



Australian Government

Defence Honours and Awards Appeals Tribunal

Cain and the Department of Defence [2017] DHAAT 21 (16 November 2017)

File Number(s) 2016/018

Re Mr James Cain
Applicant

And Respondent

Tribunal Mr Mark Sullivan AO (Presiding Member)
Ms Naida Isenberg
Mr David Ashley AM

Hearing Date 18 September 2017

DECISION

On 16 November 2017 the Tribunal decided to recommend to the Minister that:

- a. the decision dated 13 March 2008 by the Parliamentary Secretary for Defence Support to not support Mr James Cain's request for the award of the Conspicuous Service Cross for his actions during the fire in HMAS *Westralia* on 5 May 1998, be set aside,
- b. the Minister recommend to the Governor-General that James Cain be awarded the Conspicuous Service Cross for his actions during the fire in HMAS *Westralia* on 5 May 1998, and
- c. the Minister request Navy to review the eligibility for honours of other members of the ship's company involved in firefighting operations in HMAS *Westralia* on 5 May 1998 in particular, the leaders of Hose Teams 1 and 2.

CATCHWORDS

DEFENCE HONOUR – *Conspicuous Service Cross - Conspicuous Service Medal – HMAS Westralia fire – Hose Team Leader – Board of Inquiry - Chief of the Defence Force Commendation – dual recognition regimes*

LEGISLATION

Defence Act 1903 – ss 110T, 110V(1), 110VA and 110VB(1)
Defence Force Regulations 1952 – Reg 93B Sch 3
Commonwealth of Australia Gazette No. S108 dated 7 May 1990 (*Letters Patent and Regulations for the Conspicuous Service Decorations*)

REASONS FOR DECISION

Introduction

1. The applicant, James Cain, has made several representations over time to the Department of Defence and other offices seeking the award of the Conspicuous Service Cross (CSC) or the Conspicuous Service Medal (CSM) for his actions during the fire in the Main Machinery Space (MMS) of the Oil Tanker HMAS *Westralia* on 5 May 1998, during which the lives of four members of the ship's company were lost. Each of his representations was unsuccessful. In particular, on 4 February 2008 he wrote to the then Parliamentary Secretary for Defence Support (Parliamentary Secretary) seeking the CSC, and he was informed on 13 March 2008 by the Parliamentary Secretary that his representations had already been considered at the highest levels of Defence and Navy. No recommendation was made by the Parliamentary Secretary.

Tribunal Jurisdiction

2. Pursuant to s110VB(1) 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 or the Minister to refuse to recommend a person for an honour or award in response to an application. Regulation 93B of the *Defence Force Regulations 1952* defines a defence honour as being those awards set out in Part 1 of Schedule 3.¹ Both the CSM and the CSC are included in the defence honours set out in Part 1 of the Schedule.

3. The Tribunal was satisfied that the Applicant's letter of 4 February 2008 constituted an application as defined in s110V(1)(c) of the Defence Act. The Tribunal also considered the Parliamentary Secretary's letter of 13 March 2008 constituted a decision in response to that application, thus satisfying the requirements of s110V(1)(a) and (b) of the Defence Act. The Tribunal therefore has jurisdiction to conduct the review.

4. The role of the Tribunal is to determine the correct and preferable decision in relation to the application having regard to the applicable law and the relevant facts. In accordance with s110VB(1) of the Defence Act, as the matter under review is a defence honour, the Tribunal does not have the power to affirm or set aside the decision but may make recommendations regarding the decision to the Minister.

¹ Under Section 85 of the *Defence Regulation 2016*, the *Defence Force Regulations 1952* continue to apply to an application made under those regulations before their repeal on 1 October 2016.

Conduct of the review

5. In accordance with the *Defence Honours and Awards Appeals Tribunal Procedural Rules 2011 (as amended)* (the Procedural Rules), on 22 September 2016, the Tribunal wrote to the Secretary of the Department of Defence informing him of Mr Cain's application for review and seeking a report on the decision to deny Mr Cain the honour(s) in respect of his service in *Westralia*.

6. On 4 November 2016, the Deputy Chief of Staff, Naval Strategic Command, Captain BL Legge CSC provided a response (the Defence Report), which the Tribunal sent Mr Cain on 9 November 2016, and invited his comments on the Defence Report.

7. On 22 November 2016, Mr Cain provided his comments. Also, in support of the application for review, Mr Cain provided copies of the 'BOI in confidence' material referenced in his application which expanded upon his statement to the Board of Inquiry into the Fire in HMAS *Westralia* on 5 May 1998 (the BOI), in particular regarding the discovery and condition of the body of a casualty. Mr Cain also provided excerpts from the BOI report.

8. As required by the Procedural Rules, the hearing was conducted in public, on 18 September 2017 in Perth. Mr Cain was invited to give evidence. He asked the Tribunal to hear evidence from Mr Clem Croasdale and Mr Brett Merivale, who were both Marine Technicians in *Westralia* during the fire. The Tribunal also asked to hear from Chief Petty Officer Graham Body who, as a Petty Officer in *Westralia* on the day of the fire, established Mr Cain's Hose Team.

9. Defence was represented at the hearing by Commodore Brett Dowsing, the Senior Naval Officer Western Australia, who, co-incidentally was the first external member to be flown aboard *Westralia* after the fire. Evidence was also given by Warrant Officer Mark Karlake, Training Facility Manager RAN School of Safety and Survivability at Sea, Western Australia, as a subject matter expert on firefighting at sea. Commodore David Greaves of Navy Headquarters Canberra made submissions by the telephone.

The Conspicuous Service Decorations

10. The Australian Conspicuous Service Decorations (the Decorations) were created on 18 October 1989 to provide recognition to members of the ADF and certain other persons for outstanding or meritorious achievement or

devotion to duty in non-warlike situations.² The Decorations consist of the Conspicuous Service Cross (CSC) and the Conspicuous Service Medal (CSM). The eligibility criteria are set out in the Australian Conspicuous Service Decorations Regulations (the Regulations),³ as follows:

The **CSC** shall be awarded only for outstanding devotion to duty or outstanding achievement in the application of exceptional skills, judgement or dedication, in non-warlike situations;

The **CSM** shall be awarded for meritorious achievement or devotion to duty in non-warlike situations.

Mr Cain's service

11. Mr Cain joined the Royal Australian Navy on 5 July 1993 as a Boatswain's Mate. Boatswain's Mates specialise in seamanship skills such as rope and anchor work, small boat handling, berthing, towing, helmsmanship and refuelling at sea, and are also trained in the use of close range weapons.⁴

12. Mr Cain was promoted to Able Seaman in October 1994 and to Leading Seaman in December 1996. He had a number of sea postings, including to the patrol boat HMAS *Geraldton* and the guided missile frigate HMAS *Darwin*.

