



Australian Government

Defence Honours and Awards Appeals Tribunal

Browning and the Department of Defence [2019] DHAAT 06 (13 June 2019)

File Number 2018/030

Re **Mr Avelon Browning**
Applicant

And **Department of Defence**
Respondent

Tribunal Ms Josephine Lumb (Presiding Member)
Rear Admiral James Goldrick AO CSC RAN (Retd)

Hearing Date 21 February 2019

DECISION

On 13 June 2019, the Tribunal decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Mr Avelon Browning is not eligible for the award of a clasp to the Australian Active Service Medal 1945-1975 recognising his service in HMAS *Melbourne* on 20 May 1963.

CATCHWORDS

DEFENCE AWARDS – Australian Active Service Medal 1945-1975.

LEGISLATION

Defence Act 1903 – Part VIIIIC – Sections 110T, 110VB (2)
Defence Amendment Regulations (No.1) 2010 Schedule 3 Part 2
Defence Regulation 2016

Commonwealth of Australia Gazette S18 of 19 January 1998, Regulations Governing the Award of the Australian Active Service Medal 1945-1975.

REASONS FOR DECISION

Introduction

1. On 7 June 2018, the Applicant, Mr Avelon Browning, applied to the Defence Honours and Awards Appeals Tribunal for a review of the decision by the Directorate of Honours and Awards of the Department of Defence (the Directorate) denying his eligibility for an additional clasp to the Australian Active Service Medal (AASM) 1945-1975.¹ Mr Browning attached a copy of his original application and its associated material, together with the original refusal letter from Defence dated 19 April 2018.²

2. On 28 June 2018, the Chair of the Tribunal wrote to the Secretary of the Department of Defence seeking a report on the decision of Defence to deny Mr Browning the AASM 1945-1975.³

3. On 31 July 2018 Defence provided its report to the Tribunal⁴ and on 8 August 2018 the Tribunal Secretariat despatched a copy of this report to Mr Browning for his comments. He provided comments by email on 3 September 2018.⁵ This included 106 pages of information previously provided to the then Parliamentary Secretary for Defence Support, Senator the Hon. David Feeney. Mr Browning later supplemented this material with copies of a National Archives of Australia file. The size of the entire package was such that Mr Browning was asked to provide a summary of no more than 5 pages indicating just what material was relevant to his claim. The applicant provided this summary to the Tribunal on 8 November 2018.⁶

4. Mr Browning enlisted in the Royal Australian Navy on 23 February 1959. He discharged on 22 February 1968 on completion of his engagement.⁷ He served in the Royal Australian Naval Reserve from 11 April 1968 to 10 April 1975. Mr Browning has received the following Defence awards for his service:

- The Australian Active Service Medal 1945-1975 with Clasps 'MALAYSIA' and 'VIETNAM'
- The General Service Medal 1962 with Clasp 'MALAY PENINSULA'
- The Vietnam Logistic and Support Medal
- The Australian Service Medal 1945-1975 with Clasp 'FESR'
- The Defence Long Service Medal
- The National Medal
- The Australian Defence Medal
- Pingat Jasa Malaysia⁸

¹ Application for Review of decision by Mr Browning dated 7 June 2018.

² Letter DHA – R55175 from the Directorate of Honours and Awards refusing Mr Browning's application for the AASM in recognition of service in the Sunda Strait on 6 March 1962 (sic) dated 19 April 2018.

³ Letter DHAAT/OUT/2018/436 dated 28 June 2018.

⁴ Letter DH&A/OUT/2018/0056 dated 31 July 2018.

⁵ Mr Avelon Browning Email dated 3 September 2018.

⁶ Mr Avelon Browning Email dated 8 November 2018.

⁷ Avelon Richard Browning – Record of Service.

⁸ Para 11 Defence submission to DHAAT – Review of Recognition for R55175 Mr Avelon Richard Browning.

