



Australian Government

Defence Force Remuneration Tribunal

DECISION

Defence Act 1903

s.58H(1) — Determination of the salaries and relevant allowances to be paid to members

Legal Officer Specialist Officer Career Structure

(Matter No. 6 of 2012)

Post Graduate Legal Officer Trainees

(Matter No. 23 of 2013)

THE HON. A. HARRISON, PRESIDENT
THE HON. A. BEVIS, MEMBER
BRIGADIER W. ROLFE, AO (Ret'd), MEMBER

CANBERRA 18 APRIL 2013

Introduction

[1] This decision relates to an application by the Australian Defence Force (ADF) to vary the current salary structure for Legal Officers and Post Graduate Legal Officer Trainees, pursuant to s.58H of the *Defence Act 1903* (the Act). The ADF sought to introduce new salary levels and additional salary increments within the current structure, and extend the existing Trainee Allowance to legal graduates completing training in a Defence Legal Office. This decision reflects the statement we published on 23 November 2012 and Defence Force Remuneration Tribunal Determination 11 of 2012 and Determination 2 of 2013 dated 23 November 2012 and 24 January 2013 respectively. The operative date of effect for both Determinations is on and from 31 January 2013.

[2] At the hearing in Canberra on 27 September 2012, Mr Kenzie QC appeared on behalf of the ADF and Mr Tarlinton appeared on behalf of the Commonwealth. Air Commodore Paul Arthur Cronan, Director-General ADF Legal Service, appeared as a witness for the ADF and his affidavit was tendered during the hearing.¹

Background

[3] The current specialist career structure and salary scale for ADF Legal Officers took effect on and from 16 March 2000². Reviews have been conducted to update the structure from time to time, most recently in 2012, as described in the ADF submission.³

[4] The application in Matter No. 6 of 2012 (Legal Officer Specialist Officer Career Structure) was made on 24 April 2012, and the application in Matter No. 23 of 2012 (Post Graduate Legal Officer Trainees) was made on 7 September 2012. The ADF presented the matters separately for the sake of clarity, but requested a concurrent hearing to reflect the relationship between the two matters. The Commonwealth provided a written submission in respect of both matters⁴. This decision relates to both matters.

The basis of the application

[5] The ADF first submitted that “the following amendments to the current Legal Officer Specialist Officer Career Structure are required *“to ensure ADF capability requirements are met now and into the future as detailed below:*

- a. *better definition of the requirements for each Legal Level (LL);*
- b. *refinement and better definition of the requirements for advancement to each LL. This includes the removal of the requirement for Legal Officers (LOs) to be posted to a designated position as a means of advancement from LL1 through LL3. This will be retained for LL4 and LL5, with more rigorous capability assessment as the trigger for advancement;*
- c. *changes to the training continuum for Legal Officers in order to provide the ADF with the capability it requires;*
- d. *the introduction of new LLs, LL-A and LL-B, for some high-level specialist Reserve Legal Officers employed to provide very specialised types of legal work. The majority of Reservists are to remain linked to the progression and remuneration of their Permanent Force counterparts;*
- e. *short-term appointment tenure, as a feature of the LO SOCS, to be removed and tenure to be managed in accordance with Defence (Personnel) Regulations 2002;*
- f. *the creation of additional salary increments at the O4 LL4 level within the current O4 LL4 band;*
- g. *amendments to LO SOCS pay points, in particular the removal of unused pay points and removal of a 'HDA only' annotation associated with one pay point; and*
- h. *make a separate submission to the Tribunal for O7 and O8 Legal ranks to be placed in an evolved Senior Officer Graded Structure (SOGS). That proposition will form part of the 2012 SOGS Annual Review to be submitted in late 2012.”⁵*

[6] The ADF submission provided detail of proposed changes to ADF administrative arrangements to support these amendments, including better definition of the requirements for each legal level⁶, with revised requirements for advancement⁷ and the introduction of a new training continuum⁸.

