



## Australian Government

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### Defence Honours and Awards Appeals Tribunal

## **Manton and the Department of Defence [2014] DHAAT 21 (28 April 2015)**

**File Number(s)** 2015/063

**Re** **Mr Allan James Manton**  
Applicant

**And** **Department of Defence**  
Respondent

**Tribunal** Brigadier M. Bornholt AM (Retd) (Presiding Member)  
The Hon P. Lindsay

**Hearing Date** 24 March 2015

### **DECISION**

On 28 April 2015 the Tribunal decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Mr Allan Manton is not eligible for the award of the Royal Navy Long Service and Good Conduct Medal.

### **CATCHWORDS**

DEFENCE AWARDS - Long Service and Good Conduct Medal

### **LEGISLATION**

*Defence Act 1903 – ss 110T, 110VB(2)*  
*Defence Force Regulations 1952 – Reg 93C*

*Australian Navy Order 542/67 – Long Service and Good Conduct Medal and Gratuity*  
- dated 21 December 1967

*Regulations and Instructions for the Royal Australian Navy (ABR 5016) –*  
Amendment No. 24, Article 1872 dated 7 July 1970

## REASONS FOR DECISION

### Introduction

1. The applicant, Mr Allan Manton seeks review of a decision of the Directorate of Honours and Awards of the Department of Defence (the Directorate) that he is not eligible for the award of the Royal Navy Long Service and Good Conduct Medal (LSGCM).
2. On 13 September 2013 Mr Manton made application to the Directorate for “a full medal search” of his service entitlements. On 10 October 2013 the Directorate advised Mr Manton that he had qualified for the Australian Service Medal 1945-75 with Clasps ‘FESR’ and ‘PNG’, and the Australian Defence Medal. He was advised that these awards had previously been issued to him and that he had not qualified for any additional awards.
3. On 20 February 2014, Mr Patrick Carney of the Seven Hills-Toongabbie RSL Sub-Branch, acting on behalf of Mr Manton made application to the Tribunal for his “15 Year Good Conduct Medal (Navy)”. This application was made as a submission to the Inquiry into *the refusal to issue entitlements to, withholding and forfeiture of defence honours and awards*. The Tribunal advised Mr Carney on 16 April 2014 that the Inquiry was not the appropriate avenue for individual representations and advised that if Mr Manton wished to proceed with an eligibility review for the LSGCM he was at liberty to make such application.
4. On 5 May 2014 Mr Manton wrote to the Tribunal seeking an individual review of his eligibility for the LSGCM and consenting to Mr Carney acting on his behalf.

### Tribunal Jurisdiction

5. Pursuant to s110VB(2) of the *Defence Act 1903* (the Defence Act) the Tribunal has jurisdiction to review a reviewable decision if an application is properly made to the Tribunal. The term *reviewable decision* is defined in s110V(1) and includes a decision made by a person within the Department of Defence to refuse to recommend a person for an award in response to an application. Regulation 93C of the *Defence Force Regulations 1952* defines a defence award as being those awards set out in Part 2 of Schedule 3. Included in the defence awards set out in Part 2 is the Royal Navy Long Service and Good Conduct Medal. Therefore the Tribunal has jurisdiction to review decisions in relation to this award. The role of the Tribunal is to determine whether the decision of the Directorate is the correct or preferred decision having regard to the applicable law and the relevant facts.

### Conduct of the Review

6. In accordance with its *Procedural Rules 2011*, on 22 May 2014, the Tribunal wrote to the Secretary of the Department of Defence informing him of Mr Manton’s application for review and requesting that he provide a report. On 17 September 2014, the Directorate, on behalf of the Secretary, provided the Tribunal with a report. In that report the Directorate confirmed its position that Mr Manton was not eligible for the LSGCM as he had not completed fifteen years qualifying service after the age

of 18 years and he was not serving on an engagement to complete 20 years service after attaining the age of 20 years. The Tribunal forwarded a copy of the report of the Directorate to Mr Manton for comment and he provided a written response on 16 February 2015.

7. The Tribunal met on 2 March 2015 when it considered the material provided by Mr Manton and the Directorate. On 24 March 2015 the Tribunal heard oral evidence from Mr Manton and his representative Mr Carney who both agreed to be available by telephone that day.

