



# Defence Force Remuneration Tribunal

## DECISION

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

### **SUBMARINE CAPABILITY ASSURANCE PAYMENT – AMENDMENTS AND REPORT BACK** (Matter 10 of 2023)

MS B. O’NEILL, PRESIDENT

MR A. MORRIS, MEMBER

CANBERRA, 29 NOVEMBER 2023

MAJGEN G. FOGARTY AO RETD, MEMBER

[1] This decision arises from a listing application from the Australian Defence Force (ADF) for a determination to be made under Section 58H of the *Defence Act 1903* (the Act). The listing application<sup>1</sup> seeks to amend provisions of the Submarine Capability Assurance Payment (SM-CAP) and proposes targeted increases to the rates of the allowance.

[2] We were aided in our consideration of this proposal by a range of submarine workforce briefings on 13 September 2023 at Russell Offices, Canberra. We subsequently considered the matter in hearing on 16 November 2023 where Ms K. Hagan appeared for the ADF, and Mr M. Guteridge for the Commonwealth. Captain M. Hoffman RAN, Director Nuclear and Conventional Submarine Workforce Development appeared as a witness for the ADF.

## Background

[3] The SM-CAP is paid to members who hold a submarine sea qualification, are serving a period of continuous full time service, and meet set proficiency standards. It is payable on a tiered basis with the amount payable increasing based on the years of service undertaken where the members have met the conditions of eligibility. It is paid as an annual completion payment in addition to salary and other allowances.

[4] The SM-CAP was introduced in 2016 as the financial component of the Submariner Deliberately Differentiated Package (SM-DDP), and the only factor within the remit of this Tribunal. There has been no change to the eligibility criteria nor to the quantum of the payment sought since its inception.

[5] We last considered the SM-CAP in Matter 2 of 2023<sup>2</sup> where provision was made to permit eligible submariners to receive other retention and/or incentive payments determined by Defence under s.58B of the Act, while also in receipt of SM-CAP determined under s.58H, by this Tribunal.

## Submissions

### ADF

[6] The ADF submit the SM-CAP was *‘designed to be flexible to allow personnel to achieve broader Navy and ADF experience and return to the capability, and be attractive enough to ensure personnel want to remain or return to the submarine capability. It does this by significantly recognising the contribution eligible members have made in the previous calendar year. Additionally, the operation of the current sunset clause provides for continuation of the payment to personnel who undertake postings external to the submarine capability for professional development purposes and incentivises them to return’*.<sup>3</sup>

[7] The ADF states that this submission is made in response to outcomes from an SM-DDP Review (the Review) in which the Directorate of People Intelligence and Research, found the SM-CAP was *‘identified as highly important and consequential for the submarine workforce as it supports retention and is an incentive to join the workforce’*.<sup>4</sup> Further, that it is the *‘most important component of the SM-DDP albeit there was dissatisfaction with SM-CAP tier values and timing of the payment’*.<sup>5</sup>

[8] Subsequent to the Review, the ADF seeks to:

- a. implement targeted increases to the SM-CAP tier values, with the increase in quanta relative to the tiers and workgroups requiring the greatest future workforce growth, and experiencing the most challenging retention and recruitment, with current and new tiers as follows:
  - i. Tier 1 (0 to 3 years accrued submarine sea days) current rate \$15,000 – new rate \$25,000;

- ii. Tier 2 (3 to 6 years accrued submarine sea days) current rate \$25,000 – new rate \$35,000;
  - iii. Tier 3 (6 to 9 years accrued submarine sea days) current rate \$40,000 - new rate \$45,000; and
  - iv. Tier 4 (9 or more years accrued submarine sea days) current rate \$50,000 – new rate \$55,000;
- b. facilitate the first payment of the new rates in Q1 2024 for the 2023 calendar year; and
  - c. amend the annual payment cycle of SM-CAP to a financial year basis (vice calendar year) commencing from 1 January 2024. This will require a six-month pro-rata payment in Q3 2024 for period January to June 2024 as part of the transition to the new payment cycle.<sup>6</sup>

[9] The Navy manages the application of the SM-CAP through the Submarine Personnel Proficiency (SMPP) Framework, which provides the authority for ‘*managing submarine qualifications, proficiencies, assigning eligibility for SM-CAP and the use of the sunset clause provisions*’.<sup>7</sup> In this context, and at the same time as increasing the quanta of the tiers, Navy proposes:

