



DEFENCE FORCE REMUNERATION TRIBUNAL

TWENTY-SIXTH REPORT

2010 – 2011

(Period from 1 July 2010 – 30 June 2011)



Australian Government

Defence Force Remuneration Tribunal

22 September 2011

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-sixth Report of the Defence Force Remuneration Tribunal, which covers the period of the Tribunal's operations from 1 July 2010 to 30 June 2011.

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)**

The Honourable Arch Bevis

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1. INTRODUCTION

The Tribunal has been operating for over 26 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 Tribunal is an independent authority established under section 58H of the *Defence Act 1903*.

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 Special Minister of State for the Public Service and Integrity, 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

Members: Rear Admiral B L Adams AO, RAN (Ret'd)
 The Honourable Arch Bevis

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 continued in that position. On 16 June 2011 the Governor-General reappointed The Hon Patricia Leary as President of the Defence Force Remuneration Tribunal from 1 July 2011 and ending on 8 February 2012.

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.

On 12 May 2011 the Administrator of the Commonwealth of Australia appointed the Honourable Arch Bevis as a Member of the Defence Force Remuneration Tribunal for a period of five years. The Hon. Arch Bevis served as a Member of the House of Representatives from 1990 to 2010, with particular responsibilities in Defence and Industrial Relations. During his time in Federal Parliament, he served on a number of Parliamentary committees including as the Chair of the Joint Defence sub-committee from 2007 - 2010.

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 was reappointed until 30 June 2011. On 13 June 2011, Mr Kenzie was made a Member of the Order of Australia for service to the law, particularly as the Defence Force Advocate, and through the provision of advice on military industrial matters. On 14 June 2011, the Honourable Warren Snowden MP, Minister for Defence Science and Personnel reappointed Mr Kenzie for a period of three years, commencing 1 July 2011 and ending on 30 June 2014.

The Commonwealth is represented by the Australian Public Service Commission. 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 Defence Force Welfare Association (DFWA). Commodore Syd Lemon AM, RAN (Ret'd) represented the Returned and Services League of Australia (RSL).

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 part 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 Tribunal's work. The visits allow Tribunal members to have discussion 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 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. 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) achieved three major strategic outcomes:

- The 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 GORPS placements of all employment categories.

The Case During the Reporting Period

On 19 October 2010, the ADF and Commonwealth presented a joint submission to review three employment category placements within GORPS, which included:

- Establishing a new Navy Electronic Warfare (EW) category;
- Establishing a new Navy Aviation Support (AS) category; and
- A review of the placement of RAAF Ground Support Equipment Technicians (GSETECH).

Navy Electronic Warfare

The ADF proposed to introduce a new Navy Electronic Warfare employment category, which would be placed within the Electronic Warfare/Intelligence/Communications Family category. This decision was undertaken by Navy “*in order to meet the capability challenges presented by the rapidly evolving nature of the multi-faceted military task that is generically described as ‘Electronic Warfare’.*”

The ADF submitted that the duties, tasks and initial personnel for this category will be drawn from the current Cryptologic Systems and Combat System Operator categories.

The ADF submitted that it had conducted a comprehensive internal review of Navy Electronic Warfare functions titled Project Phoenix. The review included the examination of the requirement to meet future requirements, including the introduction of the new Air Warfare Destroyers (AWD) and Landing Helicopter Dock (LHD) vessels and upgrade of Anti Ship Missile Defence for the ANZAC Class frigates. The ADF also submitted that the review identified these ships and systems will include new capabilities in Electronic Support, Electronic Attack and Electronic Protection, which will require a cadre of specialist operators. Having examined the roles of Cryptologic Systems and Combat System Operator sailors, Project Phoenix highlighted the gaps required to meet future fleet capabilities.

The ADF also submitted that introducing the new Electronic Warfare category presented further benefits, which include:

- Elimination of career overlaps for sailors employed in EW roles;
- Provision of specialist EW career options for ranks from Seaman to Warrant Officer in both afloat and ashore positions;
- Consolidation of EW training continuums, including reduced overheads;
- Providing the opportunity for EW skills mastery, improving job satisfaction;
- Broadening employment options across the existing employment areas; and
- Clearly defining career paths for Senior Sailors wishing to specialise as Intelligence Officers.

The ADF proposed that the new EW employment category would span Pay Grades 3 – 7 and requested a date of effect on and from 7 July 2011 for this employment category.

Navy Aviation Support

The ADF submitted that it intends to introduce within the RAN, a new employment category of Aviation Support (AVN) sailors. This new category will support the enhanced aviation capability of the new LHDs, entering service in 2014 and 2015. This new employment category will control aircraft movements and manage operations on the multi-aircraft (multi-spot) flight and hangar decks of these ships. This new employment category will be grouped under the Combat 1 Family Group construct of GORPS. This employment category will have full career path opportunities, with employment positions both afloat and ashore.

The ADF submitted that in 2009 the Joint Amphibious Capability Implementation Team examined options for supporting LHD flight deck operations, specifically the requirement for a dedicated LHD aviation department and its manning. The ADF also submitted that the potentially dangerous, complex and demanding flight operations that will be conducted on the multi-spot flight decks and hangars requires dedicated levels of proficiency to ensure safety is maintained. Given the demands and the safety critical aspect of flight operations, establishing a dedicated employment category was the preferred option as apposed to tasking non-aviation personnel with secondary duties.