### **The Royal Navy Long Service and Good Conduct Medal.**

8. The Royal Navy LSGCM was instituted on 24 August 1831 by Order in Council. Section 34 of the Naval Defence Act 1910 applied the Naval Discipline Act (an act of the United Kingdom) to the Australian Navy. Concepts of good conduct, character and service assessments for the Navy are contained in various orders and regulations including The Queen's Regulations and Admiralty Instructions dated 15 August 1953. These Regulations state that 'good conduct badges (and the Long Service and Good Conduct Medal) represent the highest standard of conduct in the Service.'<sup>1</sup>

9. The Queen's Regulation prescribes the conditions for the award of a Good Conduct Badge:

*1872. Service Qualification.(2)...the whole of a man's service in the Royal Navy may be counted as qualifying service with the following exceptions:  
(a) Time served in the rating of Boy..., or before attaining the age of 18 years...<sup>2</sup>*

10. The 1953 Regulation regarding the LSGCM prescribes the conditions for the award as:

*1887....to be entitled to the award of the LSGCM, a man must:  
(a) Have completed 15 years pensionable service with continuous 'Very Good' character...<sup>3</sup>*

11. In 1967, the eligibility criteria for the LSGCM was published in Australian Navy Order 542/67.<sup>4</sup> This Regulation stipulated that:

*1886. Qualifications. To be qualified by service and conduct a sailor must –  
(a) have completed fifteen years qualifying service with continuous Very Good conduct and with previous conduct in service over the age of eighteen years...*

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<sup>1</sup> *The Queen's Regulations and Admiralty Instructions – Sect VII Article 1871 – Good Conduct and Good Service Badges* dated 15 August 1953.

<sup>2</sup> *Ibid*; Article 1872

<sup>3</sup> *Ibid*; Article 1887

<sup>4</sup> *Australian Navy Order 542/67 – Long Service and Good Conduct Medal and Gratuity* –dated 21 December 1967, Chap 18, Sect VII

- (c) *be serving on an engagement to complete 20 years service over the age of 20 years...*

12. The 1970 Regulations and Instructions for the Royal Australian Navy confirmed the 1967 eligibility criteria for the LSGCM<sup>5</sup>:

1872. *Qualifications. To be qualified by service and conduct a sailor must –*
- (a) *have completed fifteen years qualifying service with continuous Very Good conduct and with previous conduct in service over the age of eighteen years...*
  - (c) *be serving on an engagement to complete 20 years service over the age of 20 years...*

13. In 1971 the Navy announced that Good Conduct Badges would be abolished and new Long Service Badges would be introduced from 1 January 1972.<sup>6</sup> In 1974 the Navy released the final amended eligibility criteria for the LSGCM<sup>7</sup> before the introduction of the Australian system from February 1975. These amendments were not materially different from the 1970 amendment, only changing the requirement that the engagement period of 20 years commence from date of enlistment.

### **Australian Long Service Awards**

14. Australian service personnel received honours and awards including the LSGCM under the Imperial system until February 1975 when the Government introduced the Australian system. The two systems – the Imperial and the Australian; then operated in parallel until October 1992 when the Government announced that Australia would no longer make recommendations for Imperial awards:<sup>8</sup>

*Her Majesty The Queen has indicated her view that it is appropriate that Australian citizens should be recognised exclusively by the Australian system of honours ... accordingly I have consulted with the Premiers of States and we have agreed that Australian Governments, both State and Commonwealth, will henceforth cease to make recommendations for British honours...*

15. The National Medal (NM) was one of the first three elements of the Australian honours system to be introduced in 1975 and was intended to replace Imperial long service medals. Regulations governing the award of the NM were published in the Commonwealth Gazette on 17 February 1975.<sup>9</sup> The eligibility criteria for the award of the NM included a qualifying period of fifteen years of service. The regulations were silent in respect of any connection to or transitional arrangements from the LSGCM. The NM was unpopular amongst service personnel and following several

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<sup>5</sup> *Regulations and Instructions for the Royal Australian Navy (ABR 5016) – Amendment No. 24, Article 1872 dated 7 July 1970*