13. On 20 January 1997 Mr Cain was posted to *Westralia*, and, in August of that year, was posted to HMAS *Cerberus* as a course instructor. On 19 January 1998 he was posted back to *Westralia* and continued to serve in that ship until February 2001. Mr Cain discharged from the Navy on 25 January 2005 being medically unfit for service. He was a Petty Officer at the time of his discharge.

The HMAS *Westralia* fire

14. The following outline is largely extracted from the Executive Summary of the report of the BOI.⁵

15. Prior to the ship sailing from Fleet Base West on 5 May 1998, *Westralia* had undergone an Assisted Maintenance Period of about six weeks. This maintenance work included the fitting of new flexible fuel hoses to the ship's main engines.⁵ Trials were conducted alongside and a series of sea trials were

² Commonwealth of Australia Gazette No. S108 dated 7 May 1990 (*Letters Patent and Regulations for the Australian Conspicuous Service Decorations*).

³ *Ibid.*

⁴ Website, Royal Australian Navy, Boatswain's Mate, [http: www.defence jobs.gov.au/navy/jobs/ BoatswainsMate](http://www.defence.jobs.gov.au/navy/jobs/BoatswainsMate) (accessed 7 December 2016).

⁵ Report of the Board of Inquiry into the fire in HMAS *Westralia* on 5 May 1998, Executive Summary, Royal Australian Navy, 1998.

conducted between 29 April and 1 May, then returning to Fleet Base West for final preparations for an overseas deployment.⁶

16. At 0900 on 5 May, *Westralia* sailed from Fleet Base West to rendezvous with the support ship HMAS *Success*, and the guided missile frigates HMA Ships *Adelaide* and *Darwin*.⁷

17. At about 1030, a fuel leak was noticed in the area of the number 9 cylinder on the inboard side of the port main engine. It was a significant leak, with fuel emerging under pressure in a manner similar to a garden hose. The port main engine was shut down to enable repairs to be carried out and personnel in the MMS set up some fire-fighting equipment. The standing sea fire brigade mustered in the Machinery Control Room (MCR).⁸

18. The MMS in *Westralia* was an unusual configuration for a warship. In most warships, bulkheads (walls) divide the ship's machinery space into several smaller compartments. In *Westralia*, the MMS had several levels of walkways and partial decking but was essentially a cathedral-like open space running from the lowest level of the ship at the bilge to the top of the funnel. At the bottom plates the MMS was 23.6 metres long, measured from the after peak bulkhead at frame 12 forward. It was 2.6 metres longer at the middle plates because of the stepped pumproom bulkhead. It measured 34.8 metres from the bottom plates to the top of the funnel and, at 1 deck, had an average width of about 24 metres.⁹

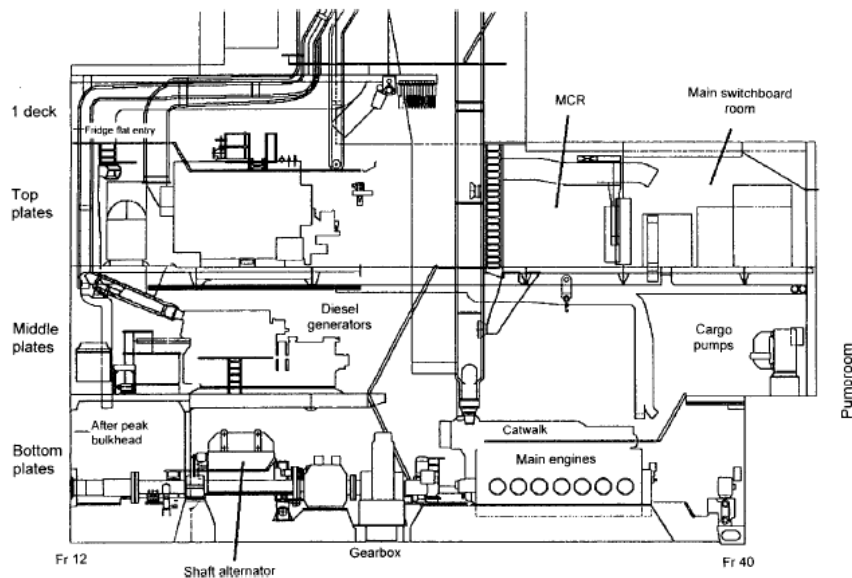


Figure 1 - HMAS *Westralia* Main Machinery Space

⁶ Ibid.

⁷ Ibid.

⁸ Ibid, p2.

⁹ Ibid, p10.

19. At about 1035 fire broke out in the MMS. Personnel saw the fire start on the outboard side of the starboard main engine. A “woofing” sound was heard in the MCR and a flame and black smoke appeared through a cable duct near an urn on the port side.¹⁰

20. A fire report was made to the bridge and emergency stations was sounded. A brief inspection of the MMS through the door of the MCR revealed thick black smoke and flames. Visibility was severely limited. Four people escaped from the MMS into the MCR.¹¹

21. The fire was intense, causing rapid smoke build up and extreme heat. Despite some heroic but unsuccessful fire-fighting efforts, the atmosphere in the main machinery space soon became inadequate to support life. Electrical cabling on the deckhead over the fire was quickly damaged with a consequent loss of services, including some communications.¹²

22. The starboard main engine was shut down and electrical power to the main machinery space isolated. The emergency generator started automatically. The MCR was evacuated at 1038. One minute later, the Engineering Officer recommended to the Commanding Officer that the MMS be drenched with carbon dioxide (CO₂). As one person was thought to still be in the MMS, the recommendation was not accepted at that time.¹³

23. At 1050, Hose Team 1, the first hose team to enter the MMS, entered from the fridge flat to fight the fire. After making a successful entry despite intense heat and thick smoke, the team was withdrawn to allow the CO₂ drench to be activated. This occurred at 1101.¹⁴

24. The drench was remotely initiated but some of the CO₂ bottles failed to discharge and were discharged manually seven minutes later. The boundary of the MMS was monitored for hot spots and the conclusion reached that the fire had not been extinguished. At 1126, Hose Team 2 entered the main machinery space via the fridge flat to attack the fire again.¹⁵

25. At 1151, Hose Team 3, led by Leading Seaman Cain, relieved Hose Team 2 and continued fighting the fire from the top plates of the MMS. Foam was pumped into the space through the funnel at 1153. At 1206, Hose Team 3

¹⁰ Report of the Board of Inquiry into the fire in HMAS Westralia on 5 May 1998, Executive Summary. Royal Australian Navy, 1998, p2.

