

DEFENCE FORCE REMUNERATION TRIBUNAL

LEGAL OFFICERS SPECIALIST CAREER STRUCTURE COMPETENCY REVIEW ALIGNMENT

REASONS FOR DECISION

The Australian Defence Force (ADF) has sought a review of the Legal Officers Specialist Career and Salary Structure. The ADF sought to remove time based requirements, to de-link Legal Level 5 from promotion requirements and to recognise the qualifications of a small number of Reserve Legal Officers.

The Legal Officers' category was the first specialist officer career structure considered by the Tribunal and took effect from 16 March 2000. Members of the category are responsible for the provision of legal support throughout the ADF at both strategic and operational levels to commanders, base managers and ADF personnel.

BACKGROUND

In February 2000, the ADF proposed a separate career and remuneration structure for Legal Officers employed in specialist legal positions within the ADF (Matter No.2 of 2000). The new structure provided for the professional development of Legal Officers with progression based on skill levels with a rank overlay. Advancement through five competency levels consisted of a mixture of academic qualifications and practical experience based on the length of time spent in each level.

In December 2003, the Tribunal added pay points within the Legal Officers structure to remunerate members who were required to act in positions for which they did not hold the requisite competency and/or rank; and who were promoted in rank but did not meet the requirements for advancement in competency level (Matter No.21 of 2003). At that time the ADF undertook to report back to the Tribunal before July 2004 to address the requirements for competency advancement.

SUBMISSIONS AND EVIDENCE

The Australian Defence Force (ADF)

The ADF submitted that the Legal Officers structure required amending to ensure that it continues to meet the needs of the ADF and is consistent with other specialist ADF structures.

- **Competency Advancement Requirements**

The ADF proposed to replace time based requirements for advancement to Legal Levels 3, 4 and 5 by competency achievement assessed in accordance with a Competency Log Book.

Under the current system of advancement, length of service as a Legal Officer goes directly to advancement through the competency levels, notwithstanding the professional achievements and development of the Legal Officer throughout that period. The ADF proposed to improve the assessment of Legal Officers by requiring the performance of specific competencies prior to advancement, as opposed to automatic progression on expiration of a given time frame.

With the current competency advancement system, a Legal Officer is deemed to be either competent in an area of law, or not. Under the ADF proposed system, there would be three levels of competence; basic, advanced and expert. The ADF submitted that these levels more accurately reflect the required progression of Legal Officers throughout their career and provide a more appropriate basis of matching each Legal Officer with ADF capability requirements.

The ADF also submitted that it would be appropriate to incorporate a requirement for posting to a relevantly designated position to trigger competency advancement. For example, advancement to Legal Level 3 would require completion of academic and practical tasks as well as a posting to a designated Legal Level 3 position.

- Changes to Legal Level 5

Under the current system there is a requirement for officers to be at the rank of Colonel (or equivalent) before advancing to Legal Level 5. The ADF submitted there are a number of circumstances where officers at the Lieutenant Colonel (or equivalent) rank require the Legal Level 5 competency standard due to the complexity of work. It was submitted that de-linking the requirement for rank in this regard is consistent with the frameworks for the other specialist structures. The ADF, therefore, proposed the establishment of an additional pay point for Lieutenant Colonels (or equivalent) at Legal Level 5. The proposed rate of \$119,001 represents the halfway point between Legal Level 4 for Lieutenant Colonels and Legal Level 5 for Colonels.

- Recognition of Reserve Legal Officers with Specific Qualifications

The ADF submitted that the specialised experience of certain Legal Officers, such as Judges, Queens Council, Senior Council and Professors, should be able to be taken into account when considering recruitment at Legal Level 4. Under the existing arrangements, members of the Legal Officer Reserve are required to meet the same competency standards as members of the Permanent Force.

It was submitted that this provision would be utilised for the employment of senior lawyers who are experts in their speciality, such as criminal law prosecution. This arrangement is similar to provisions made for procedural specialists in the Medical Officer structure.

