



DEFENCE FORCE REMUNERATION TRIBUNAL

TWENTY-FIFTH REPORT

2009 – 2010

(Period from 1 July 2009 – 30 June 2010)



Australian Government

Defence Force Remuneration Tribunal

14 October 2010

The Hon Gary Gray AO, MP
Special Minister of State for the Public Service and Integrity
Parliament House, Level 1 Suite 23
CANBERRA ACT 2600

My dear Minister,

I have pleasure in presenting to you the Twenty-fifth Report of the Defence Force Remuneration Tribunal, which covers the period of the Tribunal's operations from 1 July 2009 to 30 June 2010.

Yours sincerely,

A handwritten signature in dark ink, consisting of a series of loops and a long horizontal stroke.

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 25 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 Fair Work Australia. 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 occurred 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 and continues in that position.

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. In 2002 Rear Admiral Adams was made an Officer of the Order of Australia.

3. THE PARTIES

The major parties appearing 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 is represented by eminent legal practitioners. 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 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) represented the Returned and Services League of Australia (RSL) and the Defence Force Welfare Association (DFWA) and concluded his appointment of both organisations on 4 March 2010. Commodore Syd Lemon AM, RAN (Ret'd) now represents the RSL. The DFWA is yet to appoint a representative in matters before the Tribunal.

4. THE WORK OF THE TRIBUNAL

The work of the Tribunal is in general terms activated by matters brought before it by the Parties, in particular the ADF. The Tribunal sits as and when required to deal with these matters. Within each two year period the Tribunal has a statutory obligation to inquire into and make a determination in respect to salaries and relevant allowances paid to members in accordance with section 58H(6)(a) of the Act.

Various matters brought to the Tribunal have been dealt with by a single member pursuant to section 58K of the Act. However most matters are heard by the Full Tribunal.

A summary of each of the matters considered by the Tribunal is detailed in the next point of this Report. For more detailed information reference should be made to the reasons for decision and determinations published by the Tribunal.

Visits to ADF establishments are an important part of the Tribunals' work. The visits allow Tribunal members to have discussions with ADF members about conditions of service matters generally and in particular, about pay and allowances. The Tribunal intends to continue with a well targeted visit program. It is worthy to note that these visits are warmly welcomed by ADF members.

The work of the Tribunal is often complex and intense and the Tribunal is well served by the Defence Force and Commonwealth Advocates, and those who assist them in their diligence and high standard of presentations.

Members of the ADF who have provided presentations and demonstrations for the Tribunal when on visits and inspections have done so with much enthusiasm, professionalism and skill.

The Tribunal continues to be well supported by the CDF and his senior management team. We thank them for that and their continued support, courtesy and frank discussion.

The Tribunal continues to be impressed by the hard work, professionalism and dedication of the members of the ADF. It is a great privilege to serve them in our small way.

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

5. MATTERS CONSIDERED

A. ADF Officer Aviation Remuneration Structure (OARS).

On 6 August 2007 the Tribunal approved the placements of Australian Defence Force (ADF) officers, other than specialists, within the Graded Officer Pay Structure (GOPS). In the Reasons for Decision published 31 October 2007, the Tribunal approved the placement of Aircrew 0-2 years post wings at Pay Grade 3; Aircrew with 2-4 years experience in Pay Grade 3A (being a temporary pay grade); Aircrew with 4-6 years experience at Pay Grade 5; Aircrew with 6-8 years experience at Pay Grade 7; Aircrew with 8-10 years experience at Pay Grade 9; and Aircrew with 10+ years experience at pay grade 10. The Tribunal also approved the placement of Air Force Air Traffic Control (ATC) with a single level rating at Pay Grade 3; ATCs with dual ratings at Pay Grades 5 and 7 and ATC Command appointments at Pay Grade 8.

Air Force introduced a new employment group, Air Combat Officers (ACO), comprising ATC (Navigation), ACO (Air Electronics) and ACO (Aerospace Battle Management). Officers newly recruited to this employment group are currently progressing through the Defence Force Academy and new ACO specialisation courses are being developed for them.

Once these courses are complete the ADF intends to return to the Tribunal and seek a substantive placement framework for the ACO employment category. The development of the ACO framework will require a consideration of the role of pilots in the overall officer workforce.

On 15 April 2008, the ADF briefed the Tribunal on the Aircrew Sustainability Project (ASP) submitting that the primary purpose of the project was 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:

- (i) delivery of an acceptable and sustainable aircrew remuneration system;
- (ii) delivery of a non-financial initiatives framework; and
- (iii) 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*”, proposal which included all remunerative elements within the jurisdiction of the Tribunal.