¹¹ Ibid.

¹² Ibid.

¹³ Ibid, p3.

¹⁴ Ibid, p4.

¹⁵ Ibid.

discovered the body of a shipmate on the top plates adjacent to the port ladder to the middle plates.

26. Hose Team 1 relieved Hose Team 3 at 1210 and progressed down to the middle plates and fought the fire from there. They found the bodies of three crew members prior to reporting at 1232 that the fire was extinguished.¹⁶

27. The ship was subsequently towed to safety and berthed at Fleet Base West about six hours later.¹⁷

Role of the Hose Teams

28. The BOI report provides the following description about the roles and responsibilities of members of a Hose Team (the names of those in Hose Team 3 have been added for reference):

#1 Waterwall (Leading Seaman Electrical Technician Elliott) - This person uses his hose to provide a wall of water which shields the team from the intense heat which radiates from the fire. This waterwall, or water shield forms a disc like shape in front of the Hose Team. This waterwall is always in the shielding position.

#2 Attack Hose (Able Seaman Marine Technician Croasdale) - This person uses a different type of nozzle to fight the fire. It provides a jet of water and aerates a foam mixture which, when pointed at the deckhead (roof) creates a blanket of foam, falling like snow onto the seat of the fire. The # 2 member fights the fire under the direction of the team leader (#3)

#3 I/C (Team Leader) (Leading Seaman Cain) - This person is in charge of the Hose Team. They have communications with their scene leader, and fills the role of the team's eyes and ears. The main piece of equipment that the team leader carries is a thermal imaging camera (TIC). As the only member of the team with a TIC, the leader is the only person able to see through the thick black smoke. The leader relies on touch and nudges to guide their team around the fire zone, using his TIC to show him where the fire is.

#4 Hydrant Operator (Seaman Bosuns Mate Williams) - The hydrant operator controls the flow of water and foam through the hoses as directed by the I/C. They also assist with handling hoses.

¹⁶ Ibid.

¹⁷ Ibid, p5.

#5 *Waterwall/Handler* (Petty Officer Writer MacKinnon) - When entering a compartment through a door, the #5 is a hose handler. If entering through a hatch, the #5 sets up a second waterwall to prevent the escape of smoke and heat from the compartment, and provide additional protection for members entering the compartment.

BA (Breathing apparatus) Controller - Each Hose Team has a controller who records how much air pressure they have on entering the compartment, and calculates how long their air supply will last. The BA controller does not enter the fire zone.

29. A diagram of how the waterwall, attack hose and team leader work together is below.¹⁸

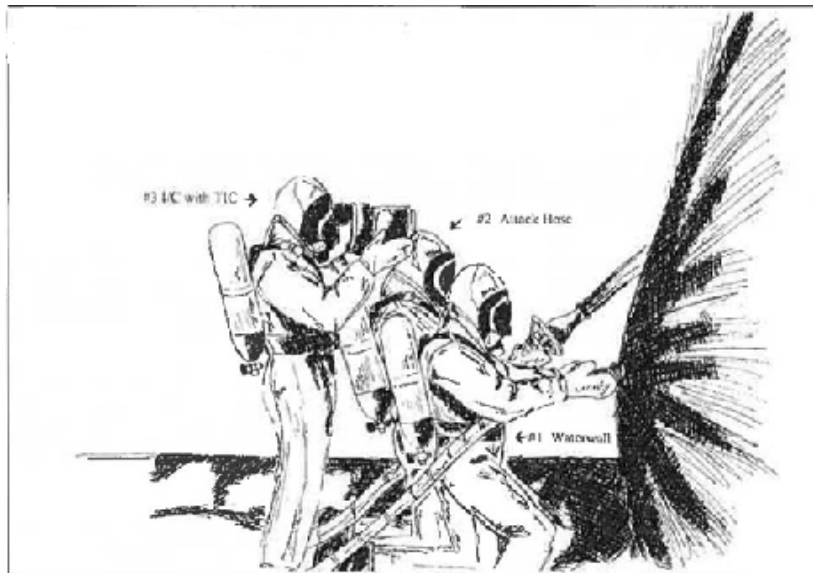


Figure 2 - Hose Team in Operation

Awards arising from the HMAS Westralia fire

30. Following the BOI, a number of recommendations were made for awards arising out of the events of 5 May 1998:

- The Conspicuous Service Cross to Warrant Officer Bottomley (*Westralia's* Deputy Marine Engineer Officer) and Commander Johnston (the Commanding Officer of HMAS *Stirling*);

¹⁸ Ibid, Annex F.

- The Bravery Medal to Able Seaman Carroll (Posthumous), Petty Officer Smith (Posthumous) and Chief Petty Officer Hollis (present in the MMS at the time of the fire);
- Group Bravery Citations to members of Hose Teams 1-3;
- Chief of the Defence Force Commendations to Leading Seaman Cain, and four others (including the other Hose Team Leaders);
- Chief of Navy Commendations to three others.¹⁹

31. As well as the above awards, a number of memorial awards have been established to recognise the deceased members, such as the Phillip Carroll Award for the Academic Recruit of the Year. In addition to the above awards, in 2016, Leading Seaman Meek was posthumously awarded the Bravery Medal for his service on 5 May 1998.

32. Section 15 of the Report of the BOI deals with recognition of personnel. In respect of the Hose Team Leaders, the Report states:

The single most important factor in the success achieved by each of the three Hose Teams, were the individual Hose Team Leaders. These three Leading Seaman (sic) displayed exemplary courage and devotion to duty and are worthy of considerable recognition.

Conclusion

All members of the Hose Teams should be commended for their significant dedication to duty. Additionally, LSBM Daly, LSETW Mitchell and LSBM Cain as leaders of the Hose Teams, should receive considerable recognition for their exemplary devotion to duty.

33. The Tribunal had available to it material dealing with honours and awards from the Westralia fire. These excerpts illustrate the reasons the then Chief of Navy, Vice Admiral Don Chalmers AO RAN, arrived at the recommendations in respect of the Hose Team Leaders.

34. Mr Cain's CDF Commendation reads:

I commend you for your outstanding professionalism and devotion to duty in extremely adverse conditions during fire fighting and damage control operations on (sic) HMAS Westralia on 5 May 1998.