5. The issue in contention relates to Mr Browning's service in HMAS *Melbourne*, from 28 December 1962 until 3 June 1963,⁹ particularly his service and the service other personnel in *Melbourne* and HMA Ships in company during a transit of the Sunda Strait on 20 May 1963. The issue also relates to earlier transit of the same strait on 6 March 1962, when Mr Browning was not serving in HMAS *Melbourne*. During these passages, while in proximity to Indonesian claimed waters, the Australian ships assumed and maintained a higher degree of readiness for action than normal peacetime conditions.

6. Mr Browning has in the past made repeated efforts to have these periods recognised as 'qualifying service' under the *Veterans' Entitlements Act 1986*, in order to confer Veteran status under that Act, with its associated benefits, on those concerned. The request has been denied.¹⁰

Summary of the Hearing

7. The hearing for this review was conducted in Canberra on 21 February 2019 at which Mr Browning appeared by telephone. The Directorate of Honours and Awards of the Department of Defence was represented by Ms Jo Callaghan, Assistant Director, Assessments, and Mr Brett Mitchell, the Directorate's Research Officer.

8. At the hearing the Tribunal confirmed with Mr Browning that he had received all relevant documents and asked him to outline his submission. Mr Browning explained what he saw as the key points of his application, which in summary reflected his view that the political situation created what were 'warlike conditions' for the transits of the Indonesian archipelago which RAN units undertook in 1962 and 1963 and that this required those units to maintain higher degrees of readiness, including loaded weapons and with armed aircraft at alert for launch. He emphasised his belief that the ships had gone to action stations as a result of the commanders' assessment of the situation and that his own commanding officer, the then Captain (later Vice Admiral Sir) Richard Peek OBE, DSC, RAN, would not have used the term 'wartime [cruising] conditions' in his Report of Proceedings unless he meant just that. Mr Browning stated his belief that this justifies the extension of the award of the AASM to the personnel involved, if necessary with a new clasp to the medal.

9. Mr Browning also pointed to the *Veterans' Entitlements Act* and its use of the term 'warlike service' in determining qualifying service. The Tribunal here explained to Mr Browning the distinction between qualification as a Veteran under that Act and eligibility for a Defence Award, noting that there is no legal connection between eligibility for the award of medals and repatriation benefits and that the Tribunal has no powers, nor any role, in the determination of eligibility for repatriation benefits for veterans.

10. In their evidence, the representatives of the Directorate confirmed that the events on which Mr Browning based his application had not been declared as a 'warlike operation' as required by the Regulations governing the award of the AASM 1945-1975. Accordingly, Mr Browning had not rendered qualifying service towards further clasps to the AASM 1945-1975, in addition to those he already holds ('MALAYSIA' and 'VIETNAM').

⁹ Avelon Richard Browning – Record of Service.

¹⁰ Senator the Hon. David Feeney (Parliamentary Secretary for Defence), Letter to Mr Avelon Browning dated 7 June 2012.

11. The Tribunal sought clarification of Mr Browning's interpretation of the reasons for HMAS *Melbourne* and other units going to action stations. Mr Browning stated that in 1963 the order had not been accompanied by the modifier 'For Exercise' and that in his opinion this had to have been because of the level of threat perceived by the command. This meant that the action stations were as the result of the real situation and not for training.

12. With no further questions from the Applicant, the Tribunal thanked Mr Browning for his participation and concluded the Hearing.

13. Following the Hearing, Mr Browning submitted additional information and material by email which the Tribunal included in its considerations.¹¹

The Tribunal's Consideration of the Application

14. There is no dispute regarding the basic details of the operational situations involved in the application. Records of the movements of the ships and their activities are available in the archives. There is also no dispute that, according to the existing Regulations for the AASM 1945-1975, the operations in question do not qualify personnel involved for its award.

15. We are satisfied that the Directorate decision was made by an appropriately authorised Delegate and the correct legal basis was present in the making of the decision, being the assessment that Mr Browning is not eligible for the award of an additional clasp to the AASM on the basis of his service in HMAS *Melbourne* during transit of Indonesian waters in 1963.

16. The Tribunal is bound by the eligibility criteria that govern the award of the AASM. The relevant criteria are set out in *Commonwealth of Australia Gazette S18 of 19 January 1998, Regulations Governing the Award of the Australian Active Service Medal 1945-1975*. There is no provision within those existing Regulations for recognition of this element of Mr Browning's service as the activities in which he was involved have not been declared to be a 'warlike operation'. The Tribunal has no power to modify or add provisions to the Regulations which could change that situation.