The ADF also submitted that:

“AVNs will be specialist sailors who train at all non-commissioned rank levels to plan, execute and oversee all aircraft movements on the flight deck and hangar deck on an LHD multi-spot ship in all weather and sea states, day or night. Their duties will involve the operation of all flight and hangar deck systems including aircraft and ammunition hydraulic lift systems, mechanical handling equipment (MHE) and associated safety and securing equipment. In the event of an emergency, duties will include aircrew rescue; aircraft crash fire fighting, incident management and the operation of all associated specialist fire fighting and personnel rescue equipment.”

The ADF proposed that AVN employment category would span Pay Grades 2 – 5 and requested a date of effect on and from 9 December 2010 for this employment category.

RAAF Ground Support Equipment Technicians

On 1 September 2010, the Tribunal conducted an inspection at RAAF Williamtown NSW to observe the work conducted by members employed in the RAAF Ground Support Equipment employment category. During the inspection, the Tribunal observed a number of practical demonstrations, including the maintenance of airfield arrestor equipment, specialist aircraft ground support equipment, power generators, air conditioning equipment and fire fighting vehicles. During the inspection, it was noted that a discrepancy between the Pay Grade placement between qualified supervisors and non-qualified supervisors had occurred following GORPS implementation in 2008. During the inspection, the Commonwealth raised questions with regard to the date of effect of the identified differential and that this should be the GORPS implementation date 4 September 2008.

The ADF submitted that in the GORPS 2008 submission the Air Force sought to establish a pay differential between Advanced Ground Support Equipment Technicians who are trade supervisor qualified and those who are not qualified as such. Trade supervisor personnel from both Ground Support Equipment Fitter (GSEFITT) and Ground Support Equipment Technicians (GSETECH) backgrounds were placed into the newly established Skill Grade. This resulted in an element of the GSEFITT workforce being placed into the same Pay Grade as GSETECHs, which are trained at a higher level and carry additional responsibilities. Subsequently, Air Force recognised the consequences of *“not maintaining the differential between fitter-qualified and technician qualified supervisors”*.

The ADF submitted that GSETECH Supervisor Pay Grade differential will:

- Recognise the multi-skilling and capability of GSETECH Supervisors;
- Restore the Pay Grade differential that existed from 1993-2008;
- Recognise that the value of advanced skill sets continues into supervisory roles; and
- Ensure a robust and sustainable trade structure which will meet the needs of Air Force and Technical Regulations Frameworks.

The ADF submitted that it was seeking to re-establish the pay grade differential by moving dual qualified GSE Tech Supervisors to Pay Grade 6. The ADF also submitted that:

“When fitters, technicians and managers are viewed as separate categories within a trade group (as indeed Air Force manages them); the current submission offers greater salary progression to both GSEFITT and GSETECH personnel over the length of a career than the pre-GORPS situation.”

The Commonwealth submitted that as the placement for GSETECH is the resolution of an anomaly the new Pay Group should be implemented to take effect from the date of the establishment of the Graded Other Ranks Pay Structure (GORPS) being 4 September 2008.

The Defence Force Welfare Association supported the joint submissions.

The ADF requested a date of effect on and from 28 October 2010 for this employment category.

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

- to approve the creation of the new Navy Electronic Warfare employment category on and from 7 July 2011;
- to approve the creation of the new Navy Aviation Support Employment category on and from 9 December 2010;
- to note the proposal of the Commonwealth in respect to the effective date for GSETECH Supervisors;
- to approve the differential pay grade placement for GSETECH Supervisors on and from 28 October 2010; and
- to direct the Parties to make further submissions regarding the operative date for the GSETECH Supervisor pay grade placement

B. Removal of Reserves Discounted Rates.

Discounted Pay rates were introduced into the ADF in 1975 when the Committee of Reference concluded that due to the inequality of skill, efficiency and professionalism between the Army Reserves (ARes) and Australian Regular Army (ARA), the inequality in rates of pay should be more marginal than substantial. As a result the salary for Reservists was based on a discounted factor of 10% or 15% (rank dependent) of the Permanent Force daily rate. These percentage discounts were reconfirmed in the ADF Submission on Reserve Remuneration in August 1996.

In 2006 the ADF and Commonwealth presented a joint Reserve Remuneration Review submission, which proposed to remove the salary discount for certain categories of Reserve members. The Tribunal accepted the joint submission, and agreed that the integrated workforce had affected the nature of training and employment of the ARes, with demands necessitating skill, efficiency and professionalism increases for ARes.

During the 2008 Graded Other Ranks Pay Structure (GORPS) review, all Other Rank (OR) trades and categories were moved into the new 10 Pay Grades, with approximately 50% of employment categories (EC) being moved from the Discounted Rate to the Non-Discounted rate, providing specific requirements were met.

Being consistent with GORPS 2008 principles, in 2009 the ADF and Commonwealth made submissions requesting a review of trades remaining on the Discounted Rates, which included the following Army Corps:

- a) Royal Australian Armoured Corps,
- b) Royal Australian Artillery,
- c) Royal Australian Infantry,
- d) Royal Australian Corps of Transport,
- e) Royal Australian Army Ordnance Corps,
- f) Royal Australian Engineers,
- g) Royal Australian Corps of Military Police, and
- h) Royal Australian Army Medical Corps

The Tribunal agreed to the placements as proposed within the above listed corps.

In 2010, Army completed the analysis of remaining ARes trades on the Discounted Rates and determined that it no longer had any Reserve employment categories being paid at the

Discounted Rate. Subsequently in December 2010 the ADF proposed to remove the Discounted Rates from the Salary structure. The Commonwealth supported the proposal.

