



Australian Government

Defence Honours and Awards Appeals Tribunal

Galea and the Department of Defence [2015] DHAAT 44 (7 October 2015)

File Number(s) 2013/022

Re **Colonel Paul D. Galea**
Applicant

And **Department of Defence**
Respondent

Tribunal Mr M. Sullivan, AO (Presiding Member)
Brigadier M. Bornholt AM (Retd)

Hearing Date 25 September 2015

DECISION

On 7 October 2015 the Tribunal decided to:

- a. **Set aside** the decision of the Directorate of Honours and Awards of the Department of Defence that Colonel Paul D. Galea is not eligible for the award of the Australian Service Medal with Clasp 'CT/SR'.
- b. **Substitute** its decision that Colonel Paul D. Galea is eligible for the award of the Australian Service Medal with Clasp 'CT/SR' and directs that the medal be issued.

CATCHWORDS

DEFENCE AWARDS – Australian Service Medal with Clasp 'CT/SR'.

LEGISLATION

Defence Act 1903 – ss 110T, 110VB(2)

Defence Force Regulations 1952 – Reg 93C

Commonwealth of Australia Gazette (CAG) No S336 dated 2 November 1988

Commonwealth of Australia Gazette (CAG) No S50 dated 30 March 2011

REASONS FOR DECISION

Introduction

1. The applicant, Colonel Paul D. Galea (Colonel Galea) 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 Australian Service Medal with Clasp 'CT/SR' (ASM with Clasp 'CT/SR').
2. On 12 April 2011 Colonel Galea made application to the Directorate for the award of the ASM with Clasp 'CT/SR' to recognise his service as the Troop Commander of the 2nd Signal Regiment troop in 1987-88 which he asserted provided specialist communication detachments to the Tactical Assault Group (TAG) under the applicable Counter Terrorist Australian Joint Service Plan (AJSP). On 16 January 2013 the Directorate e-mailed Colonel Galea and advised that acting on the advice of Headquarters Special Operations (SOHQ), they had decided that he was not eligible for the ASM with Clasp 'CT/SR'.
3. On 19 July 2013 Colonel Galea submitted an application for review of the decision to the Tribunal asserting that the advice provided by SOHQ to the Directorate was dismissive of his application and failed to consider the content of the relevant CDF Operational Preparedness Directive (CPD), the AJSP or to adequately reflect the Tribunal's 2009 *Inquiry into Recognition of Australian Defence Force service for Special Air Service Counter Terrorist and Special Recovery Duties*¹ (the Inquiry). He concluded his application by stating that the delegation of responsibility for the decision created the potential for bias by SOHQ.

Tribunal Jurisdiction

4. 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 Australian Service Medal. Therefore the Tribunal has jurisdiction to review decisions in relation to this award.

Conduct of the review

5. In accordance with its *Procedural Rules 2011*, on 15 August 2013, the Tribunal wrote to the Secretary of the Department of Defence informing him of Colonel Galea's application for review and requested a report on the material questions of fact and the reasons for denying Colonel Galea's eligibility. The Tribunal also requested that the Secretary provide copies of documentation relied

¹ *Inquiry into Recognition of Australian Defence Force service for Special Air Service Counter Terrorist and Special Recovery Duties*, Defence Honours and Awards Tribunal, dated 22 December 2009.

upon which was not included in Colonel Galea's submission and also that he provide a copy of the relevant service record.

6. On 16 October 2013 the Tribunal also advised the Secretary that a similar application had been lodged by the Australian Peacekeepers and Peacemakers Veterans' Association (APPVA) seeking the same award for approximately 40 individuals who had been a part of the 1st Commando Regiment.

7. On 30 September 2014, the Directorate advised the Tribunal that a review of eligibility by SOHQ had resulted in the Special Operations Commander Australia (SOCAUST) 'endorsing' the award of the ASM with Clasp 'CT/SR' for eligible members of 1st Commando Regiment and 'rejecting' the award of the ASM with Clasp 'CT/SR' for members of 2nd Signal Regiment. On 22 October 2014 the Tribunal forwarded a copy of the review by SOHQ to Colonel Galea for comment which he provided on 23 October 2014. Colonel Galea provided a further submission on 30 April 2015 which was commented on by SOCAUST on 11 June 2015.

8. The Tribunal met on 10 July 2015 when it considered material provided by Colonel Galea and Defence. The Tribunal noted that despite the SOHQ 'endorsement', the APPVA review had not been concluded as the Defence submission only partially addressed the applicants' claims.² The Tribunal considered that in all likelihood the APPVA claim would be affected by the outcomes of the Galea review. With this in mind, the Tribunal decided that it would complete the Galea review before commencing the APPVA review and advised the Directorate accordingly.

9. On 10 July 2015 the Tribunal asked Colonel Galea to remove classified information from his 30 April 2015 submission (which was received on 13 July) and asked Defence to provide copies of the AJSP which relate to Colonel Galea's claims from 1987-88 and the relevant CPD. AJSP DOMINIE³ dated 23 June 1978 was produced by Defence on 7 August 2015; they were unable to locate a copy of AJSP DICKENS or the CPD. In lieu of the CPD, Defence provided a copy of a review and the ensuing report into ADF Operational Readiness that was conducted in 1988.⁴ On 25 September 2015 the Tribunal heard evidence from Colonel Galea, the Directorate and Warrant Officer Class One Darren Hunt, the Command Sergeant Major of Special Operations Command.