17. Should it be justified, however, the Tribunal has the power to make a recommendation to the Minister for changes to Defence awards, including the AASM. The Tribunal therefore carefully considered the arguments made by the applicant, as well as the evidence provided, in order to determine whether the making of such a recommendation is justified in this case.

18. The applicant submitted a considerable amount of material in support of his claim that 'warlike conditions' existed during the period of his service and those of his fellow sailors. Much of this material related to the various sources of tension between Indonesia and Australia in the early 1960s. The Tribunal recognises that there were many uncertainties in relationships between the two countries during that period, which resulted in RAN units sometimes having to operate at higher levels of readiness than usual in peacetime.

19. Nevertheless, having carefully reviewed all the material presently before it, the Tribunal cannot agree that the situation reached a point at which conditions could be considered 'warlike' in 1962 or 1963. The Tribunal also wishes to emphasise that the situation in 1964 and 1965 was not the same as that in 1962 or 1963 (and there were different concerns between each of those years as well) and does not consider that the material provided by the applicant

¹¹ Mr Avelon Browning emails to DHAAT dated 22 February, 17 April, 21 April & 4 June 2019.

relating to events in these later times is relevant to this case. It is notable, however, that even when Australian units were directly involved in operations against Indonesian efforts to undermine Malaysia during Confrontation from 1964 onwards, diplomatic relations were maintained between Australia and Indonesia, a Defence Attaché was retained in Jakarta and Australian naval transits of the Indonesian archipelago continued.

20. The various sources of concern over Australia's relationship with Indonesia and the situations in which HMA Ships might have found themselves derived from very different causes which were not directly related and which were not all occurring at the same time. They ranged from the tensions between the Netherlands and Indonesia over the future of Dutch New Guinea (which eased with the agreements of August 1962), to the evolving claims of Indonesia to much more extensive territorial waters than then recognised by international law, and to the developing conflict over the new Malaysian Federation, known as 'Confrontation' – which in fact seemed close to settlement in mid-1963 and worsened again only later. In the case of 'Confrontation', the main concerns in 1963 about potential encounters between Indonesian units and those of Britain, Australia and New Zealand related specifically to 'activities in or over the waters between Malaya (sic) and Indonesia' rather than to areas such as the Sunda Strait.¹²

21. Matters were not helped by political tensions and conflicts within Indonesia itself, which sometimes resulted in the Indonesian government making declarations (such as the country being in a state of war) which appeared to lack any logic. In the case of Dutch New Guinea, for example, although Australia feared that it might have to become involved in order to protect nationals and non-combatants, the key concern in March 1962 was that Australian units should not be confused with those of the Netherlands (particularly the *Melbourne* with her near-sister *Karel Doorman*).¹³

22. The applicant submitted evidence relating both to the transit of the Sunda Strait by HMAS *Melbourne* when he was serving in the ship in May 1963 and the earlier transit in March 1962 when he was not a member of the ship's company. During the 1962 transit, HMAS *Melbourne*, while four Sea Venom fighters were 'fully armed and ready to go, ranged on the Flight Deck'¹⁴, was at the third degree of readiness with her 40mm guns loaded, but also spent part of the time at action stations, while HMAS *Voyager* was at action stations for an extended period later the same day. Mr Browning viewed it as particularly significant that the ships went to action stations during this transit. The applicant's contention, which was a key element of his oral submission during the hearing and which is repeated several times in the written material provided, is that closing up to the highest degree of readiness in both personnel and materiel terms, was as a result of the assessed threat level at the time and not any kind of exercise. Given the significance attached to this matter by the applicant, the Tribunal subjected it to detailed assessment.

23. While the Tribunal accepts that additional measures were in place as a result of the uncertainties of operating so close to Indonesia, we do not share the applicant's view of the situation or all the actions of the ships. It was and remains a frequent practice, when assuming a higher level of readiness than normal cruising conditions, to bring ships to action stations (State 1) and shut down to the highest level of watertight and nuclear (then called atomic), biological and chemical defence (in 1962/63 - ABCD Condition ZA). Once the organisation

¹² British High Commission Letter POL.35/11 dated 21 May 1963 and attached Note.

