



Defence Force Remuneration Tribunal

DECISION

Defence Act 1903
s.58H—Functions and powers of Tribunal

ROYAL AUSTRALIAN NAVY: NAVY RETENTION INCENTIVE PAYMENT – REPORT BACKS 2022 (Matter 2 of 2022)

MS I. ASBURY, PRESIDENT

MR A. MORRIS, MEMBER

CANBERRA, 30 AUGUST 2022

MAJGEN G. FOGARTY AO RETD, MEMBER

[1] This decision arises from the requirement, set by this Tribunal in Matter 2 of 2019 – *Royal Australian Navy – Retention Incentive Payment*, for the Navy to provide bi-annual report backs on the operation of the Navy Retention Incentive (NRI) Payment.¹

[2] The NRI Payment is a short-term remunerative measure determined by this Tribunal under s.58H of the *Defence Act 1903* (the Act) applicable from 1 July 2019 to 1 July 2024. It was designed by Navy to provide an incentive to extend the length of service of members at the mid-ranks approaching career separation points, and is paid as a lump sum of \$20 000 (gross) for the previous years' service.

[3] Each report back is required to evaluate seven key performance indicators (KPIs) to ascertain the effectiveness, or otherwise, of the payment. They are:

- a. member feedback on the payment, including effectiveness of communication regarding its implementation;

- b. increase of personnel within key mid-ranks based on a July 2019 base index with the expectation this will increase over the duration of the NRI;
- c. the reduction in the difference between the demand of trained members and the actual supply of trained members per rank with the expectation that this difference will decrease over the duration of the NRI;
- d. separation rates per rank with the expectation these will decrease over the duration of the NRI;
- e. length of service profiles, with the expectation that the average length of service will extend over the duration of the NRI;
- f. any second order effects such as uneven retention or feedback indicative of loss of goodwill, and how this will be addressed; and
- g. progress of Navy's broader retention initiatives.

[4] This is the fifth NRI report back and follows those made in 2020² and 2021³. This submission was filed in March 2022 in compliance with the six-monthly reporting requirements. It was subsequently withdrawn, and revised, as a result of the commencement of a separate retention payment, the Navy Capability Retention Payment (NCRP) which was introduced by Chief of Navy under s.58B of the *Defence Act 1903* (the Act) on 12 April 2022, and on which we sought information shortly thereafter.

[5] An amended report back was received on 19 July 2022. It was considered in hearing on 16 August 2022 when Mr J. Phillips SC appeared for the ADF and Mr N. Doukas for the Commonwealth. Commodore E. Young CSC RAN, Director General Navy People, appeared as a witness.

Report Back

[6] In addition to providing updates against the seven KPIs the resubmitted ADF report back informed us of a newly introduced Navy retention campaign, known as '*Stay Onboard – People First*' announced on 20 April 2022. The campaign focusses on 81 initiatives developed following engagement with the Navy workforce.

[7] One component of this campaign is the NCRP; a \$40 000 bonus payment targeted to members in a number of 'critical' and 'at risk' employment categories in exchange for a commitment to serve two *further* years of service. The ADF submits this therefore differs from the NRI, which is a 'completion' payment for meeting the *previous* years' service.

[8] We accept the advice in the report back that, since the implementation of the NRI, workforce metrics have continued to deteriorate and "*Navy has been continuously risk managing a number of workforce and capability pressures to generate the required forces, with demand now significantly outstripping supply*". We note that Navy's overall separation rates have continued to climb (9.7% as at June 2022) and hollowness at the middle ranks has continued to increase while recruiting numbers continue to decrease.⁴

[9] We accept that, on 23 March 2022, the Chief of Navy Senior Advisory Committee agreed Navy needed to “act quickly and that a retention campaign with a number of financial and non-financial initiatives was necessary”.⁵ As a result, Navy established the payment at very short notice to “retain members in individual positions necessary to capability in a critical trade or work unit and prevent the reduction of personnel numbers to levels below that required to sustain operational or supporting capability in Navy”.⁶

[10] The NCRP has been determined under s.58B of the Act and sits outside the remit of this Tribunal. However, as we have noted, the NRI was determined by this Tribunal under s. 58H of the Act. Subsequent to the NCRP being determined, we became aware of Navy-wide correspondence to the workforce indicating a “pause” on the NRI in order to commence the NCRP.⁷ At this point we sought clarification on the advent of the NCRP and its impact, if any, on the NRI.