As the Army was the only service to use the Discounted Rates, which were no longer required the Tribunal approved the removal of the Discounted Rates as sought. The revised salary structure was implemented on and from 9 December 2010.

C. Unpredictable Explosives Allowance (UEA).

On 8 September 2010 the Tribunal conducted inspections at the School of Military Engineering, Holsworthy NSW, during which the Tribunal observed the work of those involved in conducting searches for unpredictable explosives. On 18 November 2010, the Tribunal also conducted inspections at HMAS PENGUIN and HMAS WATERHEN, observing the work conducted by Navy Clearance Divers searching for unpredictable explosives. On 8 December 2010, the ADF sought to correct an inequity within the UEA structure, specifically an appropriate tier for high risk search operations for Improvised Explosive Devices (IED's). The table below details the proposed inclusion of the UE Search High Risk tier.

Qualification	Occurrence	Annual Rate	Daily Rate
EOD/EOR	continuous roster	\$13,385.00	-
EOD/EOR	cyclic roster	\$7,047.00	-
UE Search High Risk	continuous roster	\$7,047.00	-
UE Search	continuous roster	\$3,522.00	-
EOD/EOR	on occurrence	-	\$112.63
UE Search	on occurrence	-	\$56.32

Submissions and Evidence

The ADF submitted that:

“The impetus for the inclusion of a HRS tier is borne from the changing employment and character of tasks associated with the Search function in the ADF. Whilst the current situation in Afghanistan has been the trigger for the changes in tasks for the Search personnel, the ADF has committed to a long term restructure of explosive ordnance (unpredictable or otherwise) management within the ADF to reflect the changing dynamics of an increasingly volatile battlefield. The threat of IEDs is not confined to Afghanistan, with the employment of IEDs becoming increasingly widespread, sophisticated and constantly evolving. Global examples of IED use by state, non-state and issue motivated groups have been demonstrated in India, Spain, Iraq (on going), Indonesia (Jakarta and Bali) and London.”

The ADF further submitted:

“The use of IED's as the preferred method of engaging forces has resulted from the move away from state-on-state conflict (and the resulting challenges faced by non-state actors in accessing conventional weapons and tactics), and the greater accessibility to information on how to construct IED's. As this knowledge has developed, so has the ability for counter-IED operations to detect and disable IED's.

The resultant escalation has seen an improvement in the adversary's ability to conceal the devices. Further development in IED construction has resulted in more complex devices with secondary effects and alternate trigger mechanisms. The visit to the School of Military Engineering in September 2010 demonstrated the use of low-metal content IED's and the increasingly inventive way in which IED's are being constructed and concealed, making their detection by traditional means more difficult. In addition, it is becoming common practice for particular personnel in patrols to be targeted (via snipers, ambush or other mechanisms) in order to protect the primary device from being discovered."

The increase in both risk and threat to which Search personnel are exposed as a result of the changes to operational employment practices has highlighted an inequity within the UEA framework. In the Reasons for Decision Matter No. 11 of 1992, the Tribunal noted the *"irregular and relatively infrequent requirement to deal with IED incidents."* IEDs are now a standard and prolific weapon on the battlefield and in urban environments. They represent a real and ongoing threat to both Australian and Coalition Forces and account for the bulk of casualties in Afghanistan.

In written submissions, the ADF reported that:

"The addition of external threats imposed in a high risk environment contributes significantly to the layers of consequential thinking required by the search operator. This means the search operator must not only think about performing the search role, but also consider the peripheral effects of potential enemy observation posts, secondary devices, ambush locations and self protection if they are engaged by the enemy. The enemy tactics, techniques and procedures being developed in operational theatres around the globe are quickly becoming practice for other issue motivated groups, making the potential for use against high value civilian targets (people or infrastructure), not necessarily in a recognised combat zone, highly possible. It is for these reasons that the individuals at most risk of exposure to IED's and other unpredictable explosives are those personnel that form the search component of patrols (in an operational context), or who conduct searches in a high risk domestic sense. It is important to note that the regularity of exposure and types of devices used in the contemporary battlefield and the environment in which these operators perform their tasks, differ significantly from the last agreed definition of an 'irregular and relatively infrequent' exposure to unpredictable explosive..... The changes to the environments, processes and risk in which Search operators perform their duties have also created a need to recognise the changing psychological impact on the individual."

The ADF identified that Explosive Ordnance and Demolition (EOD) personnel, including the Search elements, are members of this high risk group are subject to a range of physical and psychological stresses including:

- the cumulative impact of the daily requirement to conduct highly dangerous patrols;
- the enduring sense of responsibility borne by Search personnel; and
- the personal effect if an IED is missed and personnel in the patrol or locals suffer injury or death.

In establishing a HRS tier of UEA, the ADF acknowledged the need to retain the current Search tier, along with extant eligibility, structure and quanta frameworks, where the new tier

recognises the “increased risk” presented by complex IED's, and the “additional threat imposed in certain environments”.

The ADF submitted that:

“When considering the physical and psychological impacts of search tasks performed in high risk environments, the ADF contends that Search personnel should have access to a higher rate of search allowance than those performing a more traditional, low risk and low threat search function. The ADF acknowledges this higher tier must sit below those of the continuous EOD/EOR tiers, and alongside the cyclic rate of EOD/EOR, to ensure relativities are maintained.”

