



Defence Force Remuneration Tribunal

DECISION

Defence Act 1903

s.58H—Functions and powers of Tribunal

s.58(H)(2)(a) – Determination of the salaries and relevant allowances to be paid to members

s.58KD – Determination giving effect to agreement between the parties

AUSTRALIAN DEFENCE FORCE: WORKPLACE REMUNERATION ARRANGEMENT 2023-2026

(Matter 8 of 2023)

MS B. O'NEILL, PRESIDENT

MR A. MORRIS, MEMBER

CANBERRA, 17 OCTOBER 2023

MAJGEN G. FOGARTY AO RETD, MEMBER

[1] This decision arises from an application¹ for a determination to be made under Section 58KD of the *Defence Act 1903* (the Act) which 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 Australian Defence Force, in relation to a matter to which the determination relates.”

A joint submission² titled ‘2023 Workplace Remuneration Arrangement’ (WRA) seeks to give effect to the terms of an agreement reached in accordance with s58KD of the Act.

[2] Section 58K(9) of the Act provides for:

“The Defence Force Advocate and a person representing the Commonwealth are entitled to be present, and to make submissions to the Tribunal, during any proceeding before the Tribunal.”

A hearing was held in Canberra on 3 October 2023 where Ms K. Hagan, the Defence Force Advocate, appeared on behalf of the Australian Defence Force (ADF) and Mr N. Doukas appeared on behalf of the Commonwealth. Major General (MAJGEN) W. Stothart DSC AM CSC, Head of Military Personnel, appeared as a witness.

[3] Section 58K(10) of the Act deals with the circumstances in which a person or body may be permitted to appear before the Tribunal:

“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.”

The Defence Force Welfare Association (DFWA) sought leave to intervene in the proceedings³ and was granted permission to be heard in this matter.⁴ Mr L. Bienkiewicz appeared on behalf of the DFWA.

Background and provisions of the WRA

[4] The WRA is a framework that allows for annual wage adjustments for members of the ADF. There have been 14 previous arrangements considered by the Tribunal. The most recent is the WRA 2020-2023.⁵ It is proposed that this WRA will wholly replace that Arrangement.

[5] The WRA applies to all ADF members of the Permanent Force and Reserves (excluding statutory office holders).⁶ Each Arrangement historically contains a range of provisions which include ADF members' contribution to defence capability; any reforms anticipated during the operation of the Arrangement; and requirements for consultation and communication with ADF members.

[6] The salary and allowance provisions in the WRA do not stand alone. They complement the other conditions of service providing monetary and non-monetary benefits to ADF members, including those made and administered by the ADF under s58B of the Act.

[7] The WRA expressly notes the Arrangement is not intended to limit the range of responses that might arise because of strategic circumstances or personnel issues that may significantly affect military capability. To that end it is acknowledged that further submissions may be made seeking the Arrangement be varied or replaced at any time by a further s58KD agreement between the parties.

[8] It is not intended that the WRA will preclude the ADF from reviewing remuneration structures or employment categories during its operation. Nor does the arrangement preclude the ADF from seeking review of any salary and salary related allowances, or from making submissions to the Tribunal regarding the establishment of capability or retention allowances and bonuses.

[9] As agreed when determined, WRA increases expressly exclude the Officer Aviation Remuneration Structure Allowance, the Submarine Capability Assurance Payment and the Navy Retention Incentive Payment all administered by this Tribunal.⁷

[10] The provisions of the Act do not permit this Tribunal to vary a proposal to any agreement reached between the ADF and the Commonwealth under s.58KD. We may only agree or reject such a proposal in its entirety.

The joint submission of the ADF and the Commonwealth

[11] The parties submit they have developed and agreed to this Arrangement which “*recognises the continuing, significant and future programs of capability enhancements and workplace reform within the ADF under the National Defence: Defence Strategic Review 2023*”.⁸ The key features of this WRA are that:

- a. it applies to all ADF members of the Permanent Forces and Reserves of Other Ranks and Officers⁹;
- b. it provides for a three-year duration, operating from 9 November 2023 to 4 November 2026;
- c. it applies to salary and salary-related allowances;
- d. it provides an adjustment in the rates of salary for all Other Ranks and Officers and salary related allowances of 11.2 per cent over the life of the Arrangement via three instalments of 4 per cent (9 November 2023), 3.8 per cent (7 November 2024) and 3.4 per cent (6 November 2025);
- e. it does not trade-off, remove or offset any conditions of service or retention initiatives to fund the Arrangement;
- f. the Arrangement is based on the performance and preparedness of the ADF and has no links to productivity offsets historically achieved by the Defence Australian Public Service (APS) in the context of bargaining; and
- g. the Arrangement is affordable and to be funded from within Defence’s existing budget.¹⁰

[12] The parties further submit the Arrangement should:

- a. be consistent with the Government’s Workplace Relations Policy in respect of ADF remuneration;
- b. link adjustments to salary with enhanced ADF capability;
- c. ensure the ADF remains competitive in its remuneration package;
- d. be fair, reasonable and appropriate, given the economic environment; and
- e. be affordable.¹¹