Australian Service Medal with Clasp 'CT/SR'

10. The Australian Service Medal was established by Letters Patent in 1988 for the purpose of according recognition to members of the Australian Defence Force and certain other persons who render service in certain non-warlike military operations.⁵ The award of the medal is governed by Regulations set out in the Schedule:

...

² The APPVA submission had sought recognition for 40 personnel from 1 Cdo Regt however SOCAUST endorsed the award of the ASM with Clasp 'CT/SR' to six appointments and made this recommendation to the Directorate on 2 September 2014.

³ AJSP DOMINIE 1/1978 dated 23 June 1978

⁴ *Review of ADF Operational Readiness* dated 2 March 1988, Interim Report approved by Secretary/CDF on 11 April 1988

⁵ *Commonwealth of Australia Gazette (CAG) No S336* dated 2 November 1988

Declaration of prescribed operations

3. *The Governor-General, on the recommendation of the Minister, may declare a non-warlike operation, in which members of the Defence Force are, or have been on or after 14 February 1975, engaged, to be a prescribed operation for the purposes of these Regulations.*

Conditions for award of the Medal

4. (1) *The Medal may be awarded for service in or in connection with a prescribed operation.*
(2) *The conditions for the award of the Medal are the conditions determined by the Governor-General on the recommendation of the Minister.*
(3) *Any subsequent award of the Medal to the same person shall be made in the form of a further clasp to the Medal.*
(4) *The persons to whom the Medal may be awarded are –*
 - (a) *persons who served in a prescribed operation as members of the Defence Force; and*
 - (b) *persons included in a class of persons determined by the Minister, for the purposes of this regulation.*
(5) *The Medal may not be awarded except to a person who fulfils the conditions for the award of the Medal.*

...

11. In April 2009 the Australian Government asked the Tribunal to inquire into recognition of Australian Defence Force personnel engaged in Special Air Service Regiment Counter Terrorist and Special Recovery Duties. On 3 February 2010 the Government accepted the recommendations detailed in the report of the Inquiry which concluded that service in an online Tactical Assault Group (TAG) should be recognised by the award of the ASM with a new Clasp to be titled Clasp ‘CT/SR’.

12. On 24 March 2011, the Governor General made a Declaration and Determination under the Australian Service Medal Regulations:

...

(a) declare, under regulation 3 of the Regulations, the following service in which members of the Australian Defence Force were involved to be a prescribed operation for the purposes of those Regulations:

- (i) *service in a Tactical Assault Group that commenced on 31 August 1979; and*
- (ii) *service in the Recovery Force that commenced on 31 August 1979;*

(b) determine, under regulation 4 of the Regulations, that the conditions for award of the Australian Service Medal with Clasp ‘CT/SR’ (“the Medal”) for that prescribed operation are that:

(i) the Medal may be awarded to a member of the Australian Defence Force who rendered service as such a member of the prescribed operation for a prescribed period; ...

(iii) in this paragraph “prescribed period” means, in relation to the activities described at subparagraph (a)(i)...a period of not less than 60 days continuous...⁶

Colonel Galea’s Service Record

13. Colonel Galea enlisted in the Australian Regular Army (ARA) on 17 March 1980 and was allocated to the Royal Australian Corps of Signals. He transferred to the Active Army Reserve (ARES) on 18 March 2003. At the time of his application he was serving as the Commanding Officer of the Monash University Regiment. He transferred back to the ARA on 1 July 2013 and is currently serving as the Commandant of the Army Knowledge Group at Puckapunyal.

14. His Service Record indicates he was posted as a Troop Commander in 2nd Signal Regiment from 15 January 1987 to 31 January 1988 and was the Second in Command of 145 Signal Squadron in 1988. Colonel Galea provided a copy of his annual Evaluation and Development Report - Officer (EDRO) for the period ending 12 December 1988 which also confirms that he was a Troop Commander in 2nd Signal Regiment in 1987-88. His Commanding Officer had stated in the report that part of his responsibilities had included:

‘the preparation and deployment of a number of teams for contingency tasks’.

15. For his service in the Army, Colonel Galea was awarded the:

- Australian Service Medal with Clasps ‘KUWAIT’ and ‘HAITI’,
- Defence Long Service Medal with 1st, 2nd and 3rd Clasps,
- Australian Defence Medal,
- United States of America Armed Forces Expeditionary Medal,
- United States Meritorious Service medal,
- United States of America Joint Meritorious Award, and
- United States of America Army Commendation Medal.

Colonel Galea’s Submissions

16. Colonel Galea’s application for the ASM with Clasp ‘CT/SR’ was made on 12 April 2011. His application is based upon his posting to 145 Signal Squadron in the 2nd Signal Regiment from 31 May 1988. He states that he was responsible at this time to command the “‘DD’ Troop” which was tasked to provide specialist signals support to AJSP DOMINIE and AJSP DICKENS – hence the acronym ‘DD’. The two standing AJSP provided the outline responsibilities for the provision of Defence Force aid for counter terrorist operations domestically and offshore respectively.