The Case During the Reporting Period

In a series of Agreed Statements of Fact between the ADF and the Commonwealth, the key features of the proposed ADF Officer Aviation Remuneration model included:

- The establishment of a remuneration ‘system’ - the Officer Aviation Remuneration Structure (OARS), to manage the ADF aviation workforce as a singular group in recognition of the unique external market and internal capability drivers impacting on the sustainability of the group.
- The provision of a series of flexible remuneration ‘levers’ within the OARS which are specifically designed to accommodate the unique characteristics of the Aviation and Air Traffic Controller (ATC) workforces and which may be applied differentially to facilitate Service specific desired effects.

- The establishment of an OARS with 3 major structural constituents:
 - a GOPS placement profile for Aviation Career Members who will be managed against the traditional posting and promotion profile and be expected to compete and undertake command and management positions;
 - a Specialist Aviation Spine to accommodate members in an alternate career management system which provides for the employment of members at the tactical level without access to promotion, command and management employment; and
 - the introduction of an Aviation Capability Allowance which is to be flexibly applied and adjusted in accordance with internal and external environments and circumstances, with the allowance being determined primarily by capability risks.
- The removal of the historical ‘all of one company’ and time based approach to the placement of ‘Aircrew’ which has resulted in common placements within the GOPS of all Aircrew categories based on the recognition of time post award of ‘wings’.
- The identification of three distinct Aircrew employment categories: Pilot, RAN Observer and RAAF Air Combat Officer (comprising 5 distinct sub streams) and the differential assessment of each stream for GOPS placement purposes.
- The identification of key competencies to determine pay grade advancement within the GOPS for Pilots, RAN Observers and RAAF Air Combat Officers which are consistent with the broader relativities established within the 2007 GOPS placement exercise and the philosophy underpinning the revised Other Ranks placement model within the 2008 GORPS exercise.
- An amendment to the placement of the Air Traffic Controller employment category within the GOPS to accommodate the role of the Detachment Commander and to provide consistency and appropriate relativities between the placement of Aircrew and ATC.
- The establishment of a Specialist Pay Spine to accommodate members of the Officer Aviation specialisations who forgo promotion and career progression. These officers are engaged exclusively in flying or air traffic control duties.
- The establishment of a framework and key performance indicators for the application of a flexible ADF Aviation Capability Allowance designed to mitigate unacceptable capability degradation caused by an inability to retain sufficient numbers of relevantly trained and experienced Aircrew or Air Traffic Control Officers.
- The establishment of ADF Management Principles to govern the operation of all elements of the aviation remuneration model.
- Creation of a ‘legacy system’ to accommodate a specific and defined group of ADF personnel to maintain access to the existing time based placements provided by GOPS.
- The Flying Disability Allowance will be included in a Strategic Allowance Review being undertaken by the ADF.
- The development of protections of remunerative entitlements for the Aircrew legacy workforce in the following terms:
 - Serving aircrew officers who were accommodated by time based placement

within the GOPS up to the Date of Effect of a DFRT OARS Determination.

- Aircrew Officers who were accommodated by the time based placement within the GOPS who re-qualify and transfer to a different Aircrew specialisation.
- Officers or trainee officers who have yet to commence Flying or ATC training, but who have been made a formal offer of employment as ADF aircrew or ATC officers, and have accepted that offer prior to the Date of Effect of a DFRT OARS Determination.
- Officers of Foreign Military Forces (i.e. 'Lateral Transfers') who have been made a formal offer of employment as ADF Aircrew/ATC officers and have accepted that offer prior to the Date of Effect of a DFRT OARS Determination.
- Reserve aircrew officers who were remunerated as aircrew under the Time-Based System, provided that they render active reserve service within three years from the Date of Effect of a DFRT OARS Determination or the date they transferred to the active Reserve, whichever is the latter.
- Ex-ADF aircrew officers who rejoin the permanent force provided they have rendered active Reserve service within three years from the Date of Effect of a DFRT OARS Determination or the date they transferred to the active Reserve (whichever is later).

