



## Australian Government

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### Defence Honours and Awards Appeals Tribunal

#### **Evans and the Department of Defence [2018] DHAAT 29 (15 November 2018)**

File Number(s) 2018/020

Re **Mr Desley Evans**  
Applicant

And **Department of Defence**  
Respondent

**Tribunal** Air Vice-Marshal John Quaipe AM (Retd) (Presiding Member)  
Ms Anne Trengove

#### **DECISION**

On 15 November 2018, the Tribunal decided to affirm the decision of the Department of Defence that Mr Desley Evans is not eligible for the award of the Papua New Guinea Independence Medal.

#### **CATCHWORDS**

*Foreign Award – Papua New Guinea Independence Medal*

#### **LEGISLATION**

*Defence Act 1903 – ss 110T, 110VB(2).*

*Australian Government Gazette No S182 dated 16 September 1975 - Royal Warrant – Papua New Guinea Independence Medal – 2 September 1975.*

*Papua New Guinea National Gazette No G49 dated 17 June 1977 - Royal Warrant – Papua New Guinea Independence Medal – 6 October 1976.*

## **REASONS FOR DECISION**

### **Introduction**

1. Mr Desley Evans has claimed eligibility for the Papua New Guinea Independence Medal on the basis that he was serving with the Australian Defence Force in Papua New Guinea on the date of independence, 16 September 1975.
2. Mr Evans also included in his application his request that he be issued with the 'Medal Cross of Valour with Palm (sic)' for his service in Vietnam. Mr Evans has been awarded the Republic of Vietnam Cross of Gallantry with Palm Unit Citation. As a unit citation, there is no medal authorised for this award. Mr Evans has received the correct unit citation device with palm and frame. Defence made no decision with respect to Mr Evans request that he be issued with 'a medal' associated with his unit citation.

### **The Tribunal's jurisdiction**

3. Pursuant to s110VB(2) of the *Defence Act 1903* (the Defence Act) the Tribunal has jurisdiction to review an application properly made to the Tribunal regarding a reviewable decision. 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 a foreign award in response to an application.
4. The Directorate of Honours and Awards of the Department of Defence (the Directorate) made a decision to refuse to recommend Mr Evans for the Papua New Guinea Independence Medal following his application of 19 April 2014. The Royal Warrant for the Papua New Guinea Independence Medal was given under the Great Seal of Australia on 16 September 1975. The Government of Papua New Guinea issued its own Royal Warrant on 6 October 1976. While the administration of the award within Australia lies with the Directorate, the award is one given by a government of a foreign country and therefore meets the definition of foreign award set out in the Defence Act. This means that the Tribunal has jurisdiction to review the Directorate's decision.

### **Steps taken in the conduct of the Review**

5. Mr Evans applied to the Tribunal on 14 March 2018. In accordance with the *Defence Honours and Awards Appeals Tribunal Procedural Rules 2011*, on 29 March 2018, the Tribunal wrote to the Secretary of the Department of Defence informing him of Mr Evans' application for review and requested that he provide a submission. On 17 May 2018, the Directorate on behalf of the Secretary provided the Tribunal with a written submission. A copy of the submission from the Directorate was forwarded to Mr Evans for comment. Mr Evans provided his comments on this submission on 9 June 2018. The Tribunal conducted a hearing by teleconference on 2 November 2018.

## **Mr Evans' relevant service**

6. Mr Evans enlisted in the Australian Regular Army on 11 August 1958. He was discharged on 10 August 1964 as his period of engagement expired. Mr Evans re-enlisted in the Australian Regular Army Supplement (Operational) on 18 January 1965, and was discharged at his own request on 28 March 1979. Mr Evans completed two tours in Vietnam. Between 21 August 1974 and 23 May 1976, Mr Evans served with the Headquarters of the Australian Defence Assistance Group, Papua New Guinea.

## **The Republic of Vietnam Gallantry Cross with Palm (Medal)**

7. The Republic of Vietnam Gallantry Cross with Palm (Medal) is an individual award for gallantry issued by the Republic of Vietnam. Mr. Evans did not present any evidence or contend that he should have been awarded an individual award for gallantry. Rather, he contended that having been awarded the Republic of Vietnam Cross of Gallantry with Palm Unit Citation, he should have also been awarded the medal which he believed to be associated with the Citation.

8. At the hearing, Mr Evans told the Tribunal that had observed other Vietnam veterans wearing both the Republic of Vietnam Cross of Gallantry with Palm Unit Citation and the Republic of Vietnam Cross of Gallantry with Palm (Medal). The Tribunal could make no comment on this other than to advise Mr Evans that there is no medal authorised for wearing with the Unit Citation.

## **The Papua New Guinea Independence Medal**

9. The Papua New Guinea Independence Medal was instituted in 1975 to mark the independence of Papua New Guinea. Her Majesty The Queen approved two Royal Warrants for this award, one as Queen of Australia and one as Queen of Papua New Guinea. The key issue for the Tribunal to consider is whether Mr Evans meets the eligibility criteria for the Papua New Guinea Independence Medal.