You volunteered to be the leader of Hose Team 3 when the extent of the fire in Westralia was known. Your team relieved Hose Team 2 when you were told that four personnel were missing. On entering the Main Machinery Space you directed your team to fight the fire on the

¹⁹ CPD, H of R, Monday 26 March 2001, Question 2329, HMAS Westralia: Bravery Medals and Awards.

top plates. Whilst fighting the fire on the middle plates you discovered the body of one of the casualties. Despite the shock of this discovery you motivated your team to continue fighting the fire. Subsequently, you provided a comprehensive handover to the Hose Team 1 leader then assembled your team to confirm numbers and provide reassurance and support. The actions by your team were inspirational and contributed significantly to reducing further damage to Westralia and her Ship's Company.

Your outstanding professionalism, bravery, dedication and determination in the performance of your duties are deserving of the highest praise and set a fine example to others. Yours (sic) efforts reflect great credit on yourself and the Royal Australian Navy.

Mr Cain's evidence

35. In his application for review Mr Cain included a statement dated May 1998, which formed the basis of his evidence to the BOI, and which set out his actions on 5 May 1998. He also gave detailed evidence before the Tribunal.

36. One of his roles on the ship was as a spare hand for fire teams. He said that he heard the emergency alarm and donned anti-flash gear and went to the forward repair station. Petty Officer Body, who he understood to be in charge of forward damage control had told him that a third Hose Team was needed, whereas, usually, he said, there are only 2 Hose Teams. When they had drilled following the refit they had done so with only one Hose Team.

37. He said that Petty Officer Body did not have to call for volunteers and that he, Cain, immediately volunteered because he knew the engine room. Also, on an earlier posting, he had been a Hose Team Leader. The other members of Hose Team 3 were Petty Officer McKinnon, Leading Seaman Elliot, Able Seaman Croasdale and Seaman Williams. There was 'no room for debate' because there were insufficient numbers to find replacements for those selected; the entire crew was only 60.

38. Of those in the team, he only knew Able Seaman Croasdale and had no idea of the skills of the others when he had to assign responsibilities within the team. He briefed each of them on their role in the team. After they were 'suited up', including with breathing apparatus, he asked if they were 'happy to go'. He said that Petty Officer Body only told them to go aft where he was to report to Chief Petty Officer Jenkins, who was in charge of aft repair. They waited on the tank deck on standby.

39. He was briefed about conditions in the MMS: it was extremely hot; visibility was extremely poor; and four members of the crew were unaccounted for. At the fridge flat he was briefed to the same effect by Leading Seaman Mitchell who was the leader of Hose Team 2, and whose team they were to replace. Other than the briefing, he said, there was no guidance and he had to act instinctively.

40. As they entered the MMS through the door of the fridge flat it was 'like an oven'. They were 'seared'; it was 'an inferno'. He recalled having instructed his team to keep their knees off the deck because it was so hot. He guided his team through the darkness, using an infra-red thermal imaging camera (TIC) and directed the team towards the fire. He knew they were expected to stay there until the air 'ran out', which was estimated to be about 22 minutes. However, because they were very hot, breathing heavily with exertion and unnerved at being unable to see (as he had the only TIC), the available air did not last as long as had been estimated. He did not think they would get out alive.

41. For a time the hoses became entangled back towards the stairs and he and Petty Officer McKinnon went back to untangle them. He decided to move further along the top plates towards the fire which was aft near the pump room. He directed the attack hose towards the flames, which he could see through the TIC. The screen showed a 'whiteout' and hence, the magnitude of the fire.

42. As they moved forward along the catwalks the space was very cramped and it was hard to keep the team together. As they approached the end of the catwalk, Leading Seaman Elliot stumbled across the legs of a person and yelled out that he had found a casualty, in the path of the Hose Team. He, Cain, went over to him and was shouting his name, asking if he was alright. He was unable to find a pulse. He said he made a 'split second decision' to move the casualty. Although he felt by this time they were beating the fire, they had to put their hoses down in order to be able to move him. At that stage the deck started to give way and the metal plating was 'springing up and down and crackling'. He said it had buckled and was warping. They had their backs to the fire and could feel the heat starting to build again.

43. The heat continued to intensify and he moved the team back to the initial position on the top plates to resume fighting the fire. When he could see through his TIC that they were starting to 'beat' the fire, it was only then that he thought they would get out. He was informed by radio that Aqueous Film Forming Foam (foam) was going to be pumped through the funnels, and not to panic. He passed this onto his team, to reassure them. The foam hit them like it was hot snow.

44. He continued to encourage his team during the fighting of the fire, telling them how well they were doing and that they were beating the fire, even though they were exhausted. He was conscious that he was in charge of 4 people whose lives depended on him. Every decision was a 'life or death' decision and he just wanted to make the right decision so that they came out alive.

45. He was informed over the maxon²⁰ that they were running out of air and had to withdraw from the MMS. In fact, Leading Seaman Elliott's air had already run out, and he was using his emergency supply.

46. He stayed behind after his team had left the MMS to assist with getting the casualty into a stretcher, until he eventually ran out of air. When he came out he was vomiting into his mask.

47. He conducted a comprehensive handover with Leading Seaman Daly's fire team, Hose Team 1, who replaced his team. He reported that they had located one casualty but 3 were still missing. The fire was still raging and conditions were oppressive.

48. They rested and were given frozen fruit drinks, but almost immediately he was informed his team would have to go down into the MMS again. Although they were exhausted, after only about 10-15 minutes, he had to prepare his team to re-enter the MMS as an overhaul team, after the fire had been extinguished, to check for hotspots.

49. He said that because of exhaustion, morale was an issue. He was concerned that the team might 'fall apart'. He was informed that the 3 other bodies had been located and he instructed his team to focus on the job at hand, and asked if they were all comfortable in going down again. All except one, who was replaced after a brief delay, proceeded to the MMS again. Although the fire had been extinguished, it was still smoky. It was still hot, and there was a lot of water from the hoses, and debris. It was slippery underfoot because of the firefighting foam. He broke the team into pairs and directed them to check for spot fires and hot spots. Every couple of minutes they doused the engines and bulkheads of the aft pump room with water. There remained a concern that the fire would flare up again. They proceeded to aft repair base and re-entered the MMS again on three other occasions as reflash sentries. They doused the engines about every 5 minutes. He and Able Seaman Croasdale went to the bottom plates, because he, Croasdale was an engineer and 'knew what to look for'.

²⁰ Hand-held portable radio

50. After the team's reflash sentry role concluded, he changed into dry clothes but was soon called upon to assist with berthing *Westralia* on its return to Fleet Base West.