¹³ External Affairs Cablegram No 152 dated 2 March 1962.

¹⁴ 805 Squadron Diary Form S.1216 H dated Tuesday 6 March 1962.

and material elements have been proven, the ship concerned can then revert to a lower level – usually defence watches (State 2) and a more relaxed condition (YB or YC). It is also possible (and this was the case on occasion in both 1962 and 1963) to suspend the atomic/biological and gas protection measures, the water-tight measures in force being described as Condition Z, Y or X without additional nomenclature.

24. In fact, HMAS *Melbourne* did not go to action stations on 20 May 1963, but simply went to the ‘3rd degree of A.A. Readiness’ at 0200 and ABCD State 2 Condition Y at 0215. ‘Action Guns Crews’ were closed up at 1000 but, noting that the ship reverted to State 3 Condition X at 1015 and that at 1020 ‘Action Guns Crews fell out guns unloaded’, this was almost certainly only to unload and stow the ammunition away into ready use lockers and magazines.¹⁵ The Tribunal was interested to note that the ROP of HMAS *Supply*, in company with HMAS *Melbourne* for the transit of the Sunda Strait, made no reference at all to the assumption of a higher degree of readiness.¹⁶ Although Mr Browning’s memory is that an aircraft was ranged on *Melbourne*’s catapult during the May 1963 transit, there is no report of this in the ROP nor is the ranging of a Sea Venom in such a way mentioned in 805 Squadron’s records.¹⁷

25. The timings recorded in the deck logs for the March 1962 transit, in part confirmed by HMAS *Melbourne*’s Report of Proceedings¹⁸ show that the carrier and her consort, *Voyager*, closed up to Action Stations at or near dawn at 0600. *Melbourne* remained in that state until 0634, when the ship reverted to State 2 Condition Y (with no ABC measures). There is no record of any further changes in readiness, and the ROP records that the ship remained in the third degree of readiness until 0800 the following day. *Voyager*, on the other hand, appears from the ship’s deck log to have reverted to defence watches at 0620 (a destroyer will achieve a higher or lower degree of readiness more quickly than an aircraft carrier) and then gone to action stations again at 0800, remaining in that state until 1030.

26. The applicant stated his belief during the hearing that any order to proceed to a higher degree of readiness which was part of an exercise would have been coupled with the verbal statement ‘For Exercise’ and been recorded as such. He later provided a scanned copy of the relevant page of the *Naval Ratings’ Handbook* that he was issued on joining the RAN which provided details of such orders.¹⁹ The Tribunal examined other records of HMAS *Melbourne*’s activities in this period and found, although it does not deny that the verbal orders required would not have included ‘For Exercise’, the entries in the deck logs concerned do not necessarily indicate that the activity was for exercise – and when such an entry is made it is as a supplement.²⁰

¹⁵ HMAS *Melbourne* Deck Log dated 20 May 1963.

¹⁶ HMAS *Supply* Report of Proceedings dated 1 June 1963. AWM 78, 327.

¹⁷ 805 Squadron Diary Form S.1216 H dated 20 May 1963.

¹⁸ HMAS *Melbourne* Report of Proceedings dated 1 April 1962. AWM 78 226/6.

¹⁹ *Naval Ratings’ Handbook* 1938, Admiralty, p. 135.

²⁰ HMAS *Melbourne* Deck Log Form AS 322 dated 29 April 1963. This does not associate the word ‘exercise’ with what was clearly an exercise activity. The Deck Log dated 25 July 1963 adds ‘ABCD and AIO exercise commenced’ after ‘Hands to Action Stations’.

