



Australian Government

Defence Honours and Awards Appeals Tribunal

DHAAT/OUT/2025/009

Senator Dave Sharma

Chair, Foreign Affairs, Defence and Trade Committee
Department of the Senate
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Senator Sharma

At the Committee's hearings in relation to Defence Honours and Awards on Friday 7 February 2025, I took on notice a question from Senator the Hon David Fawcett in relation to legislative amendments considered appropriate by the Tribunal. I provide the following information and hope that it will be of assistance to the Committee.

Eligibility Criteria for the Defence Long Service Medal

The Defence Long Service Medal (DLSM) is issued when an ADF member has rendered 15 years' service. The Tribunal has had a number of cases in which the applicant had rendered slightly less service (commonly 13 or 14 years) but had been discharged on medical grounds in circumstances where it appeared certain that, had they remained in good health, they would have met the 15-year requirement and been awarded the DLSM. However, the Regulations governing the DLSM allow no discretion to award the medal if service is of less than 15 years.

The Australian Defence Medal (ADM) is issued when 4 years' service has been rendered but, in contrast to the DLSM Regulations, the ADM Regulations permit issue of the medal after a lesser period where the member was unable to continue for various reasons, including *'the discharge of the member as medically unfit due to a compensable impairment'*.

In exercise of its power under section 110VB(3) of the *Defence Act 1903* (the Act) to make any recommendation to the Minister that the Tribunal considers appropriate that arises out of the Tribunal's review of a Defence decision, in one such case¹ the Tribunal recommended to the Minister that he give consideration to including a similar provision in the DLSM Regulations.

The Minister subsequently advised the Tribunal that he would not take such an amendment forward in order to *'establish and maintain a minimum time period for members to be considered efficient for the award of the DLSM in order to set a reasonable standard and retain a degree of esteem for the award'*.

¹ See *Jackson and the Department of Defence [2021] DHAAT 14 13 October 2021*.

Eligibility criteria for the Iraq Medal and the Afghanistan Medal

In 2021, Mr Corey Wilson, an ADF veteran and employee of Boeing Australia who deployed to Iraq and Afghanistan in his capacity as a contractor and had received some medallic recognition for that service, applied to the Tribunal seeking review of a Defence decision to refuse to recommend him for the Iraq Medal and the Afghanistan Medal. In undertaking its assessment of Mr Wilson's service, the Tribunal observed that there were no relevant Ministerial determinations that would entitle him or his colleagues for those medals, and thus, it was required to affirm Defence's decision.

In the course of the review, the Tribunal heard evidence from Defence that it had never been suggested to the Minister that he turn his mind to whether such determinations should be made, despite other campaign medals being available to other civilians for other service. Without reaching a view as to whether such determinations should be made, the Tribunal subsequently recommended to the Minister under section 110VB(3) that he should undertake this consideration. After seeking further Defence advice, on 19 July 2022, the Deputy Prime Minister advised the Tribunal that he believed Mr Wilson has received appropriate medallic recognition for his Defence civilian service and that he had decided against making those determinations.

While acceptance of the Tribunal's recommendation in this case would not have resulted in an amendment to the Regulations in question, it would have resulted in the making of statutory instruments that would have changed the way in which the legislation applied to Mr Wilson and others in the same circumstances.

Please note that the proposals for legislative reform set out in the Defence submission to the Committee would include revocation of the Tribunal's power to make recommendations of this nature. The Tribunal's supplementary 20 September 2024 submission to the Committee sets out, at pages 7-10, the Tribunal's opposition to that particular Defence proposal and notes that the reasons given by Defence in support of it are simply incorrect.

Appeals against cancellation of an honour or award

In the report of the 2015 *Inquiry into the refusal to issue entitlements to, withholding and forfeiture of Defence honours and Awards*, an earlier-constituted Tribunal panel recommended that section 110V of the Act should be amended to allow an application to be made to the Tribunal for review of a decision to cancel a defence honour or award. This matter was the subject of some considerable discussion at the hearing on 7 February during which it was noted that:

- various levels within Defence supported that amendment;
- the then-Chief of the Defence Force however opposed it and it was not subsequently made; but
- nevertheless there is an indirect route by which an affected ADF member or veteran can obtain Tribunal review – by reapplying for re-issue of the cancelled honour or award and then applying to the Tribunal for review of a subsequent decision refusing to recommend re-issue.

The presently-constituted Tribunal does not support the amendment in the form recommended by the previously-constituted Tribunal. As discussed at the Committee hearing, the current Tribunal now considers that it would be preferable that the right of access to Tribunal review be available in an advisory form when cancellation is proposed rather than after it occurs. This would avoid the undesirable situation that could arise, under either the previously proposed amendment or the current indirect route, of the Tribunal being required to review a decision already made by the Governor-General on the advice of the Minister. The amendment now favoured by the Tribunal is discussed in more detail at pages 26 and 27 of the Tribunal's initial submission to the Committee of 29 August 2024.

Please note that the proposals for legislative reform raised by Defence would abolish any right to have a cancellation decision reviewed. The Tribunal is opposed to such amendment because it would abolish existing rights without any countervailing assurance that the cancellation decision was the correct or preferable outcome.

Other legislative amendments proposed by the Tribunal

At pages 20-28 of its 29 August 2024 submission to the Committee, the Tribunal raised a series of legislative amendments that it does support. Rather than repeat those proposals here, I simply refer the Committee to those pages.

Legislative amendments opposed by the Tribunal

The Tribunal is unanimously opposed to the legislative amendments proposed in the Defence submission to the Committee. Detailed reasons for that opposition are set out in the Tribunal's supplementary submission of 20 September 2024.

In summary however, the Tribunal's opposition rests on four bases as stated in my opening remarks to the Committee on 7 February 2025:

- The Defence proposals would render invalid the majority of applications for review made to the Tribunal;
- While seeking to curtail or abolish Tribunal decision-making, Defence proposes no limitation on its current ability to make adverse decisions on applications for defence honours and awards – plainly, its purpose is simply to render its own decisions immutable and unchallengeable, whether right or wrong, and without the transparency or accountability currently provided by Tribunal review;
- Worse than that, its proposals are illogical – the more complex the required decision-making and the more prone it may be to error, the more Defence seeks to remove such decisions from the reach of Tribunal review; and
- And its proposals are completely counterintuitive – the more dangerous an ADF member's service, the more Defence seeks to limit current rights of review and, worse again, where it is claimed that an ADF member has performed with distinction, gallantry or valour, Defence seeks to abolish current rights of review.

As foreshadowed at the hearing on 7 February 2025, I will write to you separately about cases raised in submissions to the Committee where either it may be appropriate for those individuals involved to seek access to Defence or the Tribunal under the existing processes, or alternatively where it may be appropriate for the Committee to recommend that the Minister direct the Tribunal to conduct an inquiry under section 110W of the Act.

Please do not hesitate to contact me if the Tribunal can be of any further assistance to the Committee.

Yours sincerely

Stephen Skehill

Chair

Defence Honours and Awards Appeals Tribunal

12 February 2025

Cc: Ms Pothida Youhorn, Committee Secretary