Submission of the Defence Force Welfare Association

[13] As an approved intervener in this matter, the DFWA made a written submission¹². The submission outlined feedback provided to the Association and, in summary, outlined that the Offer “falls short of CPI increases, does not meet the cost of living increases faced by members and will do little, if anything to enhance retention and recruitment”.¹³

[14] The DFWA also stated it “grapples with the current ADF remuneration setting arrangements that are perceived to be linked to APS bargaining” and consider it “should not be so”. In the hearing, Mr Bienkiewicz reiterated that the DFWA finds it “difficult to understand the link between Australian Public Service (APS) and ADF wage fixing arrangements”. He stated the “two cohorts are vastly different, and yet the ADF seem beholden to or play secondary to the APS process” and that the “delay [in releasing the proposed WRA] also impacted negatively on our ability to undertake a more extensive survey and development of our submission”.¹⁴

[15] In canvassing the views of ADF members, the DFWA published articles in its magazine ‘Camaraderie’, contacted all members of its membership database by email, through social media, and undertook a web-based survey from 18-26 September 2023. The survey asked both serving and former members opinions on a range of questions such as “how satisfied are you with the salary increases proposed?” to “what do you think is a reasonable salary increase over three years?” and “to what extent do you consider recruitment and retention initiatives influence you or your partner’s decision to remain in the ADF?”. The DFWA received 1654 responses, some of which were summarised in its submission.

Witness Evidence

[16] MAJGEN W. Stothart DSC AM CSC, Head of Military Personnel, provided written and oral evidence in support of the WRA. In his affidavit,¹⁵ he summarised the development of the WRA proposal, the current strategic context, the communications strategy and the overall value of the WRA to the workforce. MAJGEN Stothart stated that the WRA proposal provides “*an element of remuneration competitiveness, along with remuneration certainty and stability for the ADF workforce*”.¹⁶

[17] Further, MAJGEN Stothart highlighted that the WRA is being developed at a time when “*Defence is facing acute workforce challenges that are compromising its health, potency and ability to effectively deliver all of the required enhanced capabilities*”. He submits the proposed WRA “*supports workforce retention and growth as well as ongoing delivery of capability*” and is “*strongly focused on the need to ensure that the ADF remuneration package is appropriate and consistent with the preservation of its capacity to deliver military capability*”.¹⁷

[18] In the hearing, MAJGEN Stothart expanded on his affidavit outlining what he considered to be the most pressing workforce concerns for ADF personnel at present. He detailed four of those to be “*job satisfaction and the leadership and management they experience in their local workplace; secondly it would be the workload that they’re under and their ability to balance work and life, other pursuits, and balance family; the third would be specifically the impacts on service life on family, particularly partner employment, children’s education and connections to community; and lastly, career prospects outside of the military*”.¹⁸

[19] MAJGEN Stothart also expanded on the workforce challenges of recruitment and retention, coupled with workforce hollowness, and the difficulty the ADF is facing in reaching recruiting targets. He explained that the ADF “*has been directed to grow and we are having difficulty achieving those growth targets in the current environment*”.¹⁹ He gave further evidence that the unique nature of military service means “*base salary is very important as a signal to members and their families for their sense of worth and commitment to the organisation and the nation, and it also allows them to plan for financial commitments*”. He confirmed salary to be “*a very, very important aspect of that signalling of value and worth to individuals and their families*”.²⁰

Consultation and engagement

[20] The requirement for consultation and engagement with the workforce on the provisions of any Arrangement has consistently been of importance to this Tribunal in each WRA. We accept the evidence that Defence has not conducted an employment survey into member’s opinions on their conditions of service/employment package for the past few years. We accept this has instead been achieved through dedicated feedback and email inboxes for the ADF Employment Modernisation Program.²¹

[21] We accept that, while the ADF generally engages with the workforce not less than three months prior to the expiration of an Arrangement, in this case, owing to the Commonwealth’s timeframe for tabling a revised APS pay offer (which did not occur until 29 August 2023), the usual widespread face-to-face engagement was impractical. In lieu of this, we accept “*similar online communication products and methods used during the COVID-19 restrictions were developed as the primary means of engaging and informing ADF members of this WRA proposition*”.²² We note this has included the use of emails from the Chief of Defence Force, Defence internal messages, webinars and the provision of a dedicated WRA email inbox.