In recognition of the increased risks, physical and psychological demands placed upon personnel involved in conducting high risk searches, the Commonwealth strongly supported the introduction of the new Tier as proposed by the ADF.

Having conducted the inspections in September and November 2010 and having considered the comprehensive submissions of the Parties, the Tribunal approved the introduction of the new High Risk Search Tier as proposed, effective on and from 9 December 2010.

D. Star Ranks Review.

In the Tribunal’s Reasons for Decision on the Remuneration Reform Project, issued on 27 February 2006, the Tribunal approved a new salary structure to apply to officers in the ranks 01 – 06. However, the Tribunal did not accept the ADF’s submission on setting salaries for 07 and 08 rank officers. The Tribunal noted that separate remuneration arrangements applied for star rank officers and expressed support for more flexible arrangements to apply to these officers.

Subsequently, the ADF and the Commonwealth made a joint submission to the Tribunal on 12 April 2006, proposing the Star Ranks Remuneration Framework, which provided a flexible remuneration model in which the Tribunal set a salary range for each rank. The CDF would recommend salary levels and non-superannuable incentive levers (circumstance benefit) for individual Star Ranks to the Tribunal. On 21 April 2006 the Tribunal approved the salary ranges as proposed by the Parties and introduced the Total Cash Value concept for Star Ranks.

The Case During The Reporting Period

On 16 December 2010, the ADF and Commonwealth made a joint submission to the Tribunal in respect of the review of remuneration structures for Star Ranks. The ADF and Commonwealth submitted that although the 2008 decision by the Tribunal to introduce the new frameworks and enable the ADF to have greater flexibility the structure had become administratively cumbersome and problematic and should be replaced. The Parties submitted that the 2008 Star Ranks Remuneration Framework specifically required reform due to:

- “a. A shift in government policy more favourably disposed to a collective and structured approach to executive remuneration;*
- b. The incongruous alignment of differential pay with the individual and collective values of Star Ranks;*
- c. The divisive nature of Circumstance Benefit;*
- d. The Ongoing administrative burden created by ID and Circumstance benefit; and*

- e. A perceived lack of transparency between the parties involved in determining ADF remuneration.”*

The ADF and Commonwealth sought:

- A new remuneration model for ADF 07 and 08 Star Ranks – the Senior Officer Graded Structure (SOGS), which does not incorporate the Circumstance Benefit;
- Approval of transition principles to guide the placement of members into SOGS;
- The continued but limited operation of the previous remuneration structure until SOGS was introduced;
- The conduct of an annual review of SOGS salary rates;
- The continued ability of the ADF to request an Individual Determination for members in exceptional circumstances; and
- A further hearing to address Specialist Star Rank officers in February 2011.

The ADF submitted:

“The following elements were identified as fundamental to any reviser remuneration model:

- a. Be consistent with Australian Government policy;*
- b. The need to define and apply appropriate relativities between 06, 07, 08 and 09 officers;*
- c. Facilitate a smooth transition of the current 07 and 08 workforce;*
- d. Be transparent to all parties; and*
- e. Be easy to administer.”*

The proposed SOGS introduced three new Pay Grades for 07 Officers and a single Pay Grade for 08 officers, with each rank having two increments as follows:

Rank – Increment	Pay Grade 1	Pay Grade 2	Pay Grade 3
O8–1	\$210,000	-	-
O8–0	\$199,000	-	-
O7–1	\$168,135	\$178,380	\$181,803
O7–0	\$163,238	\$173,185	\$176,508

The ADF submitted that the placement of 07 officers in the SOGS would be informed by the officers’ previous placement at the 06 rank in the Graded Officer Pay Structure. The ADF further submitted that Star Ranked Officers would be transitioned into the SOGS following a review of each member’s current remuneration arrangements, with full transition to be completed by January 2013.

The Defence Force Welfare Association (DFWA) supported the structure proposed by the Parties.

Having considered the submissions, the Tribunal approved the proposed structure for senior officers as sought by the Parties and supported by the DFWA. The date of effect for the new structure was on and from 17 March 2011.

E. Specialist Star Ranks

In Matter No 8 of 2008, ADF Star Ranks Remuneration, the ADF submitted that:

"Specialist O7 and O8 officers accommodated under the Medical, Dental and Legal Specialist Career Structures (SOCS) be moved to the general Star Rank banded structure; and Chaplains Division 5 remain in their extant structure."

The rationale behind this, inter alia, was to simplify the arrangements under which Star Rank officers were paid and also to indicate that these specialist officers are part of the broader strategic management and leadership group. The view formed at the time was that at the Star Rank level common work characteristics existed in terms of the exercise of strategic leadership and higher management responsibilities, which outweighed the application of their specialist skills.

The iterative nature of this approach for Star Ranks specialist officers was acknowledged during the 2008 hearing of the matter. The ADF submitted that differing imperatives in the future could result in a proposal to the Tribunal to revisit or vary the incorporation of specialists within the general Star Ranks remuneration structures.

Following a review of Star Rank Medical Officers duties, the Parties submitted that it had transpired that officers at this level continue to apply their specialist skills to a greater level than anticipated in 2008. The Parties also reported that the *"ongoing liability to utilise specialist skills at these strategic management levels is also reflected in the external market"*. The ADF submitted that Star Rank Medical Officers are required to be qualified specialist administrators with post-graduate qualifications and specialist health training. This approach is consistent with the findings of many wide ranging inquiries in Australia that have concluded that medically qualified leaders are required for efficient and effective health services. Subsequently, on 24 February 2011, the ADF and Commonwealth made a further joint submission in respect of specialist Star Ranks.