10. The (Australian) Royal Warrant dated 2 September 1975 states:

*2.(1) Distinguished residents and former residents of Papua New Guinea, including persons serving on the day of independence of Papua New Guinea in the Papua New Guinea legislature, Defence Force, Public Service, Corrective Institutions Service or Fire Service or in the Royal Papua New Guinea Constabulary, who have given outstanding and meritorious public service to Papua and New Guinea are eligible for the award of the medal.*

11. The (Australian) Royal Warrant also states that:

*...(2) Other distinguished persons are eligible for the award of the Medal if it desirable that they be honoured on the occasion of the independence of Papua New Guinea.*

12. The (Papua New Guinea) Royal Warrant as published in the Papua New Guinea National Gazette No G49 dated 17 June 1977 contains similar clauses. In particular it states:

*2.(1) Persons serving on the thirtieth day of November, 1973, in the Defence Force or the Royal Papua New Guinea Constabulary or the Correctional Service or the Fire Service, and are still serving on the sixteenth day of September 1975, are eligible for the award of the medal.*

### **Tribunal consideration**

#### **Does Mr Evans qualify for the Papua New Guinea Independence Medal under the provisions of the Papua New Guinea Royal Warrant?**

13. At the hearing, Mr Evans told the Tribunal that the basis for his claim was that he was a member of the (Australian) Defence Force and present in Papua New Guinea on 16 September 1975, the date of Papua New Guinea Independence. He directed the Tribunal's attention to the wording contained in sub-clause 2(1) of the Royal Warrant published in the Papua New Guinea National Gazette. Since this criterion simply states membership of the 'Defence Force' Mr Evans contends that he is eligible.

14. The Tribunal considered Mr Evans' claim that the wording afforded him eligibility. Under sub-clause 2(1) membership of the 'Defence Force' is not stipulated as being the Defence Force of Papua New Guinea nor the Australian Defence Force. However, the Tribunal interprets that the Papua New Guinea Royal Warrant, is referring only to the 'Defence Force' of Papua New Guinea. The Tribunal construes that being a Warrant of Papua New Guinea, it is referring to services of that country. The Tribunal determined that if it had been intended to refer to the services of any foreign country such as Australia, the Warrant would have clearly stipulated so. Noting that the Warrant was Gazetted on 11 June 1977, sometime after independence on 30 November 1973, Australia was indeed a foreign country.

15. The Tribunal was therefore unable to accept Mr. Evans' view that 'Defence Force' is referring to members of the Australian Defence Force, such as himself. The Tribunal therefore determined that being a member of the Australian Defence Force does not qualify Mr Evans under sub-clause 2(1) of the Papua New Guinea Royal Warrant.

#### **Does Mr Evans qualify for the Papua New Guinea Independence Medal under the provisions of the Australian Royal Warrant?**

16. The (Australian) Royal Warrant, under sub-clause 2(1), is similarly worded to sub-clause 2(1) of the (Papua New Guinea) Royal Warrant, but expands upon the list of people and is clearly referring to residents and those serving in various public institutions of Papua New Guinea. The Tribunal determined that the (Australian) Royal Warrant, is clearly referring to the Defence Force of Papua New Guinea and that Mr Evans does not directly qualify as a member of the Australian Defence Force.

17. The Tribunal noted that provision does exist under sub-clause 2(2) of the (Australian) Royal Warrant, for other people to be eligible as ‘*other distinguished persons*’. This could include members of the Australian Defence Force, such as Mr Evans, if so nominated.

**Does Mr Evans qualify for the Papua New Guinea Independence Medal as a member of the Australian Defence Force?**

18. In its written submission, Defence provided the Tribunal with an Australian Army Minute dated 21 October 1991, which states that the desire of the Papua New Guinea Government to present the medal to members of the Australian Defence Force was known to Australian authorities prior to Papua New Guinea Independence. Accordingly, a recommendation was made to the Papua New Guinea authorities that the medal be awarded to Australian servicemen subject to certain criteria. Those criteria were recorded in a Papua New Guinea Cabinet decision of 15 June 1975:

*...personnel are required to have been members of the Australian Defence Force and or with Australian Formed Units in Papua New Guinea for the prescribed period, which for the purpose of the award is those members who are in service on 30 November 1973 and are still in service on the date of Independence (to be taken as 16 September 1975).*

19. In February 1976, Headquarters Australian Defence Co-operation Group-PNG referred a list of ADF members who were eligible for the medal under the agreed criteria. Mr Evans’ period of service in Papua New Guinea did not qualify him to be included on that list.

20. In its report to the Tribunal, Defence has submitted that in 1977 and 1988, the Papua New Guinea Government made other formal offers to the Australian Government for individuals to be honoured with the Papua New Guinea Independence Medal under sub-clause 2.(2) of the (Australian) Royal Warrant (i.e. *other distinguished persons*). A further two supplementary lists were submitted. Mr Evans was not included on either of the supplementary lists and not therefore a member of the Australian Defence Force identified to receive the award under the provision for ‘*other distinguished persons*’.

**DECISION**

21. The Tribunal decided to affirm the decision of the Department of Defence that Mr Desley Evans is not eligible for the award of the Papua New Guinea Independence Medal.