⁶ Commonwealth of Australia Gazette (CAG) NoS50 dated 30 March 2011

17. Colonel Galea states that his troop provided specialist signals and communications capabilities in support of the TAG including Higher Command Link detachments and Communications Centre personnel and equipment. He states that the troop's capabilities augmented those provided by 152 Signal Squadron, the Special Air Service Regiment's (SASR) integral communications element. He indicates that himself and eight to ten others were on call from 31 May to 28 October 1988. During this time they were restricted in their movements, prevented from consuming alcohol and frequently exercised in their readiness through no-notice call outs. He recalls deploying on four separate TAG related exercises during the period and was unaware each time if the call out was operational or an exercise. During these activities, his detachment would set up proximate to the TAG and assist in the passage of secure facsimile and formal message traffic between the various supporting agencies. Colonel Galea described his personal role during these deployments as a liaison officer.

18. Colonel Galea's application also asserted that a review of the CPD from 1987-1988 would confirm that elements of 2nd Signal Regiment were formally tasked and assigned in support of the TAG.

19. On 23 October 2014 Colonel Galea provided further information in response to the Defence submission. His response asserted that his troop's assignment in accordance with the relevant AJSP had not been adequately considered by the Directorate or by the SOHQ review. He stated that his troop was a specialist capability 'attached' to the TAG via the AJSP to provide 'support'. He also asserted that the reliance in the Defence submission on the SOCAUST Directive 2/2013 was a 'causal diminution' of the role played by specialist members who supported the TAG. He indicates that in his view SOCAUST is focussed on:

'ensuring only members of the specified Special Forces units achieve recognition'.

20. Colonel Galea concludes this submission by indicating that the counter terrorist and special recovery capability was based upon many more units than just the Special Forces and was codified in consecutive CPDs, through the issue of AJSP and the need for non-Special Forces personnel to be on call for extended periods and beyond the stipulated 60 days.

21. On 13 July 2015 Colonel Galea provided an unclassified version of his April 2015 submission which included extracts from plans and documents he had reviewed at Defence Archives. The aim of this submission was to prove that 2nd Signal Regiment was a part of the TAG and that approximately 33 members of the DD Troop were eligible for the ASM with Clasp 'CT/SR'. In this submission he indicated that 2nd Signal Regiment provided force assigned 'Communication Readiness Teams (CRT)' under the relevant AJSP and these teams were sourced from the DD Troop. He stated that the CRT 'were clearly identified, force assigned and tasked to provide a specialist command and control element between the CDF and CO SASR, and within the TAG across several locations'.

22. The submission contained several extracts from relevant plans purporting to support Colonel Galea's assertions that the CRT was force assigned in support of AJSP DOMINIE and DICKENS. These included:

- *'Force Command Net – Voice. Equipment owned and installed by 2nd Signal Regiment and operated by 152 Signal Squadron at POC, PFCP, Reaction Force'*⁷
- *'Command States on declaration of "DOMINIE WHITE" – Under operational command of CDF:*

*SASR CT Force
Elm HQ 1 Cdo Regt
Det 2 Sig Regt'*⁸

23. The submission also included evidence that the Commander Special Forces had tasked 2nd Signal Regiment to provide communications staff to 'cover' SASR manning shortfalls under the AJSP and to provide personnel to the Communications Centre:

'Enclosed is a copy of the JFHQ SOP for use during AJSP DICKENS training and operational deployments; shortfalls in SASR manning will be overcome by the provision of members from 2nd Signal Regiment'.⁹

24. Colonel Galea's submission also pointed to the inconsistent insertion of words into direct quotations in the SOHQ review provided by the SOHQ Project Officer and asserted that these actions appeared to be:

'a disingenuous attempt to constrain the numbers of specialist ADF members who would otherwise qualify...'

25. In summary, Colonel Galea's submissions assert that members of the 2nd Signal Regiment DD Troop that he commanded in 1987-1988, directly contributed to and supported the TAG from 1980 to 1992. He states that 2nd Signal Regiment was force assigned by the CDF under the respective AJSP and CPD and accordingly, a small number of members of the Troop were on identical notice to move as the remainder of the TAG for periods greater than 60 days, were specialists and, as they were assigned, are eligible for the award of the ASM with Clasp 'CT/SR'.