Inspections

The Tribunal undertook an extensive range of inspections as part of the review of Aviation remuneration. The inspections covered the full range of aviation in Navy, Army and Air Force. The inspections were conducted in the period 28 April 2009 to 27 May 2009 and included:

- 28 April 2009, RAAF Base Darwin – Air Combat Group (ACG) and Surveillance and Response Group (SRG), including a static display of the new Wedgetail aircraft. The inspection included briefs on Air Combat Officers (ACO), Air Battle Managers, Navigators, Airborne Electronics Officers and pilot competencies. Key attributes of the Air Traffic Controller (ATC) workforce was also reviewed. The Tribunal also conducted an inspection of 1 Aviation Regiment and participated in a static display of the new Armed Reconnaissance Helicopter (ARH - Tiger).
- 29 April 2009, RAAF Base Tindal – F/A-18 Hornet operations during a large force employment exercise, being Exercise Arnhem Thunder 09.
- 18 May 2009, 5th Aviation Regiment (RAAF Base Townsville) – including the competencies and employment of Army pilots on the S-70A Blackhawk and CH-47 Chinook platforms. The Tribunal observed mission planning, execution and debriefing as well as crew coordination and the practical execution of an airmobile mission. The Tribunal also conducted an inspection of A Squadron, currently tasked with the introduction of the new MRH-90 aircraft.
- 19 May 2009, RAAF Base Amberley – 82 Wing, including familiarisation of the employment of Pilots and Air Combat Officers operating the F-111 variants, with briefings being undertaken on future capability transitions, including primarily the introduction of the F/A-18F Super Hornet. The Tribunal also inspected 33 Squadron (part of 84 Wing) Air Lift Group. The squadron will provide air-to-air refueling and transport capabilities and future operation of the KC-30A Multi Role Tanker Transport (MRTT). The Tribunal also inspected 36 Squadron, (part of 86 Wing) Air Lift Group, with briefings and practical demonstration of the C-17 Globemaster III.

- 21 May 2009, RAAF Base Edinburgh – Aerospace Operations and Support Group. The Tribunal was shown how this Group provides Air Force with Information Warfare, Air Systems Development and Testing capabilities. The Tribunal inspected the work of 92 Wing, Surveillance and Response Group, with briefings and practical demonstrations of competencies of pilots and ACOs in the maritime environment and overland Intelligence, Surveillance and Reconnaissance (ISR) capabilities.
- 25 May 2009, HMAS ALBATROSS – 723 Squadron, 816 Squadron and 817 Squadron, with briefings and practical demonstrations of the Navy Aviation Group structure and the future strategic direction for Navy Officer Aircrew and their employment. The Tribunal also inspected the work of the Aircraft Maintenance and Fleet Trials Unit.
- 26 May 2009, RAAF Base Williamtown – Surveillance and Control Training Unit (a unit of 41 Wing) where the Tribunal observed presentations and demonstrations by the Surveillance and Response Group (SRG) structure and roles, Aircrew competencies employed within SRG and the implications of the introduction into service of the Wedgetail AEW&C; and ATC competencies.
- 27 May 2009, ADF Basic Flying Training School, where the Tribunal heard presentations covering the structure and roles of Air Force Training Group, the pilot selection and training process, and the competencies of and employment of ADF Qualified Flying Instructors and Qualified Aviation Instructors.

In a written submission to the Tribunal, the RSL and DFWA offered their full support for the proposed introduction of a capability allowance for ADF Aircrew and ATCs.

The Tribunal accepted the pay grade placements proposed by the ADF and the Commonwealth. In summary the Tribunal decided:

- (a) to approve the Officer Aviation Remuneration Structure;
- (b) to approve the creation of the Aviation Officer Specialist Spine;
- (c) to approve the application of the Air Traffic Controller Capability Allowance; and
- (d) to approve the application of the Aircrew Capability Allowance for a period of two years.

B. ADF Workplace Remuneration Arrangement 2009 – 2011 (WRA).

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 28 October 2009 the ADF and Commonwealth made submissions on such an agreement covering the period from 4 November 2009 until 3 November 2011. The agreement provided a salary increase of 3.5% from 12 November 2009 and a further increase of 2.7% from 11 November 2010, for ADF Permanent and Reserve members at 06 Rank and below. The Tribunal gave effect to the Agreement operative from 12 November 2009.

C. Graded Officer Pay Structure (GOPS).

On 27 February 2006 the Tribunal approved the Graded Officers Pay Structure (GOPS, Matter 2 of 2003) which incorporated major Qualification and Skill allowances into salary and established a differential pay structure for officers.