The joint submission proposed a further differential approach for Star Ranks Medical Officers, without prejudicing any future reviews of the SOCS. The Parties sought to set pay points for O7 and O8 Medical Officers, based on the work done in the 2010 Medical Officers review. The Parties submitted that setting Star Ranks pay points for Legal and Dental Officers at the time would be problematic as there had been no recent review of the relevant employment categories.

The joint submission reported that:

"Consideration of the duties of Star Rank Medical Officers has shown a liability for continued use of medical skills at these ranks, to a greater extent than previously believed in 2008, similar consideration of the duties and liability of Legal and Dental Star Ranks has not yet been undertaken."

The ADF submitted that since 2003, it *"has recognised that Medical Officers' remuneration is predominantly market-driven making Medical Officers extremely susceptible to external markets and that this view was further reinforced in the 2010 Medical Officer review"*.

The Parties submitted that although in 2008, it was believed that general management skills outweighed specialist medical skills at the O7 and O8 ranks, a greater and ongoing liability to utilise specialist medical skills within the O7 and O8 roles had become apparent. The ADF

identified that this liability is consistent with requirements of senior public sector medical positions. The ADF also submitted that it requires 07 and 08 Medical Officers to maintain their registration as medical practitioners, with Legal and Dental Officers of these ranks also being required to maintain professional registrations. However at this point, the extent of the ongoing liability to utilise their specialist skills for Star Rank Legal and Dental officers had not been assessed.

The Parties submitted that the majority of 06 Medical Officers selected for promotion to 07 are at Medical Level 4. The remuneration arrangements proposed in the submission also covered the possibility of 06 Medical Officers at Medical Level 3 or Medical Officers not in the Medical Officer SOCS being selected for promotion to 07.

The Parties submitted that:

“The following principles have been developed to articulate the rationale that underpins the proposed remuneration arrangements for Star Rank Medical Officers.

- *Star Rank Medical Officers are specialists and are required to use their specialist skills in the performance of their duties.*
- *Remuneration arrangements for Star Rank Medical Officers recognise the remuneration arrangements of other ADF Medical Officers.*
- *Star Rank Medical Officer remuneration is highly impacted by external market forces.*
- *The Medical Officer Structure is a standalone structure that is not linked to the Graded Officer Pay Structure or the Senior Officer Graded Structure.*
- *There may be rank/pay incursion by Star Rank Medical Officers into the Senior Officer Graded Structure or rates of pay set by the Remuneration Tribunal.*
- *Star Rank Medical Officers may have non-traditional career paths. Three examples of possible career paths are:*
 - *Full time ADF service up to Star Rank level.*
 - *Full time ADF service anywhere up to O6, transfer to the Reserves, return to full time ADF service at Star Rank level.*
 - *Reserve service, transfer to full time ADF service at Star Rank level.”*

The Parties also submitted that:

“The remuneration arrangements put in place for Star Rank Medical Officers acknowledge the non-traditional career paths.”

The ADF reported that it is planning a full review of Legal Officer SOCS in 2012 based on the datum point of 2000 and a further review of the Dental Officer SOCS in the second half of 2012 based on the datum point of 2003. The reviews will examine whether Star Rank Legal and Dental Officers should remain in the general Star Rank structure or be repatriated back to their respective SOCS. Consideration will need to be given to whether there is an ongoing liability to utilise their legal or dental skills respectively at the Star Rank level that overrides the generalist nature of Star Rank duties and possible incursion issues from the O6 ranks of the Legal and Dental SOCS.

Until the outcomes of this review are presented to the Tribunal, the Parties proposed that the Star Rank Legal and Dental Officers remain on Individual Determinations. The Parties

submitted this approach ensured that these members will not be prejudiced by reviewing the Star Rank Legal and Dental Officer remunerative structures in isolation.

The Parties also submitted that as the review will not be presented to the Tribunal for at least 18 months, any increases awarded under the annual review of SOGS should also be applied to Star Rank Legal and Dental Officers.

Having considered the joint submission, the Tribunal:

- Approved the proposed structure for Star Rank Medical Officers;
- Noted the proposal to review the Legal and Dental structures in 2012; and
- Noted that the Parties will seek increases to Individual Determinations for Legal and Dental Star Rank Officers commensurate with those awarded for the Senior Officer Graded Structure annual review.

In being consistent with the Star Ranks Review, the date of effect for the changes is on and from 17 March 2011.

F. RAAF GSE Technicians and Retrospectivity
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In a statement published on 20 October 2010, the Parties were directed to provide further information and submissions regarding the date of effect for the GSETECH category. The Parties were further directed that the submissions should consider precedent, flow on and any special circumstances surrounding this particular pay group anomaly and whether there are similar circumstances likely to arise in the future and if so, how they will be addressed.

On 15 March 2011, the ADF submitted that its position:

“is that the present case is not one in which exceptional circumstances exist such as to justify a date of operation retrospective to 2008. The date of operation should be 28 October 2010 as advanced in the 2010 GORPS proceeding.”

The ADF also submitted that:

“the Tribunal should not use the present case as an occasion on which to erect some general test for dealing with cases whether or not described (broadly or specifically) as anomalous but should deal with every case on its merits. This approach, in the case of GOPS and GORPS associated cases, involves recognising the reality that, because of the very dimension of the total exercise, it was inevitable that different groups were dealt with at different times.