Defence Submission

26. In an e-mail from Mrs West of the Current Entitlements Team of the Directorate, Colonel Galea was advised that he was not eligible for the ASM with Clasp 'CT/SR' and that this decision was made on advice received from SOHQ on 10 December 2012 that:

⁷ 1 Div Implementing Instruction 1/81, Provision of Aid to the Civil Power, Annex K – Communications Plan – File LOG (C)110/3/107 Part 1 1981

⁸ AIRHQ/64/6/21/1 AIR(15) dated 20 Mar 89 – File 88/24692/P1 PLAN DOMINIE DOPS

⁹ Covering letter for JFHQ, SOP for AJSP DICKENS Page 12 (S) dated 16 Feb 90

“2 Sig Regt not part of TAG, in 1988 does not have 60 days service.” As such, you are not eligible for the Australian Service Medal with Clasp CT/SR.’¹⁰

27. On 15 August 2013 the Tribunal asked the Secretary of the Department of Defence for a report on the background to the decision, findings on material questions of fact and an explanation of how the Department reached its original decision in relation to Colonel Galea’s eligibility. During the hearing, the Directorate confirmed that it had passed the Tribunal request directly to SOHQ as was the standard procedure they used for applications involving Special Operations personnel. Rather than provide a response addressing the questions asked, a letter to the Tribunal from SOHQ on 3 September 2014 contained a recommendation that the Tribunal ‘reject the award of the ASM with Clasp “CT/SR” for members of 2nd Signal Regiment’. The letter contained four enclosures ‘to provide further context to SOCAUST’s decision’.

28. These enclosures reveal that on 23 May 2014 the Director Special Operations Support (DSOS) at SOHQ provided terms of reference to create an honours and awards Project Team within the Command to deal with the ASM with Clasp ‘CT/SR’.¹¹ The allocated Project Officer and presumably the Team leader was an ARES Officer - Colonel M. Donaghue. He was tasked to ‘manage the requests and submissions received for the ASM with Clasp ‘CT/SR’ and provide an objective review of requirements and advice on the merit and evidence of submissions’. Attached to the terms of reference was ‘specific research task guidance’ to separately review ‘recognition for LTCOL Paul Galea’ and review ‘recognition for 1 Cdo Regt members’. This later review refers to the earlier discussed APPVA application.

29. On 30 June 2014, Colonel Donaghue provided a two page review of recognition for 2nd Signal Regiment members to the DSOS.¹² The review provided a brief historical background to the establishment of the TAG which indicated that the TAG would be resident within SASR and ‘non organic capabilities’ from the remainder of Army would be tasked to support the TAG. The review acknowledged that within this context:

‘The provision of High Command Link (HCL) by 2nd Signal Regiment to TAG was part of its Army role to provide HCL link where required’

30. The review considered that 2nd Signal Regiment:

‘was part of the whole of Defence enabling/support structure, similar to C130 aircraft ... or ships’.

31. The review included a statement attributed to the *Commonwealth of Australia Gazette* No. S50 dated 30 March 2011 that:

¹⁰ Email Mrs Tracy West, Current Entitlements Team DHA to LTCOL Galea dated 1138 16 January 2013

¹¹ SOHQ AM1568522 ‘Terms of Reference – Honours and Awards Project Team’ dated 23 May 2014

¹² SOHQ AM1686167 ‘Review of Recognition for 2 Sig Regt Members for ASM With Clasp CT/SR’ dated 30 June 2014

‘the key criteria for the award of the Clasp of “CT/SR” ... were, “Service in a Tactical Assault Group either posted or attached for a period of 60 day continuous, and ...’¹³

32. The review also purports to draw on guidance provided in the SOCAUST Directive 02/2013 dated 15 November 2013 paragraph 10.b.(2); stating that the baseline for TAG composition:

‘...consists of the following Force Assigned elements; members of a RSOCCE; organic signallers, ... and other specialists (directly assigned to TAG contingencies ...’¹⁴

33. The review concludes with a recommendation that:

‘members of 2nd Signal Regiment are not eligible ...as they were not part of the TAG nor did they satisfy the other must-have criteria’.

34. On 29 August 2014 the DSOS forwarded a decision brief to SOCAUST seeking that he endorse the recommendation of the Project Officer to reject the award of the ASM with Clasp ‘CT/SR’ for members of 2nd Signal Regiment.¹⁵ The brief indicated that the Project Officer had been appointed to ensure independence.¹⁶ The brief concluded that the review by Colonel Donaghue did not recommend Colonel Galea and members of 2nd Signal Regiment as they had been ‘tasked to provide the HCL to Army and the provision of support to TAG was part of the wider role to provide HCL as required, in the same way as a RAAF C-130 would provide support to TAG when required’. SOCAUST subsequently endorsed this recommendation on 2 September 2014 and the brief was forwarded to the Tribunal and the Directorate.

35. Following further comments from Colonel Galea in a submission dated 30 April 2015, SOCAUST provided additional material in a letter to the Tribunal dated 11 June 2015.¹⁷ SOCAUST acknowledged that the 2nd Signal Regiment Communications Readiness Team (CRT) did provide support to the TAG, however:

‘...this support was not tactical in nature and the team did not provide service “in” the TAG...’

36. SOCAUST indicated that no information was found to support any assertions that members of 2nd Signal Regiment were assigned under relevant contingency plans to the TAG however he conceded that, should orders or documentation directing force assignment be discovered, the matter could be reconsidered.

¹³ Ibid – Paragraph 4

¹⁴ Ibid.

¹⁵ HQSO AM 1707479 ‘Decision Brief for SOCAUST’ dated 29 August 2014

¹⁶ Colonel F. Froggatt, the DSOS had previously served in 1 Cdo Regt as a captain and, subject to the outcomes of the review of eligibility for members of 1 Cdo Regt, she may become entitled to the award.