The proposal of the ADF was to implement GOPS with officer employment groups on a case by case basis. The Tribunal queried the process noting that it could take a very long time to be fully implemented and proposed simultaneous placement of all officer employment categories having regard to the relativities between the employment groups. Following the interim placement of Air Traffic Controllers and ADF Engineering Officers, the ADF made further officer employment category submissions in Matter 3 of 2007.

The ADF submitted inter alia that:

“The GOPS and the proposed placement of officers within it, had the following characteristics: ...

- *it responds to the unique features of the workforce by:*
 - *acknowledging the need for the ADF to manage the differences associated with each Service where they occur;*
 - *accommodating the need to reward the military rank construct as well as differential value by different means;*
 - *comprehending the ADF concept of ‘capability’ and the nexus between capability and human capital by acknowledging the hierarchy created by the contribution of each employment group and military career milestone to capability;*
 - *acknowledging the ADF need for human capital with flexibility;*
 - *providing the means to recognise unique expertise in warfighting skills; and*
 - *providing the means to address significant sustainability issues which arise in a closed workforce (noting in particular the unique and comprehensive training pipelines and emphasis on military experience);*
- *it is based on a new, common and informed understanding of the relationship between Rank and Differential Value;*
- *it overcomes shortcomings identified in earlier remuneration reviews most significantly by the actual provision of differential pay placement (the RRP structure provided for most of the ADF population only the potential for differential placement);*
- *it is underpinned by a set of robust Enterprise-level factors which inform ADF pay structure placement:*
 1. *Professional skills/competency: this includes expertise, problem solving and accountability;*
 2. *Additional value derived from the need to respond to capability demands which encompasses the importance of the work conducted by the employment group to the achievement and sustainability of ADF capability; and*
 3. *External market forces which informs on relevant rates payable in the broader labour market, as a snapshot from time to time;*
- *it is underpinned by a set of common principles in respect of permanence of pay placement and the capacity to perform a range of work – and the need to look beyond a particular job at any particular time in favour of regarding of classes of people in classes of jobs;*

- *it is a transparent arrangement, which in a practical and inaugural way provides incentive for the achievement of individual milestones that support the provision of ADF capability;*
- *it represents a collegiate approach to present internal relativities agreed at the very highest levels of the ADF (i.e. it has COSC endorsement);*
- *it represents an approach that enjoys a significant level of support from the ADF members; and*
- *it is subject to the development of proper management principles”.*

The Case During the Reporting Period

On 15 October 2009 the ADF and Commonwealth presented an agreed submission seeking the Tribunals’ agreement to the proposed structure, placements and governance protocols of four officer employment categories being:

- Navy – Management Executive Primary Qualification (MX PQ);
- Navy – Intelligence Primary Qualification (INT PQ);
- Army – Recognition of Professional Experience (RPE); and
- Air Force – Operations Officer.

Navy – Management Executive

In August 2008 the Chief of Navy (CN) approved the establishment of the new Management Executive Primary Qualification (MX PQ) for navy officers which will provide a body of military specialists originating from any PQ or specialisation to:

“provide professional corporate management expertise at the strategic and operational level supporting the delivery of Navy sea power and ADF capability”.

The ADF submitted that CN approved the MX PQ as an outcome of the Navy Sea Change Renewal Project 2006-2007 investigation into alternative career streams and pathways. This project recognised:

“Navy capability gaps in specialist military corporate management functions in the areas of strategic military human resource capability management, capability development and military strategy in addition to other niche areas”.

The ADF further submitted:

“these capability gaps and the particularly growing importance of the human resource function and its impact on ADF recruitment and retention had been increasingly recognised in multiple Navy and Defence reviews over the last 20 years.

These reviews highlighted the critical requirement for greater military corporate management specialists within Navy particularly:

- a. The Need for roles, responsibilities and accountabilities to be refined in the HR function, enabling a more strategic, aligned workforce governance process; and a need for the nexus between workforce capability to be understood more fully.*

- b. *The need for the professionalisation of the HR functions, including recruitment and retention, career management, and remuneration.*
- c. *The core requirement for a uniformed 'strategic people capability specialists' to provide expertise to the Service Chiefs*".

Officers employed within the MX PQ employment category will have:

"significant specialist knowledge in a relevant MX functional area such as human resources (HR) or capability development, supported by a tertiary qualification (often a Masters degree) or other relevant qualifications, professional accreditation or equivalent skills, knowledge or experience".

The ADF submitted that the MX PQ would consist of three tiers of employment and proposed to place the tiers at Pay grade 4, 5 and 6 respectively in the Graded Officer Pay Structure.