51. He told the BOI that the Hose Teams would have benefited from wearing fire helmets which would have prevented lagging and hot water hitting their heads. He also observed how difficult it was to have to handle the TIC, maxon, battle lantern (which flickered) while attempting to push forward. While suited up it was difficult managing the equipment and manoeuvring the fire hoses. As regards the maxon - he had to place it underneath his mask in order to talk; because of wearing gloves it was hard to operate the buttons; it was difficult to use when it became wet; and it kept cutting out. Mr Cain also noted that the use of the maxon was impeded by the necessity to wear thick fireproof gloves which made use of the relatively small buttons on the equipment difficult. Mr Cain said that the maxon cut out, ironically, at critical times, leaving him to make decisions on his own.

52. He said that a lot of the training for Hose Teams had to be put aside, because they had never been in a situation of such gravity. For example, the training is done with dummies as casualties, which is very different to having to handle the bodies of shipmates. Similarly, there is limited smoke used in training.

53. He said that the BOI was in error about who had identified the bodies. He gave a graphic account of having to make the identification and call up the identities to an officer who recorded the names.

Other Evidence

54. The Tribunal had available to it extracts of evidence given before the BOI. These included extracts of evidence given by Petty Officer Body which described his role in establishing Hose Team 3; evidence given by Leading Seaman Elliott, Able Seaman Croasdale and Petty Officer MacKinnon which described their experience in Hose Team 3; and a statement from Seaman Williams which details how she came to be replaced before re-entering the MMS.

55. Evidence from **Chief Petty Officer Body** described his role in establishing Hose Team 3. He said that the two established Hose Teams were going down to the MMS in rotation, but the fire was not being contained. Consequently, there was a need for a third Hose Team. He had to 'grab people from anywhere [he] could'. He said he wanted volunteers and Leading Seaman Cain had come forward. There was, in his understanding, no one else available

trained in Hose Team operations in *Westralia* specifically, but, from his evidence, he appreciated that Cain had volunteered.

56. They had to quickly locate the equipment, especially breathing apparatus, they needed before they could go in e.g. they only had two sets of breathing apparatus and no TIC. In all though, it may have taken 10 minutes to equip them.

57. He said he saw Hose Team 3 return several times and smoke was coming off them and they were exhausted and ‘completely drained’, both physically and mentally; the heat was overwhelming and there was insufficient air. Notwithstanding that, by the time they returned he was directed, at least on the first occasion, to turn them round after about only a five minute break and send them back to the fire. Some members of teams, he recalled, were in tears. He told them the fire was being contained and would not be so bad to return. He had no option because there was no one else trained to do Hose Team duties. He believed it was essential due to the numbers of crew required to fight the fire that they be sent back in. While he believed the training was generally good, he told of the artificiality of training compared to the real thing.

58. There were reports of masks melting, although he did not observe that himself. He later heard reports of boots melting.

59. **Mr Clem Croasdale**²¹ gave evidence to the BOI and at the hearing. At the relevant time he was a marine mechanic.²²

60. He told the BOI that he had volunteered for the Hose Team, as he had a good knowledge of the engine room. In his evidence, though, he said he had no recollection of how he was selected for the Hose Team but said that there was really no one else available. He had had little fire-fighting experience, and had only received the standard firefighting training undertaken by all crew members, including basic NBCD²³ training. He had never previously been part of a Hose Team.

61. When suited up he said they had difficulty hearing the ‘sitrep pipes’. He did not know if the system was defective, if it was because they were wearing masks, or if he had not been paying attention. He was also critical of the effectiveness of the maxon.

²¹ AB Clem Edward Croasdale

²² Able Seaman Marine Technician

²³ Nuclear, Biological and Chemical Defence

62. There was a handover by the leader of Hose Team 2 to Cain, as leader of Hose Team 3. He had heard the leader of Hose Team 2 say that he had run out of air.

63. He thought that they would not get out alive. Cain had told them there were casualties there. Visibility was ‘appalling’ and he gave an account of having to negotiate stairs in order to get to the raging fire in the bottom plates. They were unable to see and Cain, as Hose Team Leader, told them where to aim. When they encountered the casualty, he and Leading Seaman Elliott were directed by Cain to move him to the foot of the stairs that lead to the fridge flat; they had to put the hoses down to move him.

64. When the foam was pumped down the funnel the foam became hot and sprayed onto them. It had been so hot in the MMS that his boots were melting and he had wanted to leave but that Cain had ‘kept[him] there’. He, Cain, was authoritarian and that, he said, was what was needed, because, if Cain had let him leave, that would have had an adverse effect on the other members of the team.

65. He could not recall how many times they went back into the MMS. Despite his concerns, he had been persuaded by Cain to return each time they were asked. Cain, he considered, had done a good job in getting them out.

66. **Mr Brett Merivale** gave evidence. He was not part of any of the three Hose Teams, but was a marker for Hose Team 2, which meant he monitored their air supply. He said that the fire was nothing like they had ever trained for. While, in his 16 years in the Navy, he had been involved in countless drills, this was the only fire that he had encountered.

67. He gave evidence about the maxon that had been used in each of the Hose Teams. He said it kept cutting out and all the training relied on good communications. The training was that if the maxon fails then runners are to be sent; clearly this was impractical in the circumstances of the fire. He observed that the maxon is not designed to be used through bulkheads, which explained why it was cutting out. He also observed that with so much water being used this may have interfered with the maxon’s operation.

68. In his statement to the BOI **Leading Seaman Elliott**²⁴ wrote that he was a qualified NBCD instructor.

69. He wrote that as soon as they entered they were unable to see anything – it was a ‘wall of heat and smoke’. As waterwall, he was at the front of the

²⁴ Leading Seaman Christopher Elliott Elliott

team, although he thought Cain, as leader had gone down first. He had to hold the waterwall in the general direction of the heat source. He said he stepped on something and, by feel, identified it as a boot. He did not think they had been told that there might be bodies there. He said Cain decided the casualty should be moved and he, Cain, and Croasdale came forward to move him. They were having difficulty so he put his hose down to assist.

70. He gave an account of his oxygen running out, and before finally clear of the MMS, his emergency supply also running out. They had only a quick break before re-entering the MMS, which occurred four times. He had not wanted to return at all because he was so exhausted after the first time. He thought the others in the team would be similarly exhausted.

71. As to Mr Cain's actions he wrote:

In terms of meritorious or conspicuous actions in fighting the fire I would say that LS Cain was the key member of our particular Hose Team. He knew his way round the ship well and really held us together. Although the level of training we receive in the firegrounds is very good, nothing can actually prepare you for the immensity of a fire encountered in an engine space the size of *Westralia*.