Our concerns regarding NRI and its interaction with NCRP

[11] Firstly, we considered the evidence provided by Navy that the ‘pause’ was simply considered to be a pause in “administrative processes only and driven by constraints in the administration team to ensure maximum human resources were applied to the payment of the NCRP in the financial year 2021/22 for budgeting purposes”. We note Navy acknowledges, “without additional context, the NRI Payment Pause signal may have provided a perception that Navy had unilaterally paused the implementation of the NRIP”.⁸

[12] Secondly, in reviewing what we considered interaction between the two payments, we deliberated on the advice published in Navy’s “Stay Onboard – People First” booklet that outlines the various ‘lines of effort’ of the retention campaign. That booklet refers to the eligibility for either payment as detailed below:

If I accept the NCRP will I also be eligible for the NRI?

Members potentially eligible for the NRI will be given the following options:

- a. Forgo their potential future NRI payment and commence the NCRP agreed period of effective service on 31Mar22 or the day after their current ROSO/IMPS⁹ expires, or*
- b. Seek a future NRI payment (subject to meeting the eligibility criteria at their NRI service milestone) and commence the NCRP undertaking further service the day after their NRI service milestone date. Members who elect this option will be paid the NCRP in the financial year selected in line with all other NCRP payments. If a member who elects this option fails to meet the NRI eligibility criteria their NCRP agreed period of effective service will not be recalculated or adjusted.¹⁰*

The advice to ‘forgo’ payment, and the manner in which that option could operate, was of concern to us noting we considered there was no provision in our determination¹¹ to implement such a choice and no application had been made to vary the determination giving effect to the NRI, to allow this to be implemented. Further, we had not been consulted on the impact to the provisions, and the impact of the NRI on the NCRP, including the proposal to pause the NRI.

Consideration

[13] In considering this report back, we accept the workforce data contained within it, while submitted in August 2022, was prepared in March 2022 and is primarily based on data from 2021.

[14] We considered the report back data that (as at December 2021) of the 3,256 potential candidates for the NRI Payment, 2,523 members have received payment. We sought clarification on the data submitted that of those, “1,503 waivers were applied to applicants that did not meet all of the Individual Readiness of Mandatory Annual Awareness Training requirements”.¹² We note the concerns of the Commonwealth regarding “the significant provision of waivers and deferrals to members who had not satisfied the necessary eligibility criteria to receive the payment” and its observation that “53 per cent of payments were facilitated by a waiver”.¹³ We considered the evidence of CDRE Young that the factors for a waiver are considered “on a case-by-case basis and they’re based really on our assessment of whether it’s in the member’s control”.¹⁴ We agree Navy is working to mitigate and reduce the need for waivers.

[15] We share Navy’s concern that the data presented in this report back shows workforce demand is growing at a far greater rate than supply. We also note that while the expectation was that separation rates would decrease because of the NRI, some have now begun to increase, with Leading Seaman separation rates nearing 12 per cent in recent months.¹⁵ Reflecting this, we note “notwithstanding the NRI remains a key component in Navy’s overall retention strategy for reducing workforce hollowness across Navy, it has shown to be not enough to arrest the outflow of Navy’s critical and at risk categories”.¹⁶

[16] For context, and with regard to Navy’s use of another retention bonus, the report back informed us that Army¹⁷ and Air Force¹⁸ have both introduced similar retention bonuses to selected categories in their workforces under s.58B of the Act – something of which we were also unaware. We accept that, while these bonuses are also designed to retain selected workforces they have, like Navy, been determined outside the remit of this Tribunal. However, we note that these bonuses had no impact on the delivery of any retention bonus determined by us.

[17] We deliberated on the evidence provided in hearing that “we weren’t pausing the implementation of the NRIP; it was the physical processing”¹⁹ and consider it to be contrary to the Navy-wide messaging tilted “NRI Payment Pause”. We also consider it likely to have resulted in confusion.

[18] With regard to the interaction between the NRI and NCRP, and Navy’s advice on the ability to ‘forgo’ NRI payments, we considered the evidence that this implies a disentitling provision to NRI exists. However, as it stands at present, when a member has accepted the NCRP, their entitlement to the NRI would arguably have continued in the 12 months after their acceptance of the NCRP, resulting in a crossover between the payments and the ability for members to be paid twice for the same period of service. It became clear there was no legal provision in the determination to provide for an ability to ‘forgo’ NRI in order to receive NCRP.