MX Tier 1 – Specialist (Pay Group 4). At this tier MX officers will usually be at the LEUT Rank, employed at the unit, FEG or HQ environment. Tier 1 positions will be limited in number and will primarily be used for those officers who have been selected for commission to the MX PQ and who refine their MX specialist skills and/or qualifications. These officers will have an inherent understanding of and significant experience in the application of relevant policies and legislation but require further definition of their skills at the operational and strategic levels.

MX Tier 2 – Strategic Specialist (Pay Group 5). At this tier MX officers are considered Subject Matter Experts (SME) with specialist skills at the senior LEUT/LCDR rank. They have experience in a broad range of military roles (strategic policy, operational or niche). They are usually working as staff officers or project officers in the strategic or operational environment within a HQ or Command and have some degree of influence on operational military outcomes.

MX Tier 3 – Senior Strategic Specialist (Pay Group 6). At this tier the MX officer is considered to be a deep military strategic specialist at the LCDR to CMDR rank. They have significant prior experience in a broad range and depth of military MX roles (strategic policy, operational or niche). They provide expert advice and professional judgement to the DG level and above in complex issues regarding personnel, capability and operational issues. They are working as Directors/Deputy Directors or above as specialist project officers usually in the strategic headquarters environment.

MX PQ – Reserve Force. The MX PQ governance framework eligibility and assessment principles will apply equally to the Naval Reserve (NR) Force, however due to the inherent nature of Reserve employment, the combination of military experience and professional qualifications which provide the unique MX capability, may be inverted for NR MX officers. That is, while PN MX officers will have significant first PQ military experience combined with MX functional qualifications and expertise in a military context, NR MX officers may have a considerably greater level of functional experience and qualifications gained outside the military which, where appropriate, will be a relevant consideration by the MX Board. There will be no ab initio MX officers into the Reserves.

Navy – Intelligence

In September 2008 CN approved the establishment of a formal intelligence community and the development of a new Navy intelligence training continuum and career structure.

The redeveloped intelligence capability comprises the Intelligence (INT) PQ, for both Permanent Navy and Naval Reserve officers consisting of four tiers for which the ADF proposed pay placement from PG2 (for entry level INT training) through to PG6 for the Tier 3 Senior Intelligence Officer. Pay Grade placements for Command are in accordance with GOPS management principles and Navy taxonomy.

The ADF submitted that a review of Navy intelligence highlighted that the existing ad hoc intelligence training continuum for PN and NR officers did not adequately train Naval Intelligence Officers (NIOs) to meet requirements in the maritime and joint domains.

Army – Recognition of Professional Experience

In response to the Chief of Army's strategy, Army instigated a formal career path within the Advanced Technical Group that sought to capture certain classes of 'professional officers'. Army has called this specialisation the Recognition of Professional Experience (RPE). The RPE career plan is designed to ensure that a professional body of military specialists, originating from any Corps background, is available to be employed at the strategic and operational level in order to provide niche capabilities specific to their chosen specialisations. Army Officers entering these specialist roles may commence exposure to their specialisation and participate in training while in the Foundation Group. They will only be employed in designated RPE employment positions once selected for the Advanced and Technical Group. The employment opportunities within this group extend from the ranks of MAJ to BRIG.

RPE officers were not included in Matter 3 of 2007 (GOPS) as the RPE specialisation had not reached full maturity.

On 15 October 2009, the ADF submitted that the RPE specialisation *"has reached operational maturity and is now providing substantial capability to the ADF"*.

Officers electing for a career within a specialisation different from their Corps employment, will be employed in one of the following Military Staff Streams:

- a. Military Personnel;
- b. Capability and Acquisition; or
- c. Discretionary Capability Stream.

Whilst it was the submission of the ADF that the RPE structure does not, and was not intended, to apply to Army Reserves it was noted that an RPE accredited officer who transfers to the Reserves could be employed in a position related to their Corps or in an RPE related role within Army's Active Standby Staff Group.

Air Force – Operations Officer

The ADF proposed to formalise the RAAF Operations Officer (OPSO) employment category to incorporate both Permanent Air Force (PAF) and Reserves with a structure spanning the placement of Pay Group 2 to Pay Group 5 as follows:

OPSO Grade 1 (Pay Group 2). An OPSO is an officer who has completed the Initial Employment Training (IET) and is working at the tactical (unit or wing) level, primarily within an Air Force environment.