- a. modification to the sunset clause provision to:
  - i. reduce the provision from 36 months to 24 months for personnel posting external to submarine capability;
  - ii. increase the minimum posting requirement on return to submarine capability to reset eligibility for further sunset clauses from 12 months to 24 months; and
  - iii. provide the delegate<sup>8</sup> discretionary authority to deny access to any sunset clause provision when a member refuses a posting within the submarine capability for reasons within the members control;
- b. to ensure consistent application of SM-CAP provisions for conventional and nuclear submarine personnel with regards to tiers and values with the definition of ‘submarine qualification’ for conventional submarines to reflect the training continuum and methodology; and
- c. to review the SM-CAP tier rates every two years to ensure the payment remains relevant and appropriate based on the state of the workforce including growth requirements and separation rates.<sup>9</sup>

[10] Finally, the ADF submit, *‘it is further proposed for submarine qualified personnel to remain eligible for s.58B payments, without affecting SM-CAP eligibility until other elements of submarine workforce remuneration are finalised and broader workforce changes can be implemented’*.<sup>10</sup>

## **Commonwealth**

[11] The Commonwealth response *‘recognised the genuine concerns of the ADF regarding attraction and retention of submariners, particularly in light of future capability requirements arising from the introduction of nuclear powered submarines’*.<sup>11</sup> Its submission did *‘not oppose’* the ADF proposal, however, did *‘note several concerns on specific components put forward’*.<sup>12</sup>

[12] These apprehensions included that the ADF *‘has not sufficiently linked how the proposed quanta’s will address the attraction and retention issues’*.<sup>13</sup> The Commonwealth was also concerned that *a reduction in the ‘jump’ from Tier 2 to 3 may result in increased attrition for submariners with more than 6 years’ experience’* which *‘may re-enliven the attrition issues that existed at the time the payment was introduced due to the perceived benefit of long-term engagement being eroded’*.<sup>14</sup>

[13] Additionally, the Commonwealth put forward that the increase proposed to be paid in Q1 of 2024 should reflect the existing tier rates (noting it is a completion payment) and not the rates now sought by the ADF. Finally, the Commonwealth outlined concerns regarding an enduring need for Individual Retention Bonuses (IRBs) to be paid under s.58B of the Act and, in the hearing, queried how long the ADF expected to rely on these IRBs.

## **Witness Evidence**

[14] Captain (CAPT) M. Hoffman RAN gave written and oral evidence in support of the ADF submission. He detailed the workforce trends and pressures that underpin the submission and explained, *‘The strategic workforce planning complexities involved with this are unlike those faced previously. The workforce transitions from the current Collins Class to a Collins Life of Type Extension workforce to a Virginia workforce and finally to the AUKUS Class, all within the space of 15 years and whilst operating concurrent submarine capabilities will require careful planning, management and flexibility’*.<sup>15</sup>

[15] He considers *‘the key to success lies in the retention of our current submarine-qualified workforce, generating sufficient inflows, either through direct ab-initio recruiting or in-Service transfers to be trained as either Collins or nuclear workforce, and careful management of sustainable outflows’*.<sup>16</sup>

[16] CAPT Hoffman echoed the findings of the Review and described the SM-CAP as *‘an important lever for retention and growth’* citing that, of the seven SM-DPP components assessed, *‘respondents considered the SM-CAP ‘very important’ (80 per cent) and that satisfaction for the initiative remained high. However, the research also pointed to the growing*

*dissatisfaction with the payment in its current form, particularly with regard to the tier values*.<sup>17</sup>

[17] In the hearing, we queried the value placed on the SM-CAP as opposed to other factors of the SM-DDP. We considered the evidence that some factors were *‘more effective than others’* and that *‘it was very difficult to gain a tangible assessment of the benefit because they weren’t measurable and not all of the workforce could actually exploit some of those opportunities’*. We accept *‘the one benefit that everyone could rely on, and everyone had visibility of was the SM-CAP’* which *‘provided our people the opportunity to actually decide how to utilise that benefit’*.<sup>18</sup>

## **Consideration**

[18] From the outset, we acknowledge the submarine workforce has had longstanding challenges with attraction and retention and agree this poses a considerable risk to achieving the AUKUS outcomes of retaining the Collins Class capability, while concurrently developing a nuclear class capability. We agree the scope of this unprecedented requirement means retention of the existing submarine workforce is critical to achieving the required consistent workforce growth of approximately 80 personnel per year for the next 30 years.<sup>19</sup>

[19] Throughout the operation of the SM-CAP we have required regular report backs from the ADF on the success, or otherwise, of the payment and have made minor amendments when sought. We reflected on the consistency of the advice provided in those reports when considering this submission.