Conclusion

[19] We agree with the Commonwealth submission²⁰ that of the seven KPIs, the ADF is continuing to meet the requirements of six with the exception of sub paragraph 2.g above, where the NCRP has been required to be introduced.

[20] We accept the progress of Navy's broader retention issues remains of concern. While acknowledging the need for timely action we also note that we have always been available and "*if something needs to happen expeditiously we will respond to it urgently*".²¹ Had we been made aware of bonus requirements closely aligned to the NRI we would have willingly, and urgently, engaged with the ADF and the Commonwealth on remunerative options to provide for the same, or similar conditions, if achievable. It is regrettable that we were not permitted this opportunity by any of the Services in developing their respective retention and/or capability bonuses.

[21] We note the Commonwealth submissions in this report back reiterate its interest in ensuring a transparent and collaborative relationship with the ADF when matters relevant to the DFRT are impacted. We also note the sincere apology given by Commodore Young to both the Tribunal members and the Commonwealth for the misunderstanding and oversight in relation to this matter and accept this unreservedly.²²

[22] We accept the progress on KPIs as submitted and agree that Navy remains committed to ensuring that the NRI continues to be fit for purpose and used effectively.

[23] We accept the difference between the NRI and NCRP is the former is a *completion* payment for reaching a service milestone while the latter is a payment for a commitment to undertake *further* service. We note the level of acceptance of the NCRP and agree it appears to be achieving the desired outcome for future commitment to serve for a further two years and has a take-up rate of 80 per cent.²³ The impact on NRI remains to be assessed in future reporting.

[24] We accept that there was never intention for members to receive both payments for the same period of service and agree to revision of the Determination 11 of 2013 – *ADF Allowances* in order to clarify that a member is not eligible for any other bonus paid for the same period of service. Determination 4 of 2022 will provide for correction of this with effect from 1 September 2022.

[25] We consider this report back meets the March 2022 reporting requirements. We therefore request the next six monthly report back be filed in September 2022 to align with our original reporting requirements on the NRI Payment.

MS I. ASBURY, PRESIDENT
MR A. MORRIS, MEMBER
MAJGEN G. FOGARTY AO RETD, MEMBER

Appearances:

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

Mr N. Doukas for the Commonwealth assisted by Mr H. Miller

Witness:

Commodore E. Young CSC RAN, Director General Navy People

¹ [Matter 2 of 2019 - Navy: Retention Incentive payment](#)

² [Matter 4 of 2020 - Navy: Retention Incentive Payment 2020 Report Backs](#)

³ [Matter 6 of 2021 - Navy: Retention Incentive Payment 2021 Report Backs](#)

⁴ Affidavit of Commodore E. Young CSC RAN dated 15 August 2022 page 2 paragraphs 10 and 11.

⁵ Affidavit page 3 paragraph 15.

⁶ Affidavit page 8 paragraph 38.

⁷ DGNVYYPEOPLE 280042ZAPR2022 WAS/Z4P "Navy Retention Incentive (NRI) Payment Pause".

⁸ ADF Submission *Navy Retention Incentive Payment Matter 2 of 2022 – Report Back 5 Mark 2* (ADF1) page 6 paragraph 3.2.

⁹ Return of Service Obligation/Initial Minimum Period of Service.

¹⁰ Navy Retention Campaign Line of Effort (LOE)2: Remuneration. *Navy Capability Retention Payment Frequently Asked Questions*. Version 2 - 26 April 22.

¹¹ [Determination 2 of 2019 - Allowances - Navy Retention Incentive Payment](#)

¹² ADF1 page 6 paragraph 3.3.

¹³ Commonwealth Submission *Navy Retention Incentive Payment – Report Back 5* dated August 2022 (CWLTH1) page 3 paragraph 18.

¹⁴ Transcript of 16 August 2022 page 10 lines 11 and 12.

¹⁵ ADF 1 page 15 paragraph 4.16.

¹⁶ ADF 1 page 22 paragraph 5.1.

¹⁷ DCA Directive 07/21 *Implementation of the Army Capability Retention Scheme* dated 27 October 2021.

¹⁸ Air Force Enlisted Employment Categories Retention Bonus of 6 April 2022.

¹⁹ Transcript page 17 lines 29 and 30.

²⁰ CWLTH 1 page 3 paragraph 17.

²¹ Transcript page 17 lines 36 and 37.

²² Affidavit page 12 paragraph 54.

²³ Transcript page 18 line 41.