should assist retention and attraction.
- The new pay model retains the essential simplicity of the previous model, noting however, two new rates apply to Other Ranks undergoing IET.
- The common pattern of payment across the variety of officer training patterns is retained, which preserves equity.
- The pay primacy of a fully qualified member is preserved in the proposed model.

In drawing comparisons between Service Allowance and the proposed Trainee Allowance, the ADF submitted that trainees are exposed to a similar range of disabilities which in some instances (restrictions on movement, discipline etc) are more severe than those applying to fully qualified members. However, the ADF noted that trainees are not fully qualified members of the ADF and that their training is in preparation for the full performance of an ADF job rather than performance of the job itself. On this basis the ADF acknowledged that trainees are not eligible to receive Service Allowance, however trainees should be compensated for their exposure to disabilities while under training.

The Tribunal was satisfied that the new rates represent a contemporary approach to the remuneration of trainees and give appropriate recognition for training regimes that may extend over a number of years.

The Tribunal accepted that trainees experience disabilities, including the requirement to submit to military discipline and control, to live and work in uncomfortable conditions and to be on call and work long and irregular hours. The Tribunal endorsed the ADF's proposal, supported by the Commonwealth, for a trainee allowance at the rate of \$8000 per annum.

D. Submarine Escape Allowance (SEA)

At the Annual Review of Allowances on 22 July 2008 (Matter No 11 of 2008) the ADF foreshadowed a review of Submarine Escape Allowance (SEA) to be conducted in November 2008.

The ADF and the Commonwealth proposed that this matter be dealt with on the papers without the need for a formal hearing. The Tribunal agreed with this approach.

In November 2008, the ADF provided a written submission to the Tribunal on its proposal for SEA. The ADF submitted that the structure and quanta of SEA remain current. The ADF went on to say it is recognised that there is a *“skills component encapsulated within SEA and any implications for the structure of this allowance would be best addressed in a wider review of salary related allowances”*.

In a written submission on 3 December 2008, the Commonwealth said *“We note the ADF submission relating to Submarine Escape Allowance. We note that the submission does not seek to change the current structure or quanta of the allowance. As it is proposed that the DFRT undertake a wider review of ADF ‘disability’ allowances it would seem appropriate for the ADF submission to be considered as part of the broader review”*.

The Tribunal agreed with the ADF's approach.

E. Workplace Remuneration Arrangement (WRA) and Star Ranks Remuneration Arrangement (SRRA) 2006 – 2009

The Defence Act provides, in relation to salaries and allowances, that the Tribunal may give effect to any agreement reached between the Minister for Education Employment and Workplace Relations, acting on behalf of the Commonwealth, and the Chief of the Defence Force, acting on behalf of the members of the ADF. On 27 September 2006 the ADF and Commonwealth made submissions on such an agreement covering the period from 4 November 2006 until 3 November 2009. It proposed a salary increase of 4.2% from 16 November 2006 and three further increases of 2.8% from each of 9 August 2007, 1 May 2008 and 5 February 2009, for ADF members at 08 rank and below. The Tribunal determined new salary rates for ADF members with effect from 5 February 2009.

6. INSPECTIONS

Inspections are generally made at the request of the parties to review work performed by ADF members.

On 28 April 2009, the Tribunal conducted inspections at RAAF Base Darwin and 1 Aviation Regiment Darwin. The aim of this inspection was to introduce the Tribunal to the employment of Pilots, Air Combat Officer (ACO) and Air Traffic Controller (ATC) workforces within the Air Force Air Combat Group and Surveillance and Reconnaissance Group and Pilot/Gunner within Army Aviation Brigade. During the inspection, the Tribunal observed several live demonstrations and examined the work of ATC; ACO (Air Battle Manager) employed on Wedgetail; and Pilot/Gunner employed on the Tiger Armed Reconnaissance Helicopter. On 29 April 2009, the Tribunal conducted an inspection at RAAF Tindal, during which the Tribunal observed several demonstrations, including mission briefings and debriefings conducted by F/A-18 Hornet Pilots in the execution of Exercise Arnhem Thunder.