OPSO Grade 2 (Pay Group 3). The officer must have completed specific OPSO Force Element Group (FEG) Conversion Training and on-the-job experience, which is obtained through completion of 26 week post-IET competency log. The officer will have also completed the Introduction to Joint Planning Course; Air and Space Operations Course; and Emergency Control Officer Course. The Grade 2 OPSO will also have had postings in two different FEGs and has deployed on a major exercise or operation as part of a Task Unit Headquarters or AOC.

OPSO Grade 3 (Pay Group 4). The officer must have been an OPSO Grade 2 in a flying FEG (Air Combat Group, Air Force Training Group, Air Operations Group, Air Lift Group, Air Operations Support Group, or Surveillance and Response Group) and been a CAPT (E) watch keeper at AOC or MAJ (E) at HQJOC; or an operations Officer S3 in an Air Force Expeditionary Combat Support Squadron or been an Officer-In-Charge of a Base Command Post. The officer will have also completed the Joint Operations Planning Course; and hold the secondary appointment of Unit Defence Officer or Unit Security Officer. The officer will have also met the requirements of the sub-specialisations of Range Safety Officer for Air Activities or Tactical Air Control System.

OPSO Grade 4 (Pay Group 5). To qualify for this level the officer has been employed in a defined position as a specialist planner in the AOC, HQAC or HQJOC; or as the senior OPSO in a wing or FEG. The officer must have completed the relevant courses at the Australian Command and Staff College (or equivalent) and been employed as a Deputy Director at Air Force Headquarters, HQAC or HQJOC. The minimum rank for an OPSO Grade 4 in WGCDR.

The Returned and Services League of Australia (RSL) and the Defence Force Welfare Association (DFWA) supported the joint submission.

Having considered the joint and agreed submissions of the Parties, the comprehensive material presented and being satisfied that the placement principles of the four officer employment categories are consistent with the GOPS management principles, the Tribunal approved the placements as proposed effective on and from 10 December 2009.

D. Graded Other Ranks Pay Structure (GORPS).

In 2008 the ADF proposed the Graded Other Ranks Pay Structure (GORPS), being part of the Remuneration Reform Project (RRP). The GORPS activity achieved three major strategic outcomes:

- Establishment of a 10 Graded Pay Structure;
- The transition of the ADF Other Ranks (OR) framework to the newly established 10 Pay Grade Structure by the “Simple Transition” methodology; and
- The further placement of approximately 50% of the OR employment categories within the 10 Pay Grade Structure by “Value Added Transition” by recognising the increased enterprise value to the ADF following detailed and contemporary analysis.

During GORPS the ADF outlined to the Tribunal that there remained a body of work ahead that would see the simple transition categories being considered on a rolling basis and be brought before the Tribunal in a similar manner to the 2008 Value Added Transition (VAT) placement exercise. The ADF further identified the need to review the initial placements of the VAT employment categories.

The Case During the Reporting Period

On 15 October 2009, the ADF and Commonwealth presented a joint submission to review the placement of both Simple and VAT employment category placements within the 10 Pay Grade structure.

The structure of the 2009 GORPS maintained the methodology adopted in the GORPS 2008 Employment Family approach with consideration being given to the relative value and placement of employment categories within the structure. The employment categories submitted in 2009 were presented in a manner consistent with the Tri-Service Family approach, being:

- Tri-Service Categories – ADF Investigative Service (ADFIS) and ADF Physical Training Instructors (PTI);
- Combat 1 Family Categories – Army categories of Crewman and Light Cavalry Scout, Ground Based Air Defence, Offensive Support, Surveillance Target Acquisition and Rifleman, Air Force category of Air Base Protection mustering;
- Support Logistic Family Categories – Army categories of Driver, Cargo Specialist, Marine Specialist, Air Dispatcher, Operator Movements, Ammunition Specialists, Operator Petroleum and Rigger Parachute; and
- Engineering/Technical Family Categories – Army category of Geospatial Technician.

The proposed placements within GORPS were as follows:

Pay Grade 6:

Cavalry/Tank Warrant Officer, Manager Operations Ground Based Air Defence, Manager Operations Offensive Support Grade 2 (WO2 qualified SGT and WO2), Manager Company Operations Grade 2, Manager Company Operations Specialist Grade 2, Ammunition Technician Supervisor SGT, Ammunition Technician Manager WO2.

Pay Grade 5:

Cavalryman/Tank Crewman Commander, Supervisor Ground Based Air Defence, Supervisor Gunnery, Supervisor Artillery Command Systems Grade 2, Supervisor Joint Fires Grade 2, Operator Radar Grade 6, Supervisor Platoon Operations Grade 2, Supervisor Petrol SGT, Manager Petrol WO2, Rigger Parachute Supervisor, Rigger Parachute Manager.