[20] We considered the evidence that *‘there is growing dissatisfaction amongst the submarine workforce with the current payment rates’* and the suggestion *‘the relative value has decreased since 2015 and it is therefore proving less effective in assuring a long term sustainable workforce’*. We accept this is reflected partially in the *‘increasing separations across the submarine workforce and persistent recruiting under achievement’* as we consider there are a myriad of other environmental and external market factors influencing these behaviours. However, having said that, we agree this poses a significant risk and that there is *‘an urgent requirement to stem those losses and preserve the existing workforce, while other remediation measures are developed and implemented to address workforce criticalities over the longer term’*.<sup>20</sup>

[21] We gave regard to the Commonwealth’s concerns and in doing so, considered the evidence that *‘a totality approach was taken to developing the proposed tier values and improving satisfaction with the payment. This approach included the following elements: Consumer Price Index (CPI) considerations, noting the rate of the allowance had not been subject to increases or Workplace Remuneration Arrangements (WRA) since inception; parity with other financial retention payments paid to non-submariner cohorts (i.e. Navy Capability Retention Payment and Navy Retention Incentive Payment, both of which are \$20,000 per annum); and the need for the payment to be large enough to attract members to the submarine*

*workforce and also large enough to retain the submariners who look to leave the capability or the Navy’.*<sup>21</sup>

[22] We considered the evidence that the *‘size of the increases at each tier level are relative to the increased future demand and number of submariners required and the current criticality and loss rates’* and accept the Tier 1 and 2 increases are the largest, reflecting the majority of future workforce growth is required at these levels.<sup>22</sup>

[23] We consider the differentiation between the tiers has been soundly evaluated and that the *‘increase of the values in the lower tiers aims to attract new joiners and in-Service transfers to the submarine capability, re-attract ex-submarine personnel, and retain those currently in the capability and encourage personnel to return to sea postings to accrue additional sea time to advance tiers.* We agree this should *‘in turn support remediation of hollowness at the lower ranks’* while *‘the more modest improvement at the higher tiers will continue to provide a differential that acts as an incentive to pull through those in the lower tiers and retain those already at the higher tiers’.*<sup>23</sup>

[24] In our decision in Matter 2 of 2023, we agreed that individual s.58B payments do provide an appropriate lever, however, considered them a *‘short-term measure only to adequately relieve workforce pressures and appropriately remunerate the emerging submarine workforce’.* At the time we also reiterated that the intent to pay both s.58B and s.58H allowances was *‘designed to deliver an interim solution to assist in remediating current workforce pressures’.* Therefore, we considered that while this submission seeks a continuation in submarine qualified personnel remaining eligible for s.58B payments, *‘until other elements of submarine workforce remuneration are finalised’* we have to accept the evidence of CAPT Hoffman that *‘the opportunity to call on that flexibility for rare cases hopefully, but the flexibility to have options, that’s important’.*<sup>24</sup>

[25] We accept the evidence that, since the provision to pay s.58B bonuses was provided in May this year, *‘the ADF has paid one payment’* with *‘no adverse workforce outcomes resulting’.*<sup>25</sup> Noting this we do not share the Commonwealth’s concerns that *‘there is a risk that the more IRBs that are put in place the more difficulty there will be to remove them when the time comes’.*<sup>26</sup> We will however, continue to monitor the application of such payments, and any inclusion in an enduring submarine remuneration package.

[26] Nor did we give particular weight to the Commonwealth’s proposal that the first payment (January 2024) be made at the existing rates, with the second payment (July 2024) at the future rates. We agree with the ADF that next year is critical for workforce recruitment and, noting the length of time since any increase has been provided, coupled with the workforce awareness of the Review process, means the *‘submarine community has been anticipating an improvement to the SM-CAP since the Review was announced (in 2021) and the delay to providing an outcome has generated some dissatisfaction that may be exacerbated should the implementation not take effect as soon as possible’.*<sup>27</sup>

[27] We considered the evidence regarding sunset clause provisions and accept that a 12-month minimum to reset further sunset clause eligibility does not align with standard posting durations nor provide sufficient return on SM-CAP investment. We accept the evidence of CAPT Hoffman that *‘there’s still a requirement to provide opportunities for people to serve outside, and to generate skillsets outside of submarine capability’*. We agree a change to 24 months will most likely provide *‘more alignment with the posting cycle’* and will prevent situations where *‘people can serve for three years outside the capability, come back in, reset the clock for a year and then leave for another three years’*.<sup>28</sup>

[28] We are cognisant that a range of options were considered by the ADF in developing this proposal. We note this included *‘potentially changing to a six-tier model and/or changing eligibility criteria and progression rules’* and accept that *‘rather than a significant change or restructure, a more conservative and incremental approach is considered appropriate for this SM-CAP review, noting the early stage of development of the submarine workforce pathways’*.<sup>29</sup>

## **Conclusion**

[29] We accept the transition to the AUKUS pathway will be lengthy and multifaceted. We agree the transition is extremely complex and poses unique workforce challenges for Navy, in particular the need to maintain current capability while expanding to meet future requirements that will include a fundamental shift in skills and qualifications.