[7] The ADF further submitted that a new trainee rate of salary should be introduced for legal graduates who are not yet admitted to practice and are not part of the Legal Officer Specialist Career Structure⁹.

[8] The ADF submissions were endorsed by all three Service Headquarters¹⁰, and are intended to apply to the 156 Legal Officers currently employed in the Specialist Officer Career Structure scheme, which includes members employed in the Reserves¹¹. It is anticipated that the first post-graduate legal trainee will commence service in 2015¹².

Specialist Reserve Legal Levels

[9] Two new levels are proposed to differentiate between generalist Reserve Legal Officers who have broad knowledge of Service law and those employed as Reserve Legal Officers with a narrow focus based on their recognised specialist legal experience. The new levels will be named Legal Level A and Legal Level B.

[10] The ADF proposed that Reserve Legal Officers deemed to make a singular contribution to the practice of an area of law in which expertise is required by Defence will be employed at Legal Level A. These officers will be expected to make original, innovative and distinguished contributions to legal policy or practice in their area of expertise¹³, and will be remunerated at the same level as a generalist legal officer at the maximum increment of 05 Legal Level 5¹⁴.

[11] The ADF further proposed that Reserve Legal Officers deemed to make an outstanding contribution to the practice of an area of law in which expertise is required by Defence will be employed at Legal Level B. These officers will be expected to make distinguished contributions to legal policy or practice in their area of expertise¹⁵, and will be remunerated at the same level as a generalist legal officer at the maximum increment of 05 Legal Level 4¹⁶.

[12] The ADF proposed remuneration of the two new levels is consistent with the current remuneration practice for Specialist Reserve Legal Officers, and the ADF submits that this remuneration accurately reflects the continuing work value of these specialists¹⁷.

[13] The Commonwealth had no objections to the introduction of these specialist classifications, which it submits will provide the ADF with greater flexibility to access highly specialist legal expertise when required¹⁸.

Removal of Short-Term Appointment Tenure

[14] The current determination contains an eligibility requirement for Legal Officers in the Legal Officer Specialist Officer Career Structure to have a fixed tenure of employment. The ADF submits that this requirement should be removed and for tenure to be managed by the Services in accordance with extant Regulation and Defence Instruction¹⁹.

[15] The Commonwealth submitted that it has no objection to the ADF determining tenure for members in the Legal Officer Specialist Officer Career Structure consistent with the practices for other employment and specialist categories. The Commonwealth further submitted that if the current pay rates contained compensation for short tenure, that the rates should be adjusted to reflect the amended arrangements²⁰.

Additional Increments – 04 Legal Level 4

[16] The ADF submitted that the two 04 Legal Level 4 increments contained in the Legal Officer Specialist Officer Career Structure did not accurately reflect changes in work value, which occur as an 04 legal officer gains experience at this level²¹. The ADF submitted that the insertion of two new increments between the existing pay points is expected to assist in the retention of Legal Officers at this level by providing a steady career progression and recognising growth in expertise and experience²².

[17] The Commonwealth had no objections to the introduction of these two additional pay points, noting that it does not increase the maximum payable²³.

Removal of Unused Pay Points

[18] The ADF submitted that 03 Legal Level 1 (higher duties or temporary duty only), 04 Legal Level 1 (higher duties of temporary duty only), 05 Legal Level 2 and 06 Legal Level 2 should be removed from the Legal Officer Specialist Officer Career Structure as the levels are not currently in use and there is no proposal to use them in the future²⁴.

[19] The Commonwealth had no objections to the removal of the unused pay points²⁵.

Amendment to 05 Legal Level 3

[20] The ADF submitted that the current 05 Legal Level 3 (higher duties or temporary duty only) pay point should be amended to remove the qualifying statement as it is possible for a Reserve Legal Officer to reach 05 rank and be remunerated at Legal Level 3 for the performance of their normal duties²⁶. Furthermore, Air Commodore Cronan gave evidence in his affidavit that a daily rate should be introduced to match the current annual rate to recognise that Reserve Legal Officers are more likely to reach 05 rank while still being remunerated at Legal Level 3 than their permanent counterparts²⁷.