The ADF called one witness. Colonel John Arthur Harvey, Special Adviser to the Director General, Defence Legal Office and Secretary of the Legal Officer Career and Professional Development Committee (CPDC), gave evidence that the current Legal structure contained a number of deficiencies. Colonel Harvey said that the CPDC had been required to exercise discretion in instances not envisaged at the time of introduction of the Legal structure, such as determining appropriate discounts on time requirements for members who have prior legal, paralegal or military experience. Colonel Harvey stated that the identification of specific competency requirements, rather than time based requirements, would overcome many problems in the management of Legal Officers.

Colonel Harvey also gave evidence that the expansion of legal work and management responsibilities in recent years had resulted in greater responsibilities being undertaken by some legal officers at the rank of Lieutenant Colonel (or equivalent).

In regard to the recognition of Reserve Legal Officers, Colonel Harvey stated that some high level specialist legal skills (such as criminal prosecution) are not readily available within the Permanent Force and are regularly required by the ADF. Furthermore, the current requirements for competency advancement do not enable direct recruitment at an appropriate level.

The ADF proposed a transition arrangement whereby current Legal Officers may progress to the next competency level on the basis of the previous competency standards, but must then complete the new requirements for advancement to the next competency level.

The Commonwealth

The Commonwealth supported the amendments to the structure as proposed by the ADF, submitting that they were “consistent with the principles established by the Australian Industrial Relations Commission and with broad industrial practice”. The Commonwealth maintained that the amendments would address the needs of the ADF.

The Armed Forces Federation of Australia

The Armed Forces Federation of Australia supported the ADF proposal, submitting that, “in general terms it is more equitable, removes time/rank barriers and properly bases competency advancement on qualification and merit”.

The Returned and Services League of Australia and the Regular Defence Force Welfare Association

The Returned and Services League of Australia and the Regular Defence Force Welfare Association also supported the ADF proposal submitting that they were a “reasonable and necessary fine-tuning of a specialist pay concept which offers considerable utility to the ADF and has a very significant support within the Defence legal personnel”.

DECISION

Having regard to the evidence and submissions, the Tribunal has decided to approve the new Legal Officers Specialist Career and Salary Structure as sought by the ADF, including the new pay point for Lieutenant Colonels (or equivalent) at Legal Level 5.

The Tribunal agrees that the new structure is more consistent with other specialist structures that have been approved by the Tribunal and sees benefit in aligning Legal Officers with other specialists. The Tribunal notes that the proposed changes to competence are intended for Legal Levels 3, 4 and 5 and that no significant change is required for Legal Levels 1 and 2.

The Tribunal accepts that advancement based upon demonstration of competencies is more appropriate than time based criteria. But the integrity of the system proposed is dependent on defined competency differentials, rigorously assessed.

We note that competency log books are to be introduced as the basis of both self assessment and third party assessment and that the CPDC will monitor the assessment process and results. The revised requirements are not intended to diminish the time required for advancement between competency levels. In the circumstances, the Tribunal agrees with the ADF proposal to report back on the operation of the new structure and transition arrangements. It should do so by February 2005.

The addition of a pay point for Lieutenant Colonels (or equivalent) at Legal Level 5 is, in our view, appropriate to recognise an increase in legal expertise that may be required at this level, prior to promotion to the Colonel (or equivalent) rank.

The Tribunal also endorses the equity of the transitional arrangements proposed by the ADF, namely that members will be able to progress to the next competency level on the basis of previous competency standards, but will then complete the new requirements for advancement to the next competency level.

As agreed by the parties, the date of effect of the new structure will be on and from 1 July 2004.

APPEARANCES: R Kenzie QC, Defence Force Advocate with Lieutenant Commander A Bradshaw, for the Australian Defence Force

H Marshall and J Shingles for the Commonwealth

P Morrall for the Returned and Services League of Australia and the Regular Defence Force Welfare Association

DATE AND PLACE OF HEARING:

23 June 2005

Canberra