



Defence Force Remuneration Tribunal

DECISION

Defence Act 1903

s.58H—Functions and powers of Tribunal

SUBMARINE CAPABILITY ASSURANCE PAYMENT – ELIGIBILITY AMENDMENT

(Matter 2 of 2023)

MS I. ASBURY, PRESIDENT

MR A. MORRIS, MEMBER

CANBERRA, 23 MARCH 2023

MAJGEN G. FOGARTY AO RETD, MEMBER

[1] This decision arises from a listing application received from the Australian Defence Force (ADF) for a determination to be made under Section 58H of the *Defence Act 1903* (the Act). The listing application¹ seeks to amend the eligibility criteria for Submarine Capability Assurance Payment (SM-CAP).

[2] We considered this matter in hearing on 7 February 2023. Mr J. Phillips SC appeared for the ADF and Mr N. Doukas for the Commonwealth. Commodore E. Young CSC RAN, Director General Navy People gave oral evidence.

Background

[3] SM-CAP is a completion payment capped at \$50,000, based on a member's accrued submarine sea service, and paid in addition to their salary and maritime disability and sustainability allowances. SM-CAP is one of seven components of the Submariner Deliberately Differentiated Package (SM-DDP) and the only one determined by this Tribunal.² Presently, submariners are ineligible for SM-CAP if they are paid any other form of submarine related bonus.

Submissions

[4] The ADF proposes to remove the eligibility restriction to permit a submariner to receive a bonus payment determined by Defence under s.58B of the Act, while also in receipt of SM-CAP determined by this Tribunal under s.58H.

[5] The ADF states that the introduction of the SM-CAP in 2016 “*successfully contributed to workforce growth, evidenced by growth experienced from 640 personnel in FY15/16 to 889 in FY21/22*”. However, now submits, “*there has been a dramatic increase in personnel loss rates across 2021-2022*” and a “*significant increase in workforce demand requirements to achieve both current and future submarine growth requirements*”.³ Specifically, it submits that Navy “*needs to achieve the necessary flexibility and agility to support and address increasing demand, particularly in the nuclear submarine domain*”.⁴

[6] Navy therefore seeks to address immediate workforce pressures by providing additional payments under s.58B of the Act, for individuals who “*critically affect submarine capability, including in the emerging nuclear domain*”.⁵ Additionally, it states the proposal sought “*will complement the full review of the SM-DDP*” to be completed during 2023.⁶

[7] SM-CAP was intentionally not adjusted by annual ADF Workplace Remuneration Arrangements. However, the ADF now considers the “*effectiveness and relevance of SMCAP has diminished due to a lack of tier increases in line with annual Workplace Remuneration Arrangement (WRA) or Consumer Price Index (CPI), increased workforce pressures, and the influence of a competitive external job market for submariner (SM) skills*”.⁷

[8] The Commonwealth “*does not oppose*” the proposal however highlights five areas of concern: equity and transparency; integrity; financial impact; a lack alternative options; and the enduring nature of the amendments.⁸ In addressing these the Commonwealth proposes:

- a. a cessation date of 31 October 2024 to ensure a review of SM-DDP occurs and a broader workforce reform package is developed; and
- b. six monthly updates on;
 - i. the number of payments made under s.58B and the dollar amount;
 - ii. any workforce friction or divisiveness as a result of bonus payments; and
 - iii. the progress of the SM-DPP review and Navy’s progress on a nuclear workforce submission.

Consideration

[9] We agree that while SM-CAP was designed in 2015 to be an enduring measure to attract and retain qualified submariners, the retention of submarine qualified personnel remains more critical than ever to Navy’s immediate and future capability requirements. From the outset, we accept that when SM-CAP was developed, a nuclear submarine capability and the resultant demands were not envisaged.

[10] We accept that a nuclear workforce will need to include a combination of submarine qualified and non-submarine qualified personnel. We considered the evidence that this proposal intends to alleviate immediate personnel capability pressures across all critical growth areas. We accept the evidence that concurrently Navy is “*working on other sustainable changes to address broader SM workforce issues*”.⁹

[11] We accept that, while this proposal permits payment of bonuses to individuals without changing their eligibility for the SM-CAP¹⁰, Navy intends this will only “*occur in exceptional circumstances of workforce criticality*”.¹¹ We considered the Commonwealth concerns that under the Government’s ‘*Secure Jobs Better Pay Bill*’ employers are prevented from introducing and maintaining pay secrecy clauses in employment contracts.¹² We accept the evidence that the Defence People Committee will oversee individual bonus payments introduced by Navy under s.58B and agree this provides for adequate governance, assurance, transparency and equity.¹³

[12] Having said that, substantial evidence was tendered during the development of SM-CAP, which detailed that individual bonuses were a source of division and friction within the submariner workforce. It was also submitted that SM-CAP was intended to provide an equitable and transparent payment. We considered the Commonwealth concerns the proposal “*will likely exacerbate inequities in individual remuneration within the submariner workforce*”¹⁴ and we raised concerns in the hearing that additional individual payments may be seen as regressive when one aim of the SM-CAP was to remove individual bonuses.