[21] The Commonwealth had no objections to removing the qualifying statement contained within the current determination²⁸. The objection by the Commonwealth regarding the introduction of daily rates will be addressed below.

07 and 08 Legal Officers

[22] The ADF submitted 07 and 08 Legal Officers should be removed from the Legal Officer Specialist Officer Career Structure and placed in the Senior Officer Graded Structure as part of a submission which will be considered by the Tribunal later in 2012²⁹. The submission describes the actions which the ADF will undertake to avoid any detrimental outcome to Star Rank Legal Officers in the interim period³⁰.

[23] The Commonwealth noted the change and made no submission in respect of this matter during the proceedings³¹.

Post-Graduate Legal Officer Trainees

[24] The ADF submitted that a new rate of salary should be added to Defence Force Remuneration Tribunal Determination 15 of 2008 *Salaries*, Schedule B.13 – Trainee Salary Rates to distinguish post-graduate Legal Officers who have completed their law degree but are not yet admitted to practice from undergraduate Legal Officers who are yet to complete their legal studies³². It is proposed that post-graduate Legal Officers will be remunerated at the same rate as pay point 01-2 increment 0 in the Graded Officer Pay Structure, in effect providing post-graduate Legal Officers with a 15% increase in annual salary over the final year of their studies. This is similar in operation to the rate that applies to post-graduate Medical Officers, but is less in quanta³³.

[25] The ADF also submitted that members employed at the new post-graduate Legal Officer salary rate should be entitled to receive Trainee Allowance while undertaking the practical training component of their studies in a Defence Legal Office. This is consistent with the current practice of paying pro-rata Trainee Allowance to undergraduate Legal Officers when they attend ADF training during semester breaks³⁴.

[26] The ADF further submitted that post-graduate Legal Officers undertaking the practical training component of their studies in a civilian law firm should not be eligible for this allowance. This is consistent with the treatment of post-graduate Medical Officers who undertake their internship in a civilian hospital³⁵.

[27] The Commonwealth noted the change and made no submission in respect of this matter during the proceedings³⁶.

Replication of Annual Rates with Daily Rates

[28] Air Commodore Cronan gave evidence that annual increments at all Legal Levels should be matched by a daily pay point to reflect the common career structure, rank and competency levels shared by permanent and Reserve Legal Officers. The ADF raised this issue late in the hearing as an additional matter and the Commonwealth sought an opportunity to address it shortly after the hearing. Subsequently, the Commonwealth submitted the following objections to the introduction of new daily rates to match the current annual rates³⁷:

- It is not standard ADF practice to replicate the number of full-time pay points into the Reservist pay points in the general pay rates;
- The proposal would have significant cost implications;
- Each specialist structure is intended to operate independently from the other specialist structures and therefore the Reservist pay points in the other structures should not be seen as a precedent for the legal structure; and
- Reserve Legal Officers are not required to work for the same number of days as a fulltime member to access the increment.

[30] The ADF responded and identified the need for consistency across the specialist career structures, with Medical and Dental Specialist Officer Career structures having a direct correlation between annual and daily rates and that this feature is absent in the current specialist Legal Officer Career Structure³⁸. Whilst acknowledging the matters raised by the

Commonwealth we were persuaded by the ADF submissions that the additional increments should be introduced.

Conclusions

[31] Having considered the submissions, and evidence, we decided to approve the amendments sought in the ADF submissions, specifically:

- Introducing the LL-A and LL-B specialist Legal Levels for Reserve Legal Officers;
- The removal of fixed tenure of Legal Officers, as detailed in Defence Force Remuneration Tribunal Determination No. 15 of 2008, *Salaries*;
- Introducing the additional increments at 04 Legal Level 4 to better recognise the increase in work value over time;
- The removal of pay points which are no longer in use;
- Amendment to 05 Legal Level 3 to allow more appropriate use through removal of a qualification requirement;
- The excision of 07 and 08 Legal Officers from the Legal Officer Specialist Officer Career Structure, which will now be managed under the Senior Officer Graded Structure.