<sup>6</sup> *Australian Navy Order 469/71 – Abolition of Good Conduct Badge – Introduction of Long Service Badges –dated 24 November 1971*

<sup>7</sup> *Regulations and Instructions for the Royal Australian Navy (ABR 5016) – Amendment No. 36, Section IV. Long Service and Good Conduct Medal - Articles 1872 dated July 1974*

<sup>8</sup> Prime Minister of Australia Media Release 111/92 dated 5 October 1992

<sup>9</sup> *Commonwealth of Australia Gazette No S28, The National Medal dated 17 February 1975*

representations and reviews, the Defence Force Service Awards (DFSA) Regulations were introduced by Letters Patent on 20 April 1982<sup>10</sup> for the purpose of:

*... according recognition to persons who render long and efficient service as members of the Defence Force...*

16. Three awards were established including the Defence Force Service Medal (DFSM) awarded to members of the Regular Forces who:

*...on or after 14 February 1975, completed the qualifying service as a member of the Defence Force...*

17. Amendments were also made in the 1982 Gazette to reflect the new DFSA and revoke and substitute conditions for the award of the NM.

### **Mr Manton's Service Record**

18. Mr Manton was born on 27 May 1940 and enlisted in the Permanent Naval Forces (PNF) on 4 January 1957 at the age of 16 years and seven months. His initial period of enlistment was for 12 years. He re-engaged for a further three years on 4 January 1969. On 3 January 1972 Mr Manton discharged from the PNF on the expiration of his engagement and having completed 15 years of effective service. Mr Manton was granted three Good Conduct Badges in 1961, 1965 and 1969.

19. For his service, Mr Manton was awarded the:

- a. Australian Service Medal 1945-75 with Clasps 'FESR' and 'PNG', and
- b. Australian Defence Medal.

### **Defence's Submission**

20. The Defence submission advised that the Directorate was unable to locate supporting evidence regarding any decision to refuse Mr Manton's eligibility for the LSGCM. The Directorate confirmed that on 10 October 2013 they had advised Mr Manton that he had qualified for the Australian Service Medal 1945-75 with Clasps 'FESR' and 'PNG', and the Australian Defence Medal. The Directorate stated that in a letter to Mr Manton they advised that these awards had previously been issued to him and that in response to his request that they conduct a 'full medal search', they had advised that he had not qualified for any additional awards.

21. The Directorate confirmed in the Defence submission that they had conducted a complete re-assessment of Mr Manton's eligibility for the LSGCM during their review. The Directorate stated that whilst Mr Manton had served for a total of fifteen years, he had enlisted as a 16 year old and therefore did not serve the necessary fifteen years 'over the age of 18 years' as required by the Regulation. The Directorate also noted that Mr Manton was not serving on an engagement to complete twenty years of service as required by the Regulation. The Defence submission therefore concluded that Mr Manton was not eligible for the LSGCM.

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<sup>10</sup> *Commonwealth of Australia Gazette No S78, Defence Force Service Awards* dated 27 April 1982

## **Mr Manton's Submission**

22. Mr Carney's submission on behalf of Mr Manton on 20 February 2014 stated:

*Mr Manton served 15 years Navy. His records say he received five year increments as required by protocol. Through no fault of his own, the Commanding Officer or Commander at that time did not sign off on these increments thus Mr Manton did not receive his award. Thus we submit this application for any entitlement for his 15 year recognition.*

23. Mr Manton's letter of 16 February 2015 elaborates on the Carney request when he states:

*... my period of engagement ... was twelve years ... and then re-engaged for a further three years ... this I understand would have been qualifying time for the Defence Force Service Medal granted for 15 years in the Defence Force ... I understand this medal has since been replaced with the Long Service and Good Conduct Medal ...*

24. During the hearing with Mr Manton he confirmed that he was seeking recognition of his fifteen years of service in the permanent Navy. Mr Manton confirmed during the hearing that he understood that to be eligible for the DFSM, he needed to be still serving on or after 14 February 1975. He confirmed that at the time of his enlistment he was aged 16 years and 7 months and that at the time of his discharge he had completed 13 years and five months of service over the age of 18. Mr Manton confirmed that he was aware that his initial term of engagement was 12 years and that he subsequently completed a second engagement period of three years.