¹⁷ SOC F1024082 ‘Response to Submission by 8242108 COL P.D. Galea’ dated 11 June 2015

Tribunal Consideration

37. There is no dispute regarding Colonel Galea's service record or that he commanded a troop in the 2nd Signal Regiment in 1987-1988. Relying on the notes contained in Colonel Galea's 1988 EDRO, the Tribunal was satisfied that the troop was responsible for the provision of personnel and equipment for short notice contingencies.

38. There was no evidence provided to the Tribunal that an actual documented assessment of entitlement had been conducted after Colonel Galea made his initial application for the award on 12 April 2011. There was also no evidence that the decision to deny eligibility was made by an appropriately authorised delegate. During the hearing on 25 September 2015, the Directorate indicated that they relied on the advice of SOHQ and had not conducted their own assessment. Warrant Officer Hunt, representing SOHQ, indicated that the decision was made by their internal 'Honours, Awards, Recognition and Decorations Board' (HARD Board¹⁸) and the delay in communicating the decision was a result of the Headquarters needing to establish procedures and protocols for the award. They also indicated that at the time they were dealing with in excess of 1,100 applications in a relatively short period and that at least five different staff officers were involved in the process.

39. SOHQ indicated that the decisions of the HARD Board were minuted but they did not produce these minutes as evidence. The Tribunal noted that in the brief written on 29 August 2014 as part of the package sent to SOCAUST for endorsement, a statement was made that:

'in 2011 ... the submission by LTCOL Paul Galea seeking award of the Clasp "CT/SR" ... was rejected by SOCOMD HARD Board'.

40. The Tribunal did not consider that the HARD Board had an appropriate delegation to make this decision in 2011 and subsequently, when the actual decision was communicated by the Directorate on 16 January 2013, there was no evidence that the decision was made by an authorised delegate. The Directorate and SOHQ confirmed this during the hearing on 25 September 2015 and it became clear to the Tribunal that there was confusion as to who was the authorised delegate for approving awards involving Special Operations Command personnel.

41. The Tribunal noted that after Colonel Galea made application for the review on 19 July 2013, the Tribunal wrote to the Secretary seeking a report on the decision making process and supporting evidence. Rather than provide a response to the Tribunal's request for a report regarding the decision, SOHQ elected to conduct its own review and the Directorate appeared to accept this approach without question or an independent assessment.

42. Notwithstanding this, the Tribunal was particularly concerned that the SOHQ review contained obvious errors of fact and inaccurate quotations which were misleading. For example, the Project Officer's report of 30 June 2014 contained a

¹⁸ Acronym definition was provided by the Directorate to the Tribunal on 6 October 2015

statement attributed to the ‘*Commonwealth of Australia Gazette Special No. S 50 dated 30 Mar 2011 (Annex B)*’ that:

‘ the key criteria for the award of the Clasp of “CT/SR”... were Service in a Tactical Assault Group either posted or attached for a period of 60 days continuous...’¹⁹ (Highlight added for clarity)

The Gazette does not have an Annex and actually states ‘*service in a Tactical Assault Group that commenced on 31 August 1979...*’

43. The review also draws on guidance provided in the SOCAUST Directive 02/2013 dated 15 November 2013 paragraph 10.b.(2); stating that the baseline for TAG composition:

‘...consists of the following Force Assigned elements; members of a RSOCCE; organic signallers, ...and other specialists (directly assigned to TAG contingencies ...’²⁰ (Highlight added for clarity)

The relevant paragraph which addresses eligibility is 11 and does not contain the caveat ‘**organic**’, stating:

‘...To establish a base line of the TAG composition, it will consist only of the following Force Assigned elements: (1) Members of the RSOCCE directly assigned to TAG contingencies...’²¹

44. The same Project Officer in a subsequent report into 1st Commando Regiment eligibility dated 27 August 2014, when quoting the same paragraph from the SOCAUST Directive did not include the caveat ‘organic’.²² During the hearing on 25 September 2015, SOHQ indicated these inconsistencies had been identified during their consideration of the review but they had not changed them at the time. SOHQ indicated that their focus at that time was on ensuring that eligibility for the ASM with Clasp ‘CT/SR’ was restricted to those who were subjected to constant hazardous circumstances whilst in the TAG. Warrant Officer Hunt during his evidence at the hearing indicated that SOHQ did not consider that the incorrect quotations made any material difference to the reviews.

45. The Tribunal did not accept that the incorrect quotations were not material and considered that whilst Colonel Galea’s assertions of bias could not be legally sustained, there was evidence that the two project reports, written by the same author and only seven weeks apart, may have been crafted to persuade the reader of an outcome which was not supported by facts.

¹⁹ SOHQ AM1686167 ‘*Review of Recognition for 2 Sig Regt Members for ASM With Clasp CT/SR*’ dated 30 June 2014 – Paragraph 4

²⁰ Ibid.

²¹ SOCAUST Directive 02/2013 – ‘*For Recognition of Members Involved in Special Operations, Counter Terrorism and Special Recovery Operations*’ dated 15 November 2013

²² SOHQ AM1686396 ‘*Review of Recognition for 1 Cdo Regt Members for ASM With Clasp CT/SR*’ dated 27 August 2014 – Paragraph 9.