In the case of GSETECH Supervisors (GSETECH SPVR) special circumstances do not exist that would justify separating it from this reality and treating it differently.”

During the hearing, the Commonwealth submitted:

“it’s fair to say that the Commonwealth has never, and is unlikely to ever be, attracted to the notion of retrospectivity. This matter is not about retrospectivity,... it is about the establishment of a datum point that informs the date at which an entitlement arises. In that context,... the datum point in this matter is either established when the

matter was heard in October of last year or by reference to the evidence and circumstances in 2008.”

The Commonwealth also submitted:

“Paragraph 15 of the ADF’s Submission,.... states that it’s the Submission of the ADF that if an employment Category was Simple Transition during GORPS 2008 and then later reviewed, this, in itself, does not give rise to circumstances where retrospective action is warranted. That statement is accepted.

It should not though be read as establishing a hard and fast rule for the application of a debate as to the appropriate datum point for Categories that were Simple Transition coming out of the GORPS matter in 2008.”

The Commonwealth supported of the position of the ADF and further submitted:

“that we do not need to establish rules or fixed guidelines for the determination of these matters. These are matters that need to be determined on their own merits and the nature of the parameters that informs the resolution of those particular matters... goes essentially to the circumstances of the particular case, but also what was understood of those circumstances at the time.”

The Tribunal chose to reserve its decision.

G. Submarine Service Allowance and Seagoing Allowance
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On Tuesday 2 November 2010, the Tribunal conducted inspections onboard HMAS WARRAMANGA and HMAS WALLER, during which the Tribunal had the opportunity to speak with the crews regarding Submarine Service Allowance (SSA) and Seagoing Allowance (SGA).

Following the outcomes of the Navy Capability Allowance (NCA) review, on 24 November 2011 the ADF made several submissions regarding the application in the review of SSA and Seagoing Allowance SGA. Given the current status of the Naval workforce with improved retention rates, the ADF proposed:

- The matter be adjourned and pending the adjournment the structure and quanta of Seagoing and Submarine Service Allowances continue unchanged.
- The nexus between Seagoing and Submarine Service Allowance remain unchanged.
- The Hard Lying Allowance quantum to remain unchanged as the daily rate for the same range of disabilities for which Seagoing and Submarine Service Allowance are paid.
- The structure and quanta of the Boarding Party Element should continue unchanged.
- The further review of Seagoing and Submarine Service Allowance should be included in the holistic review of allowances.

The Commonwealth supported the proposals.

The Tribunal decided:

- To agree to an adjournment of the proceedings;
- That the structure, quanta and nexus of the allowances should continue unchanged, including the daily rates of Hard Lying Allowance and Boarding Party Elements; and
- That the further review of Seagoing and Submarine Service Allowances should be incorporated in the upcoming holistic review of allowances.

The Tribunal noted that there were a number of issues raised during the inspections, including tier levels for the allowances. Accordingly, the Tribunal has directed that this is to be addressed during the broader review of allowances in 2011 – 2012 reporting period.

H. Separation Allowance

On 8 December 2010, the ADF presented a written submission to the Tribunal seeking a review of Separation Allowance. The ADF submitted that it had conducted an administrative review of the allowance following *“repeated concerns expressed by ADF personnel about the interpretation and application of certain concepts within the current determination.”*

The ADF did not seek changes to the structure or quanta of the allowance, rather the ADF submitted that the previous determination was ambiguous with regard to who was eligible for the allowance and at what point eligibility commenced and ceased.

Accordingly, the ADF proposed changes including:

- The categorisation of Member with Dependents (MWD) and Member with Dependents Unaccompanied (MWD(U)).
- Improved definitions and terminology used in the determination.

The Commonwealth supported the proposals by the ADF to refine the determination.

The Tribunal accepted the ADF submissions and agreed to the revised definitions and proposed improvements and issued a new determination that took effect on and from 20 December 2010.

I. Service Warrant Officer Band 4 Reassessment.

On 20 May 2011, the ADF made a written submission to the Tribunal, seeking to amend the salary structure for the three individual Service Warrant Officers. The ADF submitted that it was seeking to remove the individual determinations and establish a simple remuneration model that supported the Services administration of the Service Warrant Officers and the uniqueness of these positions. The ADF also submitted the desire to have greater transparency regarding remunerative arrangements for the Service Warrant Officers. The proposal aligned with SOGS by removing individual determinations, establishing a set pay point and gaining consistency of pay rates across the Services.

The ADF submitted that there was no change to the role, structure or duties of Service Warrant Officers and equally, there was no change to the four tier remuneration model for WO1(E)s.

ADF submitted that the current situation was unsatisfactory for the effective management of the remuneration of these members. The proposal highlighted that the same issues encountered with senior officer Individual Determinations were being experienced in the remuneration management for the Service Warrant Officers.

Previously, Service Warrant Officers commenced at the start of the Tier D band on appointment; moving to the middle of the Tier D band at the commencement of their second year; and then moving to the maximum rate within Tier D at the commencement of their third and final year in the appointment.

When the range of the Tier D pay band was originally set by the Tribunal, it was not contemplated the ADF would come to follow a standardised progression through the band. The band was not devised on the basis that after initial placement, Service Warrant Officers would be advanced within the band as a matter of course or as a result of the passage of time.