[22] We accept the evidence of MAJGEN Stothart that “*the mass virtual communications approach to the workforce and their families through the webinars worked well*” and that “*this method was found to be more effective at reaching a wider audience in a shorter timeframe*”. We are encouraged that “*those who traditionally may not have had the opportunity to participate in these sessions (through possible deployment, working from home or remote posted location) were able to access the live communications*”.²³ We accept that the success of this approach will give the ADF cause to consider how to “*best balance that centralised message and in-person interactions into the future for subsequent arrangements*”.²⁴

[23] In summarising the proposal, MAJGEN Stothart stated, “*generally, the feedback from ADF personnel has been supportive and indicates they appear to be pragmatic about the proposal*”. Further, he stated “*whilst some members have raised concerns about the proposed increases relative to increased costs of living, the majority of the ADF workforce, Star Ranks included, have been broadly accepting given the current financial climate and the ‘no loss of conditions’ aspect underpinning the proposal*”.²⁵

Consideration

[24] We considered the submission of the DFWA and commend it for the extensive work done in developing a sound submission, coupled with the deep analysis of a targeted survey, and within 13 days, so as to represent ADF members. We considered its concerns with regard to Consumer Price Index (CPI) increases and links to the APS bargaining policy. We accept that while the Government’s Public Sector Workplace Relations Policy 2023 does not apply to the ADF, it has been used as a guide to inform the proposed salary increases, as it has in past WRAs. We agree that while the ADF is a unique workforce, there has historically been an industrial nexus between ADF general salary increases and APS general salary increases and expect this to continue.

[25] Similarly, we accept the parties observe and reference basic economic indicators (like the CPI and Wage Price Index) but do not use them as a determinant in considering the quanta of the WRA.

[26] We also remark that that this 2023 Arrangement realigns the timing of general wage increases for non-Star Rank ADF members and eligible Star Rank senior officers, which diverged during the COVID-19 pandemic due to the Government’s pause on salary increases for Star Ranked senior officers.²⁶

[27] We accept the “2023 Arrangement quantum is reflective of the current budget and fiscal environment”²⁷ and affordable “within the existing budget and forecast personnel expenditure for the next three years”.²⁸

Conclusion

[28] In closing, we agree this Arrangement provides remunerative certainty and stability for ADF members, which in turns supports workforce retention and growth as well as delivery of capability. We consider it is appropriate, competitive and consistent.

[29] Determination 15 of 2023 gives effect to our decision from 9 November 2023.

MS B. O’NEILL, PRESIDENT
MR A. MORRIS, MEMBER
MAJGEN G. FOGARTY AO RETD, MEMBER

Appearances:

Ms K. Hagan for the ADF assisted by *Flight Lieutenant L. Hawkett*

Mr N. Doukas for the Commonwealth assisted by *Mr M. Guteridge*

Mr L. Bienkiewicz for the Defence Force Welfare Association

Witness

MAJGEN W. Stothart DSC AM CSC Head of Military Personnel.

¹ DMR/OUT/2023/17 2023/BN69836577 Listing Application – 2023 Workplace Remuneration Arrangement dated 11 September 2023.

² Joint Submission 2023 Workplace Remuneration Arrangement Matter 8 of 2023 (ADF1)

³ DFWA letter Request to intervene in Defence Force Remuneration Tribunal proceedings dated 13 September 2023.

⁴ Tribunal letter dated 15 September 2023.

⁵ <https://www.dfrt.gov.au/matters/adf-workplace-remuneration-arrangement-2020-2023>

⁶ The Chief of Defence Force, Vice Chief of Defence Force, Chiefs of Service and military justice positions who are remunerated under provisions of the *Remuneration Tribunal Act 1973*.

⁷As determined in Tribunal decisions in relation to: the Officer Aviation Remuneration Structure Allowance <https://www.dfrt.gov.au/matters/officer-aviation-remuneration-structure-allowance>; the Submarine Capability Payment <https://www.dfrt.gov.au/matters/submariner-deliberately-differentiated-package-capability-assurance-payment>; and the Navy Retention Incentive Payment <https://www.dfrt.gov.au/matters/navy-retention-incentive-payment>.

⁸ <https://www.defence.gov.au/about/reviews-inquiries/defence-strategic-review>

⁹ Excluding those senior officers paid under a determination of the Remuneration Tribunal.

¹⁰ ADF1 page 4 paragraph 16.

¹¹ ADF1 page 3 paragraph 13.

¹² DFWA submission to the Defence Force Remuneration Tribunal ADF Workplace Remuneration Arrangement 2023-2026 dated 27 September 2023.(DFWA1)

¹³ DFWA1 page 2 paragraphs 11 and 12.

¹⁴ Transcript 3 October 2023 page 17 lines 34 to 41.

¹⁵ Affidavit of Major General W. B Stothart DSC AM CSC dated 29 September 2023. (ADF3)

¹⁶ ADF3 page 8 paragraph 40.

¹⁷ ADF3 page 6 paragraph 26.

¹⁸ Transcript page 6 lines 11 to 19.

¹⁹ Transcript page 7 lines 12 to 14.

²⁰ Transcript page 8 lines 1 to 5.

²¹ <https://www.dfrt.gov.au/matters/adf-allowances-modernisation-tranche-1>

²² ADF1 page 6 paragraph 25.

²³ ADF 3 page 4 paragraph 16.

²⁴ Transcript page 6 lines 35 to 38.

²⁵ ADF3 page 4 paragraph 17.

²⁶ <https://www.dfrt.gov.au/matters/senior-officer-graded-structure>

²⁷ ADF1 page 21 paragraph 72.

²⁸ ADF1 page 22 paragraph 73.