46. The Tribunal, noting the above issues, turned to an examination of Colonel Galea's eligibility for the ASM with Clasp 'CT/SR' according to the lawful Instrument relevant to the award.

47. As the decision that he was not eligible was made on 16 January 2013, the relevant Regulation is that which was current at that date. Accordingly the Tribunal found that the award of the ASM is governed by Regulations set out in the Schedule to the *Commonwealth of Australia Gazette (CAG) No S336* dated 2 November 1988.²³

48. The Tribunal noted that one of the conditions for the award of the ASM includes:

4. (1) *The Medal may be awarded for **service in or in connection** with a prescribed operation.* (Highlight added for clarity)

49. The Tribunal was satisfied that pursuant to the Regulations, the Governor-General on 24 March 2011 through *Commonwealth of Australia Gazette (CAG) No S50*, did declare that a prescribed operation for the purpose of awarding the ASM with Clasp 'CT/SR' was:

(a)(i) *service in a Tactical Assault Group that commenced on 31 August 1979...*²⁴

50. Pertinent to Colonel Galea's claim, the Tribunal noted that conditions which must be met to be eligible for the award included '...service of not less than 60 days continuous...' and:

(b)(i) *the Medal may be awarded to a member of the Australian Defence Force who **rendered service** as such a member of the prescribed operation...* (Highlight added for clarity)

51. The Tribunal noted that entitlement to awards is determined by the eligibility criteria as declared in the Instruments, Regulations and Determinations for a particular award. These Instruments are subordinate legislation while internal Directives, Orders or policy documents such as the Defence Honours and Awards Manual or SOCAUST Directives are not. As such where the policy is inconsistent with the law, the law (in this case legislative instruments) must be followed by the decision maker.

52. Similarly, the Tribunal dismissed the various assertions made by Colonel Galea, and SOHQ regarding the application of the Tribunal's 2009 Inquiry to Colonel Galea's eligibility. Whilst the Inquiry informed the Government decision to create the new Clasp 'CT/SR', the conditions for the award are only in accordance with the Instrument, Regulations and subsequent Determinations.

53. The Tribunal considered that the fundamental issue on which Colonel Galea's claim would turn would be the definition of 'rendered service' and that that service must be 'in the Tactical Assault Group' as defined in the Determination or 'in or in connection' with the operation as defined in the Regulation. The Tribunal noted that in more recent Instruments, the issue of 'service' has been clarified by using the statement:

²³ *Commonwealth of Australia Gazette (CAG) No S336* dated 2 November 1988

²⁴ *Commonwealth of Australia Gazette (CAG) NoS50* dated 30 March 2011

*‘...must have given the service while **assigned** for duty... a person must have given service that involves the **performance of Operational Duties...**’²⁵
(Highlight added for clarity)*

54. The Tribunal noted that SOCAUST Directive 02/2013 provided guidance for the baseline TAG composition.²⁶ This guidance provided that elements must be force assigned to the TAG or ‘directly assigned to TAG contingencies’. In further guidance the Directive stated that ‘staff who are “on call” to support the TAG ... but not force assigned are not eligible ... and do not qualify...’. The guidance stated that:

*‘...The key consideration for eligibility is **force assignment** to a specific TAG for a continuous period of 60 days.’* (Highlight added for clarity)

55. During the hearing on 25 September 2015 SOHQ confirmed that this statement was extant and that force assignment was a key consideration for eligibility.

56. The Tribunal therefore considered that to ‘render service’, an individual or group must be assigned to the prescribed operation and give service ‘in or in connection with’ that operation - in this case the TAG. Accordingly, it was necessary to look to the doctrine relating to force assignment.²⁷ The current doctrine states:

‘Service Chiefs assign respective forces to Commander, Joint Operations (CJOPS) when directed by CDF. Personnel deploying overseas are force assigned from their parent-Service or peacetime organisation to a position appropriate to their rank, skill set or specialisation contained in a CDF endorsed Operational Manning Document (OMD) created for that operation.’

57. Noting that Colonel Galea’s claim is for service rendered in 1987-1988 and that OMD were not used until more recently, the Tribunal reviewed Colonel Galea’s claim that assignment to the online TAG was done ‘under the auspices of the relevant AJSP’.²⁸ The Tribunal noted that this claim by Colonel Galea also accorded with the guidance provided in the SOCAUST Directive discussed previously that elements must be force assigned to the TAG or:

‘...directly assigned to TAG contingencies...’

58. The two AJSP in question were DOMINIE and DICKENS. These plans remain classified and Defence was unable to find a copy of AJSP DICKENS; however the Tribunal was able to review AJSP DOMINIE.²⁹ The relevant extracts of the plan which are not classified and relevant to Colonel Galea’s claims regarding assignment include:

²⁵ *The Australian Active Service Medal (International Coalition Against Terrorism) Instrument 2015* dated 13 April 2015

²⁶ SOCAUST Directive 02/2013 – ‘*For Recognition of Members Involved in Special Operations, Counter Terrorism and Special Recovery Operations*’ dated 15 November 2013

²⁷ *Australian Defence Doctrine Publication 1.1 - Personnel Support to Operations*, Chapter 2, Para 2.7 – Generation of Forces to conduct and sustain operations.