[32] These amendments to salary levels and increments in Defence Force Remuneration Tribunal Determination No. 15 of 2008, *Salaries* came into effect from 31 January 2013.

THE HON. A. HARRISON, PRESIDENT
THE HON. A. BEVIS, MEMBER
BRIGADIER W. ROLFE, AO (Ret'd), MEMBER

Appearances:

Mr. R. Kenzie, AM QC with Squadron Leader J. Magro for the Australian Defence Force

Mr. R. Tarlinton with Mr. J. O'Reilly for the Commonwealth

¹ Exhibit ADF 3.

² Defence Force Remuneration Tribunal Determination No. 2 of 2000.

³ Exhibit ADF 1, pages 3-9, paragraphs 2-26.

⁴ Exhibit Commonwealth 1.

⁵ Exhibit ADF1, pages 2 – 3, paragraph 1.

⁶ Exhibit ADF 1, pages 9-15, paragraphs 27-50.

⁷ Exhibit ADF 1, pages 15-21, paragraphs 51-58.

⁸ Exhibit ADF 1, pages 21-28, paragraphs 59-82.

⁹ Exhibit ADF 2, page 2, paragraph 1.

¹⁰ Exhibit ADF 1, page 39, paragraph 119.

¹¹ Exhibit ADF 1, page 39, paragraph 120.

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- ¹² Exhibit ADF 2, page 8, paragraph 23.
- ¹³ Exhibit ADF 1, page 30, paragraph 92.
- ¹⁴ Exhibit ADF 1, page 30, paragraph 91.
- ¹⁵ Exhibit ADF 1, page 32, paragraph 97.
- ¹⁶ Exhibit ADF 1, page 2, paragraph 91.
- ¹⁷ Exhibit ADF 1, page 32, paragraph 101.
- ¹⁸ Exhibit Commonwealth 1, page 3, paragraph 9.
- ¹⁹ Exhibit ADF 1, page 34, paragraph 107.
- ²⁰ Exhibit Commonwealth 1, page 3, paragraph 10.
- ²¹ Exhibit ADF 1, page 34, paragraph 108.
- ²² Exhibit ADF 1, page 35, paragraph 111.
- ²³ Exhibit Commonwealth 1, page 3, paragraph 11.
- ²⁴ Exhibit ADF 1, page 38, paragraph 118.
- ²⁵ Exhibit Commonwealth 1, page 3, paragraph 12.
- ²⁶ Exhibit ADF 1, page 38, paragraph 118.
- ²⁷ Exhibit ADF 3, page 8, paragraph 22.
- ²⁸ Exhibit Commonwealth 1, page 3, paragraph 12.
- ²⁹ Exhibit ADF 1, page 3, paragraph 1(h).
- ³⁰ Exhibit ADF 1, page 37, paragraph 117.
- ³¹ Exhibit Commonwealth 1, page 2, paragraph 2.
- ³² Exhibit ADF 2, page 2, paragraph 1.
- ³³ Exhibit ADF 2, page 6, paragraph 16.
- ³⁴ Exhibit ADF 2, page 6, paragraph 19.
- ³⁵ Exhibit ADF 2, page 6, paragraph 20.
- ³⁶ Exhibit Commonwealth 1, page 4, paragraph 14.
- ³⁷ Letter from Mr R. Tarlinton entitled Matter No. 6 of 2012 - Legal Officer Specialist Officer Career Structure, dated 10 October 2012.
- ³⁸ Letter from Captain A. F. Bond, RAN entitled Matter No. 6 of 2012 - Legal Officer Specialist Officer Career Structure, dated 25 October 2012.