25. Mr Manton and Mr Carney concluded their oral evidence by stating that they considered that the Regulation which required that Mr Manton's service before the age of eighteen not be counted as qualifying service was unfair and unreasonable.

## **Tribunal Consideration**

26. The Tribunal considered that the Directorate's decision of 10 October 2013 that Mr Manton 'did not qualify for any additional awards' constituted a refusal to recommend Mr Manton for the LSGCM. The Directorate reaffirmed its position in the reassessment of Mr Manton's service conducted in the process of providing the Tribunal with the Defence submission.

27. There is no dispute about Mr Manton's service record. There is no question that Mr Manton rendered very good service during his fifteen years of service and was the recipient of three Good Conduct Badges.

28. The Tribunal carefully considered the eligibility criteria for the LSGCM and reviewed the various amendments to the qualifying conditions which were published between 1953 and 1972. The Tribunal noted that the Queen's Regulations from 1953 clearly differentiated between two different awards:

- a. **Good Conduct and Good Service Badges.** Article 1872 specifically excluded service before the age of 18 years as qualifying service for this badge; and
- b. **Long Service and Good Conduct Medal and Gratuity.** Article 1887 required only 15 years ‘pensionable’ service to qualify for this award. This paragraph was silent regarding service prior to age 18 but did stipulate re-engagement provisions.

29. The Tribunal noted that later Regulations and Orders, most notably the 1967 Australian Navy Order 542/67 and subsequent amendments appear to include a deliberate decision to combine the criteria for the previously mentioned separate awards into one condition for the LSGCM. The Tribunal considered that whilst the rationale for this combination was not clear – the resultant Regulations and Orders were correct at law and therefore enforceable.

30. The Tribunal was sympathetic to Mr Manton’s view that not considering service prior to the age of 18 was unfair but noted that this was a specific condition of the award of the LSGCM and it was this Regulation - *Regulations and Instructions for the Royal Australian Navy (ABR 5016)* – Amendment No. 24 Section V, ‘Long Service and Good Conduct Medal’ - Article 1872 dated 7 July 1970 which applied to Mr Manton at the time of his discharge on 3 January 1972.

31. In relation to Mr Manton’s request to consider his eligibility for the Defence Force Service Medal (DFSM), the Tribunal determined that Mr Manton was not eligible as he had completed his service on 3 January 1972, three years before the Australian system commenced. He had therefore not completed ‘15 years qualifying service on or after 14 February 1975’, as required by the *Commonwealth of Australia Gazette No S78*, ‘Defence Force Service Awards’ dated 27 April 1982.

32. In relation to Mr Manton’s eligibility for LSGCM, the Tribunal determined that Mr Manton had commenced his qualifying service for the award on 27 May 1958, the date he turned 18 years of age. His qualifying service ceased on 3 January 1972 when his second period of engagement had expired and he elected to discharge from the Permanent Naval Forces. His qualifying service therefore totalled 13 years, seven months and seven days. This service was 15 months short of the ‘fifteen years qualifying service ... over the age of eighteen years...’ required by the prevailing Regulation at the time of his discharge - *Regulations and Instructions for the Royal Australian Navy (ABR 5016)* – Amendment No. 24 Section V, ‘Long Service and Good Conduct Medal’ - Article 1872 dated 7 July 1970.

33. The Tribunal further determined that Mr Manton enlisted on 4 January 1957 for an initial engagement period of 12 years and then for a further three year period on 4 January 1969. At no stage was Mr Manton ‘...serving on an engagement to complete 20 years over the age of 20 years...’ as required by the prevailing Regulation at the time of his discharge - *Regulations and Instructions for the Royal Australian Navy (ABR 5016)* – Amendment No. 24 Section V, ‘Long Service and Good Conduct Medal’ - Article 1872 dated 7 July 1970.

## **Finding**

34. For the reasons stated above, the Tribunal finds that Mr Manton is not eligible for the LSGCM. Accordingly the Tribunal finds that the decision of the Directorate is correct and therefore affirmed.

## **DECISION**

35. The Tribunal decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Mr Allan Manton is not eligible for the award of the Royal Navy Long Service and Good Conduct Medal.