²⁸ Galea Submission dated 19 July 2013

²⁹ AJSP DOMINIE (AJSP1/1978) issued by CDFS 23 June 1978

‘...on activation all Defence Force resources assigned to cope with the incident will be placed under the Operational Control/Command of the Force Commander ... in a Force Situation this will normally be restricted to elements that have been previously selected and trained to assist...’

59. Amendment List 2 to AJSP DOMINIE was released on 21 December 1978. This amendment replaced the Communications Plan at Annex A. The new plan included the following:

‘3. Communications Readiness Teams (CRTs) may be raised from the respective single services ... 13. They are to be capable of deployment at short notice to provide medium power HF radio, voice and telegraphic circuits and limited Commcen facilities in support of the Force Commander...’

60. A further document from Air Headquarters in 1989 indicated that the command state on activation of AJSP DOMINIE included the following assigned elements ‘under the command’ of the CDF:

*SASR CT Force
Elm HQ 1 Cdo Regt
Det 2 Signal Regt³⁰*

61. As previously stated, Defence was unable to locate a copy of the relevant CPD from 1988-1989, however they did produce a classified copy of a review and the ensuing report into ADF Operational Readiness that was conducted and accepted in 1988.³¹ This report introduced the concept of Force Element Groups (FEG) and specified the composition of Army FEG and their roles for ‘specific contingencies’ including ‘SASR and support elements’. These ‘shorter term contingencies’ were said to be defined by ‘the AJSP’. Annex H to Chapter 4 of the report listed FEG for each of AJSP DOMINIE, DICKENS and SANJAK. The four elements assigned on the lowest notice to move for AJSP DOMINIE and DICKENS were:

*SASR (TAG),
Element HQ 1 Cdo Regt,
Element 2 Sig Regt, and
Element 135 Sig Sqn*

62. For AJSP DICKENS the assignment was identical and for AJSP SANJAK, the assignment was similar but also included ‘Detachments 2 Sig Regt’. All plans stated that 2nd Signal Regiment detachments were tasked ‘to provide communications command and control’; and that for each plan the assets assigned were to be ‘the same assets’.

63. Other supporting elements for these plans such as aircraft and helicopters were to be held at significantly higher notice to move.

³⁰ AIRHQ/64/6/21/1 AIR(15) dated 20 Mar 89 – File 88/24692/P1 PLAN DOMINIE DOPS

³¹ *Review of ADF Operational Readiness – Interim Report (S)* – approved by CDF/Secretary 11 April 1988

64. The Tribunal gave significant weight to the extracts from relevant plans which supported Colonel Galea's assertions that the CRT was force assigned in support of AJSP DOMINIE and DICKENS. In particular, the Tribunal was persuaded by the 1989 document that indicated that the command state on activation of AJSP DOMINIE included the following assigned elements under the command of the CDF:

SASR CT Force
Elm HQ 1 Cdo Regt
*Det 2 Signal Regt*³²

65. The Tribunal also gave significant weight to the report into ADF Operational Readiness that was conducted in 1988 and in particular to the fact that the four elements assigned on the lowest notice to move for AJSP DOMINIE and DICKENS were:

SASR (TAG),
Element HQ 1 Cdo Regt,
Element 2 Sig Regt, and
Element 135 Sig Sqn

66. The Tribunal, relying on the contents of the Communications Plan for AJSP DOMINIE, the AJSP DOMINIE DOPS command status from 1989, the Review of ADF Operational Readiness dated 11 April 1988 and SOCAUST's own guidance that elements must be directly assigned to TAG contingencies, found that on the balance of probabilities, detachments from the troop commanded by Colonel Galea in 1988 were 'directly assigned' to counter terrorist contingency plans in the CPD. The Tribunal considered that the evidence indicated that the actual FEG assigned to the CPD included those elements on the lowest notice to move and included detachments of Colonel Galea's troop from 2nd Signal Regiment, elements of Headquarters 1st Commando Regiment and the allocated TAG. The Tribunal considered that without these elements collectively assembled, the chances of any operation being successfully prosecuted were low.

67. Furthermore, the Tribunal noted that responsibility for the provision of communications support for AJSP DOMINIE, DICKENS and SANJAK was formally handed from 2nd Signal Regiment to 1st Commando Regiment (126 Signal Squadron) on 1 August 1992.³³ The Tribunal understands that signallers from that Squadron are now routinely employed as an integral part of the counter terrorist capability under the auspices of their parent unit which is now 2nd Commando Regiment.

68. The Tribunal considered that the only additional area that required clarification was whether or not individuals in the assigned FEG met the requirement of the Determination that they served for 60 days continuously. The Tribunal was satisfied on the basis of Colonel Galea's sworn evidence and relying on comments in the annual appraisal by his Commanding Officer in 1988 that he (Colonel Galea) was individually assigned to the plan as the troop commander and was on call for a period likely to have been greater than 60 continuous days.