Pay Grade 4:

Cavalryman/Tank Crewman Gunner, Offensive Support Detachment Commander, Supervisor Artillery Light, Artillery Command Systems Operator Advanced Grade 2, Supervisor Artillery Command System, Operator Radar Grade 4, Cargo Specialist Advanced, SPVR Aerial Delivery Grade 1, Ammunition Supplier Advanced Grade 1 PTE-CPL.

Pay Grade 3:

Joint Fires Observer Grade 1, Operator Radar Grade 5, Supervisor Section Operations Grade 1, Cargo Specialist Grade 2, AD Crew Commander Grades 1 & 2, Ammunition Supplier PTE, Rigger Parachute.

Pay Grade 2:

Artillery Command Systems Operator, Operator Radar Grade 1.

Pay Grade 1:

Reserve-only Airbase Protection mustering, Cargo Specialist Grade 1, Marine Specialist Grade 1, Air Dispatcher Grades 2 & 3.

The Reserve Operator Artillery Meteorology and Survey Grade Employment Streams were closed. Members were transferred to Operator Radar Grade 1 - 5.

The Returned and Services League of Australia (RSL) and the Defence Force Welfare Association (DFWA) supported the joint submission.

The Tribunal approved the placements as proposed effective on and from 18 March 2010.

E. Medical Officers (MOs).

The ADF proposed a change to the competency levels and salary points for Medical Officers in the specialist career structure. The Tribunal approved a determination giving effect to the changes as sought.

MOs were last reviewed by the Tribunal in July 2003 when a new salary and career structure removed the rank based system and introduced a structure based on competency levels with a rank overlay. The structure was based on undergraduate qualifications, Internship and Residency, with four levels of competency for Permanent MOs and a fifth level providing competency levels for Reserve Procedural Specialists.

The ADF conducted a benchmarking study to align ADF Competency Levels (CL) with current external classifications. The ADF submitted that:

“the benchmarking study:

- enabled valid salary comparisons to be made against the median of Queensland, Victoria and Western Australia data;*
- provided data on a range of allowances and other benefits that are available to external medical practitioners over and above those available to ADF MOs;*
- reinforced the view that remuneration for the force protection specialists (from the original MO SOCS) and procedural specialists in the public sector have been ‘broadbanded’ together; and*
- validated the salary rates for procedural or executive specialists in the public sector”.*

It was submitted that there was a general perception amongst MOs that they were effectively ‘left behind’ when compared to their civilian counterparts, particularly at the CL2 level and beyond in terms of remuneration, the opportunity to specialise in areas other than Primary Health Care and to pursue long term clinical careers as opposed to a career in administrative or medical management.

The ADF proposed:

- to rename CL as Medical Level (ML) to differentiate them from the competency levels of other SOCS similar to that of Legal Officers who have Legal Levels (LL) and to avoid confusion in relation to the merging of CL4 and CL5;
- to retain ML1 at the current salary rates and increments;

- to retain ML2 at the current salary rates but to increase the number of increments to recognise both the length of time taken to attain relevant postgraduate qualifications;
- to discontinue the concept of CL2A, and replace it with a “+1” increment advancement to recognise the additional value to the ADF of the development of specialist military medical skills required by each of the Services;
- to Retain ML3, but with a larger number of increments to recognise and encourage the retention and ongoing clinical practice for those MOs otherwise at the competency ceiling for a specialist General Practitioner; and
- combine the existing CL4 and CL5 into ML4 to address the disparity with the public sector. The public sector remunerates medical specialists, including specialist Medical Administrators, Public Health Physicians and Occupational Physicians at the same classification as other specialists such as physicians and surgeons. All specialists will be paid as ML4 unless occupying specified postings or performing specified duties designated as ‘Procedural Specialists’.

A Procedural Specialist salary point was also proposed to accommodate two groups:

- Procedural Specialists who are serving in the ADF on a permanent full time or permanent part time capacity undertaking specific preparedness and/or operational specialist duties; and
- Procedural Specialists in the Reserve Forces on active Reserve days or Continuous Full Time Service.

One of the features of the Specialist Structure was that officers transferring to the structure would be required to forego permanent appointment in favour of fixed periods of service. A ‘safety net’ was applied to protect MOs who did not wish to transition to the SOCS. Those officers remained on the old non specialist rates. This was termed the ‘Legacy System’. The ADF submitted that it is intended to phase out the Legacy System as soon as possible by encouraging those who remain within it to transfer to the SOCS.