Progression in this manner was the result of the ADF wanting to take a more consistent approach to remunerating their Service Warrant Officers. The approach of gaining consistency rather than on formal reassessment of work value resulted in the Services using the full width of the band in a way that was not contemplated by the original submissions, as advanced by the ADF and accepted by the Tribunal. Thus the ADF submitted that the *“result, the current progression for Service Warrant Officers through to the top of the band over a three year appointment should be regarded as aberrant”*.

Further, the ADF submitted that:

“Having put this system in place for the current Service Warrant Officers, the ADF has come to the conclusion that in addition to not reflecting the original intent of its submissions, this type of progression through the band is unsustainable in circumstances where no other category in the ADF enjoys increment increases with their salary range in the order of 8%. For example the new Senior Officers Graded Structure only allows for increment increases in the order of 3%.”

The ADF proposed a rate of salary on appointment to the position of Service Warrant Officer, and for each subsequent year in the appointment, equivalent to WO1 Tier C PG 10, being consistent with the current Tier C and Tier B WO1 structure, in which there is no salary advancement or increments within each band.

The ADF also submitted that:

“In practice, this placement will allow for an appropriate increase in salary on appointment as a Service Warrant Officer for most WO1(E)s, reflecting the previously established work value of the position and the esteem in which the incumbent is held, and consistent remuneration across the Services for the duration of the appointment.

The practical effect of this approach would still recognise the prospect of the Service Warrant Officer being a final appointment in the ADF by remunerating them at the top end of the WO1 structure.”

ADF submitted that the current Service WO's remain on their Individual Determinations, with the new single pay point commencing for each Service as the new Service Warrant Officers are appointed.

The Commonwealth supported the ADF submissions.

Both the Returned and Services League and Defence Force Welfare Association supported the submissions.

The Tribunal approved the revised Service Warrant Officer structures as sought by the Parties, with effect on and from 2 June 2011.

J. ADF Workplace Remuneration Arrangement.

The Defence Act provides, in relation to salaries and allowances, that the Tribunal may give effect to any agreement reached between the Australian Public Service Commissioner, 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.

K. Navy Capability Allowance Report Back

The Navy Capability Allowance (NCA) was established to provide a short term capability allowance to encourage trained members of the Navy to maintain individual readiness and to remain engaged in continuous full time service. The allowance was specifically targeted at the junior and senior sailor workforce. Officers were not eligible for the allowance. Specific criteria applied to be considered eligible for the allowance. The allowance has now concluded and is no longer payable. Applications for the NCA were voluntary.

Background

On 5 December 2006, as part of the ADF Recruiting and Retention Strategy, the Minister for Defence announced that the ADF would ask the Defence Force Remuneration Tribunal to fundamentally review Sea Going and Submarine Service Allowances to better recognise “*the increasing dissatisfaction with sea service and compensate for the demands associated with serving at sea*”. In the Ministerial announcement on 5 December 2006, the Government proposed that the review should examine appropriate levels of compensation, particularly with regard to the liability of Navy personnel to serve at sea, at all times, not just when the member is at sea.

In the context of discussions on the Graded Officer Pay Structure in 2007, the Chief of Navy and the Fleet Commander advised the Tribunal of unprecedented workforce manning issues impacting the delivery of Navy capability. On 27 June 2007 the Tribunal wrote to the Chief of Navy suggesting an approach “*which may be of assistance in accommodating a timely review*”.

As a result the Tribunal visited HMAS STIRLING in Western Australia in July 2007 and was briefed by the Director General Navy Personnel and Training (DGNPT) in August, September and October 2007.

Having considered the remuneration options to address the Navy workforce issue, the ADF decided that it would seek the introduction of a Capability Allowance rather than pursue the review of the Sea Going and Submarine Service Allowances at that time.

A General Service Sailor who applied for the NCA and had been accepted by the Chief of Navy was to be paid \$24,000. A Submarine Qualified Sailor who applied the NCA and was had been accepted by the Chief of Navy was to be paid \$60,000. The amounts were paid prospectively in the instalments, with sailors agreeing to serve for a minimum period of three years in return.

Having undertaken a number of inspections and consideration of extensive joint ADF and Commonwealth submissions, the Tribunal agreed to the establishment of the NCA. In doing so, the Tribunal directed that metrics be applied to Key Performance Indicators (KPI's) to assess the effectiveness of the NCA.

The Tribunal did not see this as the occasion to consider further principles that might apply in future. Nor did the Tribunal see that there were matters of general application to be taken from Navy's position in this case. The ADF reported back to the Tribunal on 31 October 2009 in a conference format and again on 11 February 2010 in a full hearing format.

The Case During the Reporting Period

The ADF reported back to the Tribunal for the third and final time regarding the NCA on 20 October 2010. The report back examined the previously set KPI's which assessed the effectiveness of the NCA. The ADF submitted that

“The NCA brought the time necessary for Navy to implement other initiatives, which have:

- *allowed the implementation of a range of initiatives aimed at improving life in the Navy for all its personnel,*
- *seen expanded and modern ADF and Navy recruiting initiatives (Navy currently has 100% recruitment),*
- *arrested Navy's separation rates therefore retaining trained and qualified personnel (separation rate at the lowest is has been for a number of years),*
- *extended the period of existing personnel, and*
- *Prevented further degradation in the health of navy categories.”*

The ADF further submitted that:

“This third report back builds on the increasingly positive trends previously reported and provides data that demonstrates the workforce situation has stabilised. The ADF considers the NCA strategy to “...create tolerance in the Navy workforce...” to allow implementation of a broader range of non remunerative measures has worked and therefore Navy is not seeking an extension of the allowance.”