On 18 May 2009, the Tribunal conducted an inspection of 5th Aviation Regiment Townsville which included presentations and demonstrations regarding the structure and role of the 5th Aviation Regiment; the competencies and employment of Army Pilots on the S-70A Blackhawk and CH-47 Chinook platforms; mission planning, execution and debriefing, as well as crew coordination in the context of an airmobile mission; and the practical execution of an airmobile mission. On 19 May 2009, the Tribunal conducted inspections of 82 Wing, 33 Squadron and 36 Squadron at RAAF Base Amberley. During the inspection at 82 Wing, the Tribunal observed several presentations on the employment of Pilots and ACO operating the F-111 variants; mission planning, preparation, simulator use and value, briefing, execution and debriefing; and future capability transitions to new platforms, including primarily the introduction of the F/A-18F Super Hornet. At 33 and 36 Squadrons, the Tribunal observed several presentations of the introduction of the new KC-30A Multi Role Tanker Transport (MRTT) and C-17 Globemaster III. The Tribunal also took part in a familiarisation flight on the C-17 Globemaster III, to observe its crewing construct, roles and capabilities.

On 21 May 2009, the Tribunal conducted an inspection of Aerospace Operations and Support Group (AOSG) and 92 Wing at RAAF Base Edinburgh. During the inspection at AOSG, the Tribunal was engaged in presentations and demonstrations regarding AOSG functions and roles in the delivery of capability, its future and strategic direction; the responsibilities associated with Aircraft Research and Development Unit command; and the competencies required of ADF Test Pilots and ACO Flight Test Systems Specialists. At 92 wing, the Tribunal observed several presentations and demonstrations regarding the employment and competencies of Pilots and ACO's in the maritime environment; the roles of Pilots and ACO's in all phases of mission preparation, briefing, execution and debriefing. The Tribunal also participated in familiarisation flight onboard an AP-3C Orion, observing the practical application of the crew competencies onboard this platform.

Between 25-27 May 2009, the Tribunal conducted inspections at HMAS ALBATROSS, RAAF Base Williamtown and the ADF Basic Flying Training School (BFTS) in Tamworth NSW. At HMAS ALBATROSS the Tribunal observed several presentations including the structure of the Navy Aviation Group, the future strategic direction for Navy Officer Aircrew and their employment; the Navy Aircraft Maintenance and Flight Trials Unit; and an aircraft demonstration and aircrew discussion. At RAAF Williamtown, the Tribunal inspected the

work of 41 Wing Surveillance and Control Training Unit, which is a Wing of the Surveillance and Response Group (SRG). The Wing provides basic and post graduate training for ACO's in the Air Battle Manager stream. The inspection presented the Tribunal with the opportunity to engage members of the ADF in structure and roles of the SRG, Aircrew competencies employed within SRG; and the implications of the introduction into service of the Wedgetail AEW&C; and Air Traffic Control competencies. At BFTS, the Tribunal observed several presentations and discussions regarding the structure and roles of Air Force Training Group; the pilot selection and training process; the competencies and employment of ADF Qualified Flying Instructors and Qualified Aviation Instructors.

7. VISITS

As part of its statutory obligation to inform itself on ADF matters, the Tribunal undertakes visits to ADF units, establishments and ships. These visits generally include open forums with ADF members at all rank levels and, on occasions, with spouses. Usually the meetings are informal and include a short explanation of 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.

On 16 and 17 March 2009, the Tribunal conducted a visit to HMAS CRESWELL. The purpose of the visit was to allow the Tribunal to gain an understanding of the role and functions of HMAS CRESWELL including the work and training activities undertaken by staff and students. The visit provided the Tribunal with the opportunity to discuss salary and salary-related allowance issues with staff and students at HMAS CRESWELL.

The number of visits to ADF ships and establishments was limited during the period of this report due to the Tribunal's program of work, reported above.

8. FINANCIAL MATTERS

The Tribunal's financial requirements are met through the Department of Education Employment and Workplace Relations. 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 Education Employment and Workplace Relations on behalf of the Tribunal.

11. ENERGY MANAGEMENT

The Tribunal occupies space at Level 1, 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 Education Employment and Workplace Relations, and by the Fair Work Australia 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 statements, decisions and determinations made in the matters that have come before it and matters scheduled for hearing. The Tribunal's 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 ADF members and other interested parties with an important opportunity to familiarise themselves with the role, operation and decisions of the Tribunal.

During the reporting period, the DFRT web site was progressively reviewed and upgraded to ensure the DFRT web site is user friendly and more appropriately raises the profile of the work of the DFRT. These upgrades include additions such as recent events and inspections and providing greater access to historic data. Further, images taken during visits and inspections are posted on the web site, being available for download in both low and high resolution formats.