The Commonwealth submitted that its position “*is that the proposals of the ADF are not opposed*”.

The Commonwealth acknowledged that the ADF had undertaken a conservative approach in relation to remuneration and that the ADF was looking to introduce non-remunerative measures to assist in attraction and retention and accordingly the Commonwealth did not oppose the ADF proposal.

The Tribunal approved the revised Medical Officer and Specialist Officer Career Structures as sought by the ADF.

F. Two Yearly Review of Allowances.

On 15 June 2010, the ADF and Commonwealth made submissions on the currency of allowances.

The ADF noted the changes in the nature of the allowances within the Tribunals jurisdiction, following the introduction of the Graded Officer Pay Structure, Graded Other Ranks Pay Structure and the rolling in of Qualification and Skill elements of allowances into salary. The ADF also reported that it intends to conduct a Strategic Reform Program (SRP) over the next 12-24 months which will further examine these allowances.

Whilst the Tribunal acknowledged that the ADF had some pressing issues to address while progressing the SRP, the Tribunal referred to its statutory obligations under the *Defence Act*. Accordingly, the Tribunal scheduled the following allowances for review in the second half of 2010:

- Aviation Capability Allowance Report Back;
- Navy Capability Allowance Report Back;
- Separation Allowance;
- Sea Going Allowance; and
- Submarine Service Allowance.

6. INSPECTIONS

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

No inspections of ADF ships and establishments were conducted during the period of this report due to the Tribunals' program of work, reported above.

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 20 November 2009, the Tribunal conducted a visit to the Joint Operations Command (JOC) facility at Bungendore NSW. During the visit the Tribunal observed several presentations and participated in discussions with JOC Staff.

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 were 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* were 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 Tribunals' 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 Tribunals' 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 that the DFRT 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 provides 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

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.

Fair Work Australia means the body established by section 575 of the *Fair Work Act 2009*.

FWA means Fair Work Australia.

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.

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 Deputy President of FWA.
- (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 *Australian Human Rights 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 *Australian Human Rights 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 *Australian Human Rights 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:

(a) any decision of, or principles established by, FWA that is or are relevant to the making of the determination; or

(b) if FWA has not yet made any such decision or established any such principles, any decision of, or principles established by, the Commission that is or are relevant to the making of the 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:

(a) any decision of, or principles established by, FWA that is or are relevant to the making of the determination; or

(b) if FWA has not yet made any such decision or established any such principles, any decision of, or principles established by, the Commission that is or are relevant to the making of the 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 Deputy President of FWA.

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: dfirt@dfirt.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
4 of 2009	Officer Aviation Remuneration Structure	1 October 2009
5 of 2009	Officer Aviation Specialist Structure	1 October 2009
6 of 2009	Air Traffic Controller Capability Allowance	1 October 2009
7 of 2009	Aircrew Capability Allowance	1 October 2009
8 of 2009	Salaries and Allowances - Amendments	4 September 2009 & 5 February 2010
9 of 2009	Graded Officer Pay Structure 2009	10 December 2009
10 of 2009	Graded other Ranks Pay Structure 2009	18 March 2010
11 of 2009	ADF workplace Remuneration Arrangement: 2009 – 2011	12 November 2009
12 of 2009	Senior Officer Salary – Amendment	28 October 2009
13 of 2009	Reserve Allowance – Amendment	1 January 2010
14 of 2009	Language Proficiency Allowance – Amendment	3 December 2009
15 of 2009	Salary for Chief of Joint Operations	3 December 2009
16 of 2009	Salary for Chief of Capability Development	3 November 2009
1 of 2010	Graded Other Ranks Pay Structure 2009 – Amendment	18 March 2010
2 of 2010	Paratrooper Allowance – Amendment	2 March 2010
3 of 2010	Special Forces Disability Allowance – Amendment	5 March 2010
4 of 2010	Medical Officer Salaries – Specialist Officer Amendment	27 May 2010
5 of 2010	Medical Officer Salaries – Specialist Officer Amendment	30 March 2010
SO 2009/25-37	Salaries and Benefits for Senior Officers – Amendment	N/A
SO 2010/01-05	Salaries and Benefits for Senior Officers – Amendment	N/A
SVC WO 2010/01-03	Salary for Service Warrant Officer	8 May 2010

SECRETARIAT

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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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