27. The most likely motivation for the force going to action stations before the transit is given in the extract of his Midshipman's Journal provided to Mr Browning by Commander E.B. Hall, RAN(Retd):

“...At 0600 Action Stations were sounded and the ship closed down to ABCD State 1 Condition Y. The Sea Venoms and Gannets were ranged on deck, armed and plugged in ready to start and manned by aircrew ready to ‘scramble’ at 1 minutes notice. *When all was ready* [italics supplied for emphasis] and as the ships approached Sunda Strait the ships reverted relaxed Defence Stations, State 2 Condition Y. The aircrew left the aircraft and returned to the Briefing Room to stand-by for re-briefing if needed.”²¹

28. The Tribunal is therefore of the view that bringing both ships to action stations at dawn on 6 March 1962 was to ensure that the force was properly set up for the transit. On the other hand, the timings and duration of HMAS *Voyager's* period of action stations suggest that it was intended as an internal ship exercise, conducted for convenience between breakfast and stand easy in the forenoon. Since *Melbourne* did not take the same measures, it is clear that the Officer in Tactical Command did not perceive that anything had occurred which would justify a higher degree of readiness for the force as a whole. There is certainly no record of any encounter with an Indonesian unit which might have triggered such action. *Voyager's* ROP for March 1962 simply records closing up to ‘Defence Stations in the Third Degree of Readiness’ and maintaining them until the following morning, suggesting that it was only this step which the ship's captain (Captain, later Rear Admiral, D.C. Wells, RAN) thought important enough to report. This is confirmed by the ROP's comment that ‘the passage was made without incident’.²² Further evidence of the lack of incidents is available in the 805 Squadron log, which states, ‘There was no interference with the ships progress through the Straits and besides a few commercial airliners, no air activity by the Indonesians was detected.’²³

29. In addition to closing personnel up at their stations, assumption of the full 1ZA state and condition of biological, chemical and nuclear defence was a significant evolution which required practice and *Voyager* exercised doing so on three other occasions during that month. *Voyager's* motivation for doing more than her consort on 6 March may have been very simple – the ship was scheduled to undergo her annual inspection the following week, which included an ‘A.B.C.D. Inspection and Efficiency Test’.²⁴ The circumstantial evidence is therefore that, while maintaining the ships at the third degree of readiness was an operational imperative on 6 March 1962, assumption of the higher state in HMAS *Voyager* during the forenoon was a training activity.

30. In summary, while there is no doubt that there was a perceived requirement for a higher degree of readiness than usual in peacetime when RAN units were transiting close to Indonesian waters and that the ships concerned did take a number of precautions, the Tribunal does not believe that there were any ‘incidents’ in 1962 or 1963 which would justify assessment of ‘warlike’. For this reason, the Tribunal was not persuaded to make a corresponding recommendation to the Minister to alter the medallic recognition for this service.

²¹ Commander Edward Hall email to Mr Avelon Browning dated 12 July 2011.

²² HMAS *Voyager* Report of Proceedings dated 2 April 1962. AWM 78/354 6 Part II, p. 43.

²³ 805 Squadron Diary Form S.1216 H dated 4 to 10 March 1962.

²⁴ HMAS *Voyager* Report of Proceedings dated 2 April 1962. AWM 78/354 6 Part II, p. 44.

31. We recognise Mr Browning's motivations, particularly those in support of his former shipmates, however, we do not assess that he presented either any significant new argument or compelling new evidence to justify the Tribunal recommending the creation of a new clasp to the AASM to recognise the service in question. The Tribunal observes that the Clasp 'FESR' to the Australian Service Medal 1945-1975 was created to recognise, amongst other demands, the operational stresses which resulted for units of the Far East Strategic Reserve from the multiple ambiguities of the Australian-Indonesian relationship in the first half of the 1960s. The Tribunal will therefore not make any recommendation for a change of the nature sought.

32. The Tribunal acknowledges that this decision will be a severe disappointment to Mr Browning personally, as well as to many of his shipmates. The Tribunal wishes to recognise not only his personal efforts in forwarding this application, but also the obvious altruistic element in Mr Browning's work, given that he already holds the AASM and that much of his argument in favour of recognition is based on events when he was not serving at sea, but many of his service contemporaries were.

DECISION

33. The Tribunal decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Mr Avelon Browning is not eligible for the award of a clasp to the Australian Active Service Medal 1945-1975 recognising his service in HMAS *Melbourne* on 20 May 1963.