The Commonwealth supported the ADF submissions and commented that the use of the Key Performance Indicators had been useful.

The Tribunal accepted the submissions of the ADF, noting that the reported performance against the set metrics were very encouraging and very positive. The Tribunal also noted that it shall continue to monitor the progress of the Navy workforce.

6. INSPECTIONS

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

On 1 September 2010, the Tribunal conducted an inspection at RAAF Williamtown to review the work conducted by RAAF Ground Support Equipment Technicians, during which the Tribunal observed static and live demonstrations at the airfield, workshops and radar facility located at Duck Hole Hill.

On 7 September 2010, the Tribunal conducted inspections at Holsworthy NSW. The Tribunal was provided with a brief on the functions and operations of Headquarters Forces Command and observed the work conducted by a number of Units including:

- Sydney University Regiment
- D Company 4/3 Royal New South Wales Regiment
- 5 Combat Support Supply Battalion
- 21 Construction Regiment

During the unit inspections, the Tribunal was briefed on Unit functions and priorities and held open discussion forums with Unit members.

On 8 September 2010, the Tribunal conducted inspections at the School of Military Engineering, Holsworthy NSW. The Tribunal was provided with briefs regarding the nature of unpredictable explosives and observed several demonstrations, including a vehicle mounted patrol and the use of explosive detection dogs. The Tribunal also had the opportunity to engage with number of soldiers currently undergoing rehabilitation following injuries sustained while on operations.

On 9 September 2010, The Tribunal conducted inspections on HMAS KUTTABUL, observing a briefing regarding the functions of Electronic Warfare (EW) sailors. Inspections were then conducted onboard HMAS DARWIN, during which, the Tribunal observed practical demonstrations of EW sailors in the ships operations room and took the opportunity to engage with members of the ships company.

On 2 and 3 November 2010, the Tribunal conducted inspections on HMAS STIRLING, including the Training Centre West and Clearance Dive Team 4. The Tribunal also conducted inspections on HMAS WARRAMUNGA and HMAS WALLER. During the inspections, the Tribunal observed several demonstrations and engaged with members to discuss the application of Sea Going Allowance and Submarine Service Allowance.

On 18 November 2010, The Tribunal conducted inspections on HMAS PENGUIN and HMAS WATERHEN and was briefed on the functions of Navy Clearance Divers in the search for unpredictable explosives and observed live demonstrations at both locations.

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 6 August 2010, the Tribunal visited the Defence offices located at Brindabella Business Park, during which the Tribunal was briefed on the introduction of the new Human Resources Electronic Management System.

On 17 September 2010, the Tribunal visited the Naval Heritage Centre at Spectacle Island, NSW in order to gain a greater appreciation of Naval history, customs and traditions.

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 Australian Public Service Commission. 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 Australian Public Service Commission 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 Australian Public Service Commission, 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
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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.

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
SO 2010/10	Salary and Benefits for Senior Officers – Amendment	5 July 2010
SO 2010/11	Salary and Benefits for Senior Officers – Amendment	15 July 2010
SO 2010/12	Salary and Benefits for Senior Officers – Amendment	2 August 2010
SO 2010/13	Salary and Benefits for Senior Officers – Amendment	19 Aug 2010
16 of 2010	Allowance for Specialist Operations – Amendment	8 September 2010
7 of 2010	Salary for Chief of Joint Operations	19 September 2010
8 of 2010	Salary for Chief of Capability Development	19 September 2010
SO 2010/14	Salary and Benefits for Senior Officers – Amendment	21 September 2010
SO 2010/15	Salary and Benefits for Senior Officers – Amendment	17 October 2010
9 of 2010	Separation Allowance – Amendment	17 October 2010
SO 2010/16	Salary and Benefits for Senior Officers – Amendment	26 October 2010
11 of 2010	Graded Other Ranks Pay Structure – Amendment	28 October 2010
SO 2010/17	Salary and Benefits for Senior Officers – Amendment	4 November 2010
6 of 2010	ADF Workplace Remuneration Arrangement 2009 – 2011	11 November 2010
12 of 2010	Graded Other Ranks Pay Structure 2010 - Amendment	9 December 2010
SVC WO 2010/05	Salary For Service Warrant Officer	15 December 2010
14 of 2010	Salaries – Amendment	16 December 2010
SO 2010/18	Salary and Benefits for Senior Officers – Amendment	16 December 2010
SVC WO 2010/04	Salary for Service Warrant Officer	19 December 2010
10 of 2010	Separation Allowance – Amendment	20 December 2010
15 of 2010	Salaries – Senior Officers – Amendment	17 March 2011
1 of 2011	Salaries – Senior Officer Specialist – Amendment	17 March 2011

Determination	Subject	Date of Effect
SO 2011/01	Salaries – Senior Officer Specialist – Amendment	17 March 2011
3 of 2011	Senior Officer Salaries – Amendment	17 March 2011
2 of 2011	Consequential Amendments	21 March 2011
4 of 2011	Salaries – Amendment – Service Warrant Officers	2 June 2011
SO 2011/02	Salary and Benefits for Senior Officers – Amendment	21 May 2011
5 of 2011	Paratrooper Allowance – Amendment	2 June 2011

Note: Determination 13 of 2010 Graded Other Ranks Pay Structure was approved during the reporting period on 24 November 2010, with a date of effect 7 July 2011.

SECRETARIAT

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Office Manager:	Peta Withers
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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.

COMPLIANCE INDEX

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