72. In his statement to the BOI **Petty Officer Mackinnon**²⁵ wrote that he was a NBCD instructor, as part of his ancillary duties aboard *Westralia*. He said that Petty Officer Body told him to get dressed for a Hose Team. He said that Leading Seaman Cain had asked who had been in a Hose Team before. He said that Leading Seaman Elliott reported that he had just completed refresher training at NBCD school. He said they were briefed that the conditions were hot, smoky and visibility was poor. They were not told that there were casualties, only that four people were missing. He also wrote of the hoses becoming entangled. He observed Leading Seaman Cain, Leading Seaman Elliott, Able Seaman Croasdale and Seaman Williams carrying a body, who he could identify. He and Seaman Williams continued to untangle the hoses while Leading Seaman Cain, Leading Seaman Elliott and Able Seaman Croasdale went forward again. When Leading Seaman Elliott was out of air, all the team pulled out. He estimated the period of the break to be 10-15 minutes, during which time they had crackers and soft drinks.

73. They were all very tired and Seaman Williams was upset, and was going to have to be replaced. He said he reported that to Leading Seaman Cain, but he, Cain, said they were going back in without a replacement. He said that there was an offer to divide up the team so there was a greater opportunity to rest, but he said Leading Seaman Cain said the remaining four would stay

²⁵ Petty Officer Craig Mackinnon

together. Leading Seaman Cain divided them into two teams to search for hotspots, which they sprayed with water, and to confirm the location of the casualties. During one of their re-entries they saw three or four medics attending to the casualties.

74. He did not understand the maxon to be working when they went back in, which he thought was due to water damage. Leading Seaman Cain received a call that he, Mackinnon's, air was running low and needed to evacuate.

75. As to Mr Cain's actions he wrote:

LS Cain was an excellent I/C because he was able to keep the team together, focussed. He kept our morale up and kept us well informed. LS Cain's decision to evacuate [the casualty] was, I believe the correct one in the circumstances, as we did not know whether he was alive or dead at the time.

76. In a statement to the BOI **SMN Williams**²⁶ wrote that she believed that if she had returned to the MMS, she thought she may have put the team at risk had she not been able to cope.

77. **Warrant Officer Karlake** is an expert on firefighting at sea, with 33 years Navy service. He gave evidence of his observations of aspects of the firefighting in *Westralia* and observed that he did not know of any fire like this outside a wartime scenario. He also informed the Tribunal that changes which had been brought about following the recommendations of the BOI had 'revolutionised' firefighting across the Navy. He said that the actions of the Hose Teams changed the way crew members are trained.

78. He observed that there were two dedicated Hose Teams in *Westralia*, and what had occurred demonstrated how quickly a situation could escalate such that two Hose Teams were not enough to fight a fire of that intensity. What occurred was that a third Hose Team had to be built from whomever was available. He stated that nowadays training can include the deployment of up to 15 Hose Teams. Also, now *all* members of the crew are trained to be members of a Hose Team.

79. He said that Hose Team Leaders had to show a lot of initiative, and had to deal with whatever they found at the scene; that is very different to the training scenario.

²⁶ Seaman Nicole Cheree Williams

80. Firstly, he said that the maxon was ‘not a good piece of kit’, causing loss of communications, and has now been replaced. The emergency air supply system from that time is no longer used; instead a whistle is blown, and all members of the Hose Team evacuate the scene at the same time if any member’s air supply is depleted.

81. He observed that the hoses used were very heavy and difficult to handle. He acknowledged that fatigue can be a major issue, and a Hose Team nowadays is never sent in more than once.

82. He said the priority is to get personnel out of the area of the blaze.

83. In relation to Leading Seaman Cain being immediately assigned other duties after he had completed his firefighting role, he observed that the treatment of those exposed to such an experience is now ‘totally different’.

Defence’s position

84. As set out by Captain Legge in Defence’s exceptionally brief report of 4 November 2016, Defence’s position was that it could find no evidence of a nomination for a conspicuous service award in respect of Mr Cain’s service, and further, that it is not possible to self-nominate for such an award. The report also stated that Mr Cain’s application provided no new evidence that would support a re-evaluation of the case by Navy, and that Navy could not find any additional evidence of considerations with respect to this case.

85. In his comments on the Defence report, Mr Cain restated his concern that Commander Johnson was awarded an honour for his service ashore at HMAS *Stirling*, while he and other Hose Team Leaders, who were actually in great danger, were given lesser recognition for their service. Mr Cain also claimed that at the investiture for the awards, Warrant Officer Bottomley removed his CSC and offered it to him and stated that this was ‘because [he] earned it more than anyone’.

86. **Commodore Dowsing**, in his submission to the Tribunal, noted that he had 48 years Navy service and had personally observed the engine room post-fire. He described what Mr Cain had done as ‘incredibly heroic’ and while he had performed ‘above and beyond’, Cain, and others, were ‘doing their job’, for which they had been trained. He conceded that training was limited compared to ‘the real thing’. He observed that a number of personnel across the ship’s company had been recognised and that Hose Team Leaders had been singled out for recognition; others, such as the Commanding Officer, Executive Officer and Marine Engineers, who all did their jobs as required, did not receive

individual honours. He observed that Mr Cain has been informed that the CDF's commendation is 'not insignificant recognition'.

87. He noted that no nomination for an honour could be located, and he repeated Captain Legge's view that it is not possible to self-nominate for an honour. He also stated that in any event, it is not normal for someone to be recognised twice for the same actions.

88. He acknowledged that he had experience in nominating personnel for honours. He stated that there is no impediment to sailors receiving the CSC, although it was mostly awarded to senior sailors. He denied there was a culture of junior sailors receiving only the CSM. He has never felt constrained by quotas, but conceded he sometimes 'had to fight' to have his recommendations accepted. He expressed the view, on the basis of the material in the pack that Mr Cain met the eligibility criteria for both the CSC and the CSM.

89. In conclusion, Commodore Dowsing said that in the 15 years since the incident there have been marked changes to firefighting on ships. It was acknowledged that the equipment and training at the time made the firefighting aboard *Westralia* difficult.

90. **Commodore Greaves** noted that the BOI had been convened very soon after the incident. The BOI had made recommendations in relation to aspects of fighting the fire, and he acknowledged that there had been a 'significant uptake' of the recommendations of the BOI.