EXTRACT FROM THE DEFENCE ACT 1903 SECTIONS 58F TO 58Y
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Division 2—The Defence Force Remuneration Tribunal**58F Interpretation**

In this Division, unless the contrary intention appears:

Commission means the Australian Industrial Relations Commission established by section 8 of the *Workplace Relations Act 1996*.

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.

President means the President of the Tribunal appointed under section 58G.

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 *Workplace Relations Act 1996*.

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 or her duties.

Remuneration Tribunal means the Remuneration Tribunal established by subsection 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 Establishment of Defence Force Remuneration Tribunal

- (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 was, but is no longer, a member of the Permanent Forces (although the person may be a member of the Reserves).

Note: The Permanent Forces are made up of the Permanent Navy, the Regular Army and the Permanent Air Force which are established respectively by the *Naval Defence Act 1910*, this Act and the *Air Force Act 1923*. Those Acts also establish the Naval Reserve, the Army Reserve and the Air Force Reserve, which together make up the Reserves.

(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 must not be appointed as a member of the Tribunal if he or she has, at any time during the year preceding the appointment, been a member of the Permanent Forces.

(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 Functions and powers of Tribunal

(1) The functions of the Tribunal are to inquire into and determine, in accordance with this section, the matters referred to in subsection (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 subsection (4), the Secretary or the Chief of the Defence Force may, by notice in writing given to the President, refer a prescribed matter to the Tribunal.

(4) The Secretary or the Chief of the Defence Force shall not, without the approval in writing of the Minister, refer a prescribed matter to the Tribunal pursuant to subsection (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 subsection, that provision shall be of no effect.

(9) The President shall give a copy of each determination made by the Tribunal to the Minister, to the Secretary and to the Chief of the Defence Force.

(10) Where the Tribunal has made a determination (not being a determination made pursuant to subsection (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 subsection (10) shall set out the grounds on which the reconsideration is being sought.

(12) As soon as practicable after a request is made under subsection (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 the Minister.

(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).

58HA Hearings in relation to discriminatory determinations

(1) If a determination is referred to the Tribunal under section 46PY of the *Human Rights and Equal Opportunity Commission Act 1986*, the Tribunal must hold a hearing to review the determination.

(2) Unless the hearing takes place before a single member of the Tribunal, subsections 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 subsection (5) and subsections 58K(9) and 58KB(5), the Tribunal may decide the people who may be present.

(5) The Sex Discrimination Commissioner is entitled to notice of, and to be present at, the hearing and may make submissions to the Tribunal.

(6) In this section:

determination includes a variation to a determination.

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

58HB Review of discriminatory determinations

(1) If:

(a) a determination has been referred to the Tribunal under section 46PY of the *Human Rights and Equal Opportunity Commission Act 1986*; 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 46PY of the *Human Rights and Equal Opportunity Commission Act 1986*; 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 subsection (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 Reports by Tribunal

(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 subsection (1), the Tribunal shall inquire into the matter concerned and give to the Minister a report in writing on that matter.

58K Procedure of Tribunal

(1) The President shall convene such meetings of the Tribunal as he or she 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 or she 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 Single member may conduct Tribunal's business

(1) Subject to subsection (2), the President may:

(a) if a person referred to in subsection 58K(9) requests the President to do so and the President considers it appropriate; or

(b) in any case, on the Chairman'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 subsection (1), direct that a single member is to deal with a request made under subsection 58KC(1).

(3) The President may, at any time, in writing, terminate a direction made under subsection (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 Procedure where single member is conducting Tribunal's business

(1) Where a single member is conducting the Tribunal's business:

(a) section 58K does not apply to the single member's conduct of such business; and

(b) the following provisions apply.

(2) The single member may conduct such proceedings relating to the matter to which the direction relates as he or she considers necessary.

(3) In the conduct of the Tribunal's business:

(a) the single member is not bound to act in a formal manner; and

(b) the single member may inform himself or herself on any matter in such manner as he or she thinks fit and is not bound by the rules of evidence.

(4) The single member must, in making a determination, have regard to any decision 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 should 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 Review of action etc. of single member

(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 Determinations giving effect to agreement between the parties

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 Terms and tenure of office

(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 must not continue to hold office as a member of the Tribunal if:

(a) he or she becomes a member of the Permanent Forces (although he or she may become a member of the Reserves); or

(b) he or she becomes the Defence Force Advocate; or

(c) in the case of the President, he or she ceases to be a presidential member of the Commission.