[30] We consider the proposed amendments to SM-CAP are a conservative, incremental approach and recognise they are *‘focussed on assuring the existing submarine workforce during a period of high separations and underachievement of recruiting targets while developing the strategies required to introduce the nuclear capability and significantly grow the number of qualified submariners needed by the mid 2050’s’*.<sup>30</sup>

[31] We agree that two years is a suitable period in which to re-evaluate regularly the SM-CAP and ask the ADF to return to us each two years with a comprehensive review and its position on the continued application of the SM-CAP.

[32] Additionally, during the process, we request the ADF continue to provide us with six-monthly advice on:

- a. the number of payments made under s.58B and the dollar amount;
- b. any workforce friction or divisiveness as a result of bonus payments; and
- c. the progress of the SM-DPP review and Navy’s progress on a nuclear workforce submission.<sup>31</sup>

[33] In closing, we agree to increase the SM-CAP across all four tiers to the following rates:

- Tier 1 - \$25,000
- Tier 2 - \$35,000
- Tier 3 - \$45,000 and
- Tier 4 - \$55,000.

[34] Determination 17 of 2023 gives effect to our decision from 31 December 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 M. Guteridge for the Commonwealth assisted by Mr N. Doukas*

*Witness:*

*Captain M Hoffman RAN, Director Nuclear and Conventional Submarine Workforce Development.*

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<sup>1</sup> DMR/OUT/2023/18 Listing Application: Submarine Capability Assurance Payment – Amendments and Report Back dated 20 September 2023.

<sup>2</sup> <https://www.dfrt.gov.au/matters/submarine-capability-assurance-payment-eligibility-amendment>

<sup>3</sup> ADF Submission Matter 10 of 2023 SM-CAP Amendments and Report Back (ADF1) page 7 paragraph 1.3.

<sup>4</sup> ADF1 page 28 Table 3 Component 7.

<sup>5</sup> ADF1 page 29 paragraph 4.8.

<sup>6</sup> ADF ADF1 page 9 paragraph 1.9.

<sup>7</sup> ADF1 page 10 paragraph 1.10.

<sup>8</sup> The Chief of Navy or delegate.

<sup>9</sup> ADF1 page 10 paragraph 1.10.

<sup>10</sup> ADF1 page 11 paragraph 1.11.

<sup>11</sup> Commonwealth Submission Submarine Capability Assurance Payment Amendments and Report Back dated November 2023 (C1) page 9 paragraph 49.

<sup>12</sup> C1 page 1 paragraph 5.

<sup>13</sup> C1 page 10 paragraph 55.

<sup>14</sup> C1 page 10 paragraph 57.

<sup>15</sup> Affidavit of CAPT M. Hoffman RAN dated 9 November 2023 (ADF2) page 3 paragraph 15.

<sup>16</sup> ADF page 2 paragraph 16.

<sup>17</sup> ADF2 page 5 paragraph 24.

<sup>18</sup> Transcript 16 November 2023 page 18 lines 24 to 34.



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<sup>19</sup> ADF1 page 18 paragraph 3.9.

<sup>20</sup> ADF1 page 16 paragraph 3.3.

<sup>21</sup> ADF2 page 8 paragraph 35.

<sup>22</sup> ADF1 page 31 paragraph 5.3

<sup>23</sup> ADF2 page 9 paragraph 37

<sup>24</sup> Transcript page 30 lines 28 to 30.

<sup>25</sup> ADF1 page 38 paragraph 5.28

<sup>26</sup> Transcript page 39 lines 20 to 22.

<sup>27</sup> ADF2 pages 9 and 10, paragraph 39.

<sup>28</sup> Transcript page 21 lines 31 and 32.

<sup>29</sup> ADF2 page 6 paragraph 25.

<sup>30</sup> ADF1 page 11 paragraph 1.12

<sup>31</sup> <https://www.dfrt.gov.au/matters/submarine-capability-assurance-payment-eligibility-amendment>  
paragraph 16.