91. The BOI, in finding the work of the fire teams to be 'excellent', he said, also made recommendations as to appropriate honours. Those recommendations were considered by the Maritime Commander and the Chief of Navy in 1999. The nominations for awards then went to Chief of the Defence Force. The 'policy at the time' was based on the experience of those officers. He referred to the relevant policy found in Defence Instruction (General) Personnel 31-2 (the service commendations policy).²⁷

92. Commodore Greaves stated that following Mr Cain's representations in 2002 and 2004 there were reviews of his award. There was found to be nothing that would make the awards made in 1999 inappropriate. He said that there had been no consideration of 'military honours', only 'administrative honours'. He regarded the systems as 'complementary'. He did not know why there had been no consideration of 'military honours' and that that was a matter for the individual judgment of senior officers at the time.

²⁷ DI(G) PERS 31-2, NAVY PERS 30-3/ARMY PERS 97-1, AIR FORCE PERS 10-4 dated 1 February 1984

CONSIDERATION

93. The Tribunal is required to review a reviewable decision on the merits. The facts, law and policy aspects of the decision are all considered afresh and a new decision is made.²⁸ The Tribunal reviews the decision, and not the reasons for the decision. In doing so, there is no legal onus of proof, and there is no presumption that the original decision was correct.²⁹ The Tribunal is bound to make what it regards as the ‘correct and preferable’ decision.

94. The Tribunal observes Mr Cain was highly critical in his submissions of some of the awards that had been made to others in respect of their role associated with the incident. It is not the role of the Tribunal to evaluate the actions of others or to assess their ‘worthiness’ for the recognition they have been afforded. The Tribunal is tasked only with reviewing the present application and making findings in respect of the actions of the Applicant.

95. In considering any application for review the Tribunal is bound by the relevant eligibility criteria for the claimed honour or award: s110VB(6) of the *Defence Act 1903*. The Tribunal is to apply the eligibility criteria at the date of the decision under review.

96. The Tribunal observes that there is nothing in the Regulations which established the Decorations which prohibits self-nomination.

The Group Citation and the CDF Commendation

97. Defence’s position, in summary, was that Mr Cain had been adequately recognised by receiving the significant honour of a CDF Commendation, which had been awarded in accordance with the service commendations policy. The Tribunal examined that policy and observed that its guidelines record as follows:

4. Service commendations are intended to provide selected senior military commanders with a means of formally recognising specific acts of bravery or exceptional, outstanding or meritorious service by Service personnel...either in isolated instances or over a period of time. Service commendations are separate from honours and awards...and are not to be regarded as an extension of the Australian honours system of honours and awards. Nevertheless, because both commendations and honours and awards are intended for similar purposes, there is a relationship (sic) between the two.

²⁸ Pearson, Linda, “Merit Review Tribunals”, in Creyke, Robin and McMillan, John, *Administrative Law – the Essentials*, AIAL 2002, p. 68

²⁹ *McDonald v Director-General of Social Security* (1984) 1 FCR 354

5. Commendations are intended primarily to cater for situations in which formal recognition in the form of honours and awards would not be justified or, for various reasons, would not be contemplated. An individual considered worthy of being nominated for an honour or award should be equally deserving of commendation by his Service or by the CDF.

6. There is not, and never can be, any assurance that a nomination for an honour or award will be successful. Furthermore, there is an inherent and unavoidable delay [in honours being awarded] ... therefore, when an individual is nominated for an honour or award, consideration should also be given to nominating the member for a commendation...the award of a commendation should not prevent the individual from subsequently receiving [an honour].

98. The BOI considered³⁰ that all members of the Hose Teams should be commended for their significant dedication to duty. Each of the Hose Teams received a group citation. The citation for Hose Team 3 was as follows:

Hose Team 3, aware that personnel were unaccounted for, entered the MMS via the fridge flat. Prior to entering, the team had been informed of the dangerous conditions they would confront. As the team descended to the top plates they discovered the body of a shipmate. The team, in poor visibility, followed the hoses until they located the nozzles and then commenced fighting the fire. Hose Team 3 remained in the treacherous conditions to fight the fire until their air supplies became too low and they were then relieved by another team.

Hose Team 3 re-entered the MMS after the fire was extinguished to ensure that the fire did not re-ignite.

99. The BOI further considered that the Hose Team Leaders were the single most important factor in the success achieved by each of the three Hose Teams. The BOI found they displayed exemplary courage and devotion to duty and are worthy of *considerable recognition*. (Tribunal's emphasis).

100. Chief of Navy, Vice Admiral Chalmers AO, made recommendations to CDF in respect of the Hose Team Leaders³¹. He referred to the Hose Team Leaders' 'courage and professionalism' and that [all the members of] the Hose Teams had 'put their lives on the line'. He wrote of there being no impediment to Hose Team Leaders receiving both a Group Citation for Bravery for being part of the Hose Team, as well as a CDF Commendation. He relied on paragraph 5 of the service commendations policy. That paragraph however,

³⁰ Section 15 of the BOI Report

³¹ CN97/37929, CN684/99 CN to CDF dated 12 May 1999

actually refers to there being no impediment to the consideration of a person for both a commendation and *an honour*.

101. The Tribunal finds, that at the relevant time, there was no impediment to the award of a Decoration to Mr Cain.

102. The CDF Commendation refers to Mr Cain's outstanding professionalism and devotion to duty in extremely adverse conditions. It noted that he had volunteered to be the leader of Hose Team 3 when the extent of the fire in *Westralia* was known. It noted that in attending the fire he was told that four personnel were missing and that on entering the MMS he directed his team to where to fight the fire. He discovered the body of one of the casualties and, despite the shock of this discovery he motivated his team to continue fighting the fire. Subsequently, he provided a comprehensive handover to the leader of Hose Team then assembled his team to confirm numbers and provide reassurance and support. His team's actions were considered to have been 'inspirational' and had 'contributed significantly to reducing further damage'. The Commendation specifically referred to Mr Cain's outstanding professionalism, bravery, dedication and determination in the performance of his duties as 'deserving of the highest praise'.

103. The Tribunal observes Defence could offer no explanation as to why Mr Cain was not considered for a Decoration at the time.

Consideration of a Decoration

104. The Tribunal then turned to consider the actions of Mr Cain against the eligibility criteria for the Decorations, in particular if there was, in a non-warlike situation, 'outstanding devotion to duty or outstanding achievement in the application of exceptional skills, judgement or dedication' (for the CSC) or 'meritorious achievement or devotion to duty' (for the CSM).

105. The Defence Honours and Awards Manual defines 'non-warlike situation' as 'a situation in which ADF service involves all service that has not been declared to be warlike, including declared non-warlike and hazardous and peacetime service.'³²

106. The Tribunal was fortunate to have available to it the contemporaneous accounts of the firefighting operations, provided in evidence to the BOI, and consequently attributed great weight to that evidence. Similarly, it had the benefit of the findings of the BOI, which, while not determinative for the present purpose, were highly persuasive.