Note: The Permanent Forces are made up of the Permanent Navy, the Regular Army and the Permanent Air Force which are established respectively by the *Naval Defence Act 1910*, this Act and the *Air Force Act 1923*. Those Acts also establish the Naval Reserve, the Army Reserve and the Air Force Reserve, which together make up the Reserves.

58M Resignation

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

58N Termination of appointment

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

58P Acting appointments

(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 any period, or during all periods, when that 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 or she is acting as President), unable to perform the duties of his or her 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, the person 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 subsection (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 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 subsection (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 person resigns his or her appointment by writing signed by him or her 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 or her appointment had not arisen, that there was a defect or irregularity in or in connection with his or her appointment, that the appointment had ceased to have effect or that the occasion for the person to act had not arisen or had ceased.

(8) A reference in section 58H, 58J, 58K, 58KA, 58KC or 58U 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 Fees and allowances

(1) A member of the Tribunal shall be paid such 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 or her tenure of that prescribed office or his or her 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 or her 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 subsection 7(11) of the *Remuneration Tribunals Act 1973*

as an office, appointment or other employment on a full-time basis or a judicial office referred to in subsection 7(12) of that Act.

Division 3—The Defence Force Advocate

58R Interpretation

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 subsection 4(1) of the *Remuneration Tribunal Act 1973*.

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

58S Defence Force Advocate

(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 subsection (1), the Minister shall have regard to any recommendations made by the Chief of the Defence Force.

58T Functions of Advocate

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 subsection 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.

58U Tenure and terms of office

(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.

58V Resignation

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

58W Termination of appointment

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

58X Acting Defence Force Advocate

(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 subsection (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.

(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 subsection (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 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.

58Y Fees and allowances

(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 Fair Work Australia.

Functions

The functions of the Tribunal are:

- 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.

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
Fax: (02) 6257 3795
Email: dfrt@dfrt.gov.au

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
16 of 2008	Reserve Remuneration Review	1 July 2008
17 of 2008	Consequential Amendment	6 November 2008
18 of 2008	Salary for Chief of Joint Operations	1 July 2008
19 of 2008	Salary of Chief of Capability Development	1 July 2008
20 of 2008	Salary for Senior Officers - Reserve Forces	1 July 2008
21 of 2008	Amendments to DFRT Determination 15 of 2008 Schedules	1 July 2008
22 of 2008	Reserve Allowances	1 July 2008
23 of 2008	Senior Officer Remuneration	1 July 2008
24 of 2008	Special Forces Disability Allowance	6 November 2008
25 of 2008	Graded Other Ranks Pay Structure	4 September 2008
26 of 2008	Graded Other Ranks Pay Structure Trainees	8 January 2009
27 of 2008	Trainee Salary Rates – Amendments	8 January 2009
29 of 2008	ADF Workplace Remuneration Arrangement 2006-2009 and Star Ranks Remuneration Arrangement	5 February 2009
2 of 2009	Graded Other Ranks Pay Structure Special Forces Amendment	7 March 2009
3 of 2009	Graded Other Ranks Pay Structure - Amendment	4 September 2008
SO2008/39-41	Salary for Senior Officer - Individual Determination	N/A
SO2008/42,43,45-49	Salary for Senior Officer - Individual Determination	N/A
SO2009/1-16, 23	Salary for Senior Officer - Individual Determination	N/A
SO2009/17	Salary for Senior Officer	N/A
SO2009/18-24	Salary for Senior Officer - Individual Determination	N/A

<i>SECRETARIAT</i>

Secretary:	Chris J Wallace
Adviser:	Jason Window
Office Manager:	Peta Withers
Telephone No:	(02) 6257 3855
Postal Address:	GPO Box 2761 CANBERRA ACT 2601
Web Site Address:	www.dfrt.gov.au

The support of a capable and engaged secretariat is a necessity for a part-time Tribunal. In this case, there is also a requirement that the secretariat has knowledge of and, ideally, experience of service life. Given the scale of change made in recent years to ADF pay arrangements, continuity has been a further asset.

We are therefore particularly grateful for the capable support of Mr Wallace and his small team. We value it highly and place that gratitude on record.

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