[13] While not disputing the workforce pressures and influence of a competitive external job market for submariners, we are not persuaded by the mention of the WRA/CPI factor, in part because SM-CAP was expressly not linked to these factors when developed. Evidence presented at the time expressly remarked, “*it is not intended that the SM-CAP will be subject to the WRA*” because its “*enduring and universal nature, under section 58H provides transparency and equity across the submarine arm*”. The Tribunal queried this at the time and was assured that “*it is not to be adjusted by WRA increases*” and “*stands alone*”.¹⁵ We also comment that there have been adequate opportunities to address any concerns linked to WRA/CPI over the six years of SM-CAP operation, and in reports provided to us in 2018 and again in 2020.¹⁶

Conclusion

[14] We accept there has been an unforeseen, significant, and rapid change in submarine workforce structure requirements since the advent of the SM-DDP. We accept that, when the SM-CAP was introduced, Navy was seeking to remove the inconsistent application of individual

retention bonuses in the submariner workforce. However, the current and anticipated demands on the submariner capability require Navy to develop greater flexibility than the SM-CAP restrictions allow and we accept there is now a need to tailor niche bonus payments and remuneration solutions appropriate to individual circumstances.

[15] We agree that individual s.58B payments provide an appropriate lever however consider this a short-term measure only to adequately relieve workforce pressures and appropriately remunerate the emerging submarine workforce. We reiterate the evidence presented that “*the proposal in this submission is designed to deliver an interim solution to assist in remediating current workforce pressures through retention of individual submariners (and non-qualified submariners critical to the workforce) until the SM-DDP can be finalised and broader workforce changes can be implemented.*”¹⁷

[16] We considered the Commonwealth proposal for a cessation date and schedule of progress reports suggested. We have refrained from setting a cessation date because we consider implementation of a finite date could present a risk for the ADF to manage. However, we agree the reporting requirements proposed at paragraph 8(b) will keep us apprised of issues and require the ADF to adhere to this schedule.

[17] In closing, we agree the amendments to the eligibility requirements until a revised, enduring and appropriate employee value proposition is defined for current and future submariners. Determination 4 of 2023 gives effect to our decision from 23 March 2023.

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. Flintoft

Mr N Doukas for the Commonwealth assisted by Mr C Johnson

¹ DMR/OUT/2023/1 *Listing Application – Royal Australian Navy Submarine Capability Assurance Payment Eligibility Adjustment* dated 3 February 2023.

² <https://www.dfrt.gov.au/matters/submariner-deliberately-differentiated-package-capability-assurance-payment>

³ ADF Submission *Navy Submariner Capability Assurance Payment Eligibility Adjustment* (ADF1) page 5 paragraph 1.9.

⁴ ADF1 page 5 paragraph 2.2.

⁵ ADF1 page 6 paragraph 2.7.

⁶ ADF1 page 5 paragraph 1.11.

⁷ ADF1 page 5 paragraph 1.10.

⁸ Commonwealth submission *Submarine Capability Assurance Payment Eligibility Adjustment* dated March 2023 (CWLTH1) page 7 paragraphs 31 and 32.

⁹ ADF1 page 7 paragraph 2.8.

¹⁰ Submariners are not eligible for the Navy Retention Incentive Payment and this proposal does not alter that.

¹¹ ADF1 page 21 paragraph 6.1.

¹² <https://www.legislation.gov.au/Details/C2022A00079/Download>

¹³ ADF1 page 9 paragraph 2.16.

¹⁴ CWLTH1 page 7 paragraph 33.

¹⁵ Transcript 1 December 2015 pages 92 and 93 lines 36 to 12.

¹⁶ Matter 15 of 2017 – *SM-CAP (Interim) Review* dated March 2018 and Matter 3 of 2020 *SM-CAP Report Back Final Report Back* dated January 2020.

¹⁷ ADF1 paragraph 7.1.