³² DGPERS-A/OUT/2016/R2620735I dated 25 August 2016

107. The Tribunal had no hesitation in finding that Mr Cain displayed meritorious achievement or devotion to duty in the course of fighting the fire, thus satisfying the criteria for the CSM.

108. The Tribunal turned to consider if Mr Cain also satisfied the criteria for the CSC.

109. The BOI found that the members of Hose Team 3 were aware that personnel were unaccounted for and had been informed of the dangerous conditions they would confront, including poor visibility. After discovering the body of a shipmate, the team remained in the treacherous conditions to fight the fire until their air supplies became too low, then re-entered the MMS after the fire was extinguished to ensure that the fire did not re-ignite.

110. The evidence before the Tribunal included a number of additional aspects to Mr Cain's actions in addition to the BOI findings.

111. Firstly, it was clear that Hose Team 3 was assembled on an ad hoc basis. There were only two standing Hose Teams, and Petty Officer Body was tasked with assembling another team. Secondly, Leading Seaman Cain volunteered for the role as leader. Although the evidence was somewhat equivocal about how the remaining members of the team were selected, it was clear that they had not trained together and that the skills of some members of the team were limited. Consequently, Leading Seaman Cain's role required him to lead an untested team whose skill-levels were unknown to him. The team's deployment was also far from ideal - in view of the urgency in sending the team to fight the fire, the extent of the briefing, was, it appears, somewhat basic. There was also evidence that the full range of equipment was not immediately available to the team and needed to be located before they could be deployed to the fire. It is against this backdrop that Leading Seaman Cain lead his hastily assembled team.

112. Additionally, the equipment that was available to him and his team was less than optimal, and this was confirmed by the evidence of Warrant Officer Karlake. For example, the intense flames were represented on the TIC as a 'white out', with the result that he could only direct the hoses in the general direction of the flames. While poor visibility was mentioned in their briefing, the evidence was that the visibility was so poor the team was reliant on Leading Seaman Cain, as Hose Team Leader, utilising the TIC as best he could, to direct the hose activity. The maxon was difficult to use because of the bulk of the protective clothing he was wearing. Further, it was temperamental – it would cut out at crucial times, meaning he was left without communications and consequently had to rely on his own initiative. There was some evidence of disintegrating clothing and smoke rising from their protective clothing as they

returned to the staging area. The breathing apparatus, while not defective, was not as efficient as had been expected, and Leading Seaman Cain and at least one other member of the team had had their air run out.

113. The BOI had found that the casualty impeded the progress of Leading Seaman Cain's Hose Team.³³ Leading Seaman Cain was obliged to make a decision about moving the body in order for the team to be able to proceed to the blaze. The area was described as 'hazardous and difficult to negotiate due to the number of fire hoses on the deck and the close proximity of the body to the ladder.'³⁴ Leading Seaman Cain stayed behind to help load the casualty onto a stretcher.³⁵ This aspect of his actions was not recorded in its recommendations for recognition.

114. In making its recommendations for recognition, the BOI also did not record that Leading Seaman Cain and his team were required to return to the MMS another four times, nor that they were exhausted and that some were in tears. They had little time to recuperate and refreshments were limited. Leading Seaman Cain had to cajole others to return to the MMS. There was some evidence that the team may have re-entered the MMS, at least once, short-handed.

115. The BOI considered the initial firefighting operations to have been conducted under 'extremely hazardous conditions'.³⁶

116. The BOI had regarded the Hose Team Leaders as the single most important factor in the success achieved by the Hose Teams. It referred to their exemplary courage and devotion to duty and are worthy of considerable recognition. Chief of Navy, when making recommendations to CDF in respect of the Hose Team Leaders referred to their 'courage and professionalism' and that they, and the other members of the Hose Teams, had 'put their lives on the line'.

117. CDF's Commendation refers to Mr Cain's outstanding professionalism and devotion to duty in conditions described as 'extremely adverse'. It noted that he had volunteered to be the leader of Hose Team 3 when the extent of the fire in *Westralia* was known and that four personnel were missing. He discovered the body of one of the casualties and, despite the shock of this discovery he motivated his team to continue fighting the fire. Subsequently, he provided a comprehensive handover to the leader of Hose Team 1 then assembled his team to confirm numbers and provide reassurance and support.

³³ BOI Executive Summary 2.140

³⁴ BOI Executive Summary 2.144

³⁵ Ibid.

³⁶ BOI Executive Summary 3.67

His team's actions were described as being 'inspirational' and had 'contributed significantly to reducing further damage'.

118. The eligibility criteria for the CSC uses 'outstanding' in respect of devotion to duty or achievement in the application of exceptional skills, judgement or dedication. The Tribunal considers the use of 'outstanding' indicates an expectation that a recipient of the CSC will have significantly performed over and above their duty. The Commendation specifically referred to Mr Cain's 'outstanding' professionalism, bravery, dedication and determination in the performance of his duties. His actions were considered to have been 'inspirational', which the Tribunal considers reflective of exceptional skills, judgement or dedication, as required by the eligibility criteria. Furthermore, the Commendation considered LS Cain's actions as being deserving of the 'highest praise'.

119. Commodore Dowsing, who had had the benefit of seeing the aftermath of the fire, described what LS Cain had done as 'incredibly heroic'.

The actions of others

120. The Tribunal observed above that it is not within the ambit of this review to evaluate the actions of others. As the Tribunal heard evidence focussing on the actions of Mr Cain, it expressly makes no findings in respect of others who were engaged in fighting the fire. Having said that though, the Tribunal considered that, having regard to many of the findings of the BOI about the Hose Teams, and, in particular, the Hose Team Leaders, some further consideration for medallic recognition may be warranted. Many of the Tribunal's findings may also be relevant to others.

DECISION

121. The Tribunal decided to recommend to the Minister that:

- a. the decision dated 13 March 2008 by the Parliamentary Secretary for Defence Support to not support Mr James Cain's request for the award of the Conspicuous Service Cross for his actions during the fire in HMAS *Westralia* on 5 May 1998, be set aside,
- b. the Minister recommend to the Governor-General that James Cain be awarded the Conspicuous Service Cross for his actions during the fire in HMAS *Westralia* on 5 May 1998, and
- c. the Minister request Navy to review the eligibility for honours of other members of the ship's company involved in firefighting operations in HMAS *Westralia* on 5 May 1998 in particular, the leaders of Hose Teams 1 and 2.