³² AIRHQ/64/6/21/1 AIR(15) dated 20 Mar 89 – File 88/24692/P1 PLAN DOMINIE DOPS

³³ DCGS 249/92 (AO Implementation Instruction 3/92) – *Assumption of CT Comms Responsibilities by 1 Cdo Regt* dated 18 May 1992 and HQ I Cdo Regt SIC OPS 495 of 310410Z Jul 92

Finding

69. The Tribunal found that the process used to assess Colonel Galea's eligibility for the ASM with Clasp 'CT/SR' was flawed and that the assessment was not properly conducted by an authorised delegate. The Tribunal, pursuant to *Commonwealth of Australia Gazette* No. S50 dated 30 March 2011, found that Colonel Galea rendered service on a prescribed operation for a prescribed period being not less than 60 days continuous service in connection with a Tactical Assault Group that commenced on 31 August 1979. For this reason, the Tribunal finds that Colonel Galea is eligible for the award of the Australian Service Medal with Clasp 'CT/SR'.

70. The Tribunal noted that Colonel Galea's April 2015 submission was on behalf of 'former members of the 2nd Signal Regiment's DD Troop'. Annex C to the submission included a list of four officers (including Galea) and 31 soldiers. The Tribunal considered that this list should be used by the Directorate as the basis to assess further individual applications for the award should they be forthcoming.

DECISION

71. The Tribunal decided to:

- a. **Set aside** the decision of the Directorate of Honours and Awards of the Department of Defence that Colonel Paul D. Galea is not eligible for the award of the Australian Service Medal with Clasp 'CT/SR'.
- b. **Substitute** its decision that Colonel Paul D. Galea is eligible for the award of the Australian Service Medal with Clasp 'CT/SR' and directs that the medal be issued.

OTHER ISSUES – The Process of Honours and Awards Consideration Involving Special Operations Command

72. The Tribunal noted that the process used to consider Colonel Galea's application and the subsequent review highlighted deficiencies and a lack of understanding of the responsibility for making recommendations and decisions for awards within Defence and Special Operations Command. Special Operations Command is an Army command that has force elements permanently assigned to Joint Operations Command by the Chief of Army. It also has elements assigned for specific purposes when directed by the CDF. Colonel Galea's application was passed to Special Operations Command by the Directorate seeking a recommendation. The resultant recommendation was shallow, appeared not to have been given appropriate and documented assessment and arguably failed to provide procedural fairness. The brief e-mail decision passed to Colonel Galea by the Directorate subsequent to the SOHQ consideration, in the Tribunal's view was an unacceptable way to transmit an outcome and the decision was not made by an appropriately authorised delegate.

73. Subsequently the Tribunal wrote to the Secretary seeking an explanation of the decision following Colonel Galea's request for review. The letter seeking explanation was passed by the Directorate to Special Operations Command, who rather than address the letter, conducted its own internal review and communicated their findings directly to the Tribunal. In the Tribunal's opinion, this internal review was untimely, superficial and contained obvious errors of fact. In response to further comments by the Applicant testing his hypothesis, the Command enlisted the authority of its Commander to reinforce the findings of the internal review in a letter written directly to the Tribunal.

74. In the Tribunal's view, the process for considering awards within Special Operations Command requires adjustment to possibly include the Service Headquarters. As a minimum, all recommendations made by the Command must be passed to the Directorate who must conduct an independent assessment and reach a decision which is made by an appropriately authorised delegate.

75. Furthermore, the Tribunal considered that SOCAUST Directive 02/2013 does not accurately reflect the requirements of the Instruments, Regulations and Determination issued in relation to the ASM with Clasp 'CT/SR' and imposes restrictions which may be unlawful. During the hearing, SOHQ indicated that it was unlikely that advice had been sought from the Directorate in drafting this Directive. The Tribunal recommends that the Directive be reviewed in light of this decision report or rescinded.

76. The Tribunal was persuaded by the evidence provided by Warrant Officer Hunt during the hearing. In particular it was obvious that the Command struggles with the reality that the Determination is broad in that it provides for 'service in a TAG' and arguably fails to adequately define what this actually means. Warrant Officer Hunt's evidence indicated that the original intent of seeking recognition for CT/SR was to recognise 'operators' and the many who were killed and injured during their hazardous preparation and time 'on-line'. The Tribunal notes that the Inquiry considered three options for recognition including 'CT/SR operators only'³⁴ but ultimately chose to recommend various attachments as well as the TAG.

77. The Tribunal considers that if Defence believes the Determination for the ASM with Clasp 'CT/SR' is inadequate and does not reflect the original intent, it should seek amendment of the conditions to perhaps provide a clearer definition of who should be considered to be a part of the TAG. In making proposals for amendment, Defence may wish to revisit eligibility criteria and mandate that only those who have qualified on Special Forces³⁵ selection courses be eligible for the award. Concomitant to this action, Defence should amend the language of the Determination to reflect contemporary instruments which require that individuals are assigned for duty and must give service that involves the performance of Operational Duties. Any subsequent amendment recommendations should not be retrospective.

³⁴ *Inquiry into Recognition of Australian Defence Force service for Special Air Service Counter Terrorist and Special Recovery Duties* dated 22 December 2009 – Paragraph 56

³⁵ Special Forces selection courses in this context should also include RAN Clearance Diver Courses