



Australian Government

Defence Honours and Awards Appeals Tribunal

Heather and the Department of Defence [2018] DHAAT 10 (16 August 2018)

File Number 2018/009

Re **Lieutenant Commander Arthur Heather, RAN**
Applicant

And **Department of Defence**
Respondent

Tribunal Brigadier Mark Bornholt AM (Retd) (Presiding Member)
Ms Anne Trengove

Hearing Date 6 August 2018

DECISION

On 16 August 2018 the Tribunal decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Lieutenant Commander Arthur Heather, RAN is not eligible for the award of the Third and Subsequent Clasps to the Defence Force Service Medal.

CATCHWORDS

DEFENCE AWARDS – Defence Long Service Medal, Defence Force Service Medal, Federation Star

LEGISLATION

Defence Act 1903 – ss 110T, 110V(1), 110VB(2)

Defence Force Regulations 1952, Reg 93C

Commonwealth of Australia Gazette No S78, Defence Force Service Awards Regulations dated 27 April 1982

Commonwealth of Australia Gazette No S352, Amendments to the Defence Force Service Awards Regulations dated 10 July 1998

Commonwealth of Australia Gazette No S160, Amendment of the Defence Force Service Awards Regulations dated 30 March 2000

Commonwealth of Australia Gazette No S352, Defence Long Service Medal Regulations dated 10 July 1998

Commonwealth of Australia Gazette No S160, Amendment of the Defence Long Service Medal Regulations dated 30 March 2000

Commonwealth of Australia Gazette No S2, Amendment of the Defence Long Service Medal Regulations dated 3 January 2002

REASONS FOR DECISION

Introduction

1. The applicant, Lieutenant Commander Arthur Heather, RAN seeks review of a decision of the Directorate of Honours and Awards of the Department of Defence (the Directorate) that he is not eligible for the award of the Third and Subsequent Clasps to the Defence Force Service Medal (DFSM).

2. On 15 June 2011 Lieutenant Commander Heather made application to the Directorate for the award of the Federation Star, being the Fifth Clasp to the DFSM.¹ On 4 July 2011 the Directorate advised Lieutenant Commander Heather that whilst his service in the Permanent Force from 9 January 1969 to 8 January 1994 entitled him to the DFSM with First and Second Clasps; his subsequent Reserve service from 13 August 1997 to the present could not be counted towards Clasps to the DFSM.² The Directorate offered Lieutenant Commander Heather the opportunity to make an election and exchange his DFSM and Clasps for the Defence Long Service Medal (DLSM) and informed him that such action would entitle him to five Clasps to the DLSM. He was advised that such an election and exchange would be 'irrevocable'.

3. On 8 February 2018 Lieutenant Commander Heather made an application to the Tribunal to review the decision of the Directorate.³ The application sought review of his entitlement to the 'Federation Star'.⁴

Tribunal Jurisdiction

4. Pursuant to s110VB(2) of the *Defence Act 1903* (the Defence Act) the Tribunal has jurisdiction to review a reviewable decision if an application is properly made to the Tribunal. The term *reviewable decision* is defined in s110V(1) and includes a decision made by a person within the Department of Defence to refuse to recommend a person for an award in response to an application. Regulation 93C of the *Defence Force Regulations 1952* defines a defence award as being those awards set out in Part 2 of Schedule 3.⁵ Included in the defence awards set out in Part 2 is the DFSM.

¹ Application for the Issue of Medals, Lieutenant Commander Heather dated 15 June 2011.

² Email from Mr O'Brien DH&A to Lieutenant Commander Heather dated 4 July 2011.

³ Application for Review of Decision by Lieutenant Commander Heather dated 8 February 2018

⁴ Rosettes are worn on the ribbon bar to denote clasps that have been awarded for long service. It was found that five rosettes could not be accommodated on the ribbon bar and so a single emblem, in the form of a Federation Star, was introduced. A single Federation Star is worn on the ribbon bar in lieu of five rosettes. Sixth and subsequent clasps are denoted by additional stars.

⁵ 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. As Lieutenant Commander Heather's application was made on 15 June 2011, *Defence Force Regulations 1952* apply.

5. The Tribunal was satisfied that Lieutenant Commander Heather's application to the Directorate for the award of the Federation Star, being the Fifth Clasp to the DFSM, on 15 June 2011 constituted an application as defined in s110V(1)(c) of the Defence Act. The Tribunal considered that the response by the Directorate on 4 July 2011 that Lieutenant Commander Heather's Reserve service from 13 August 1997 to the present could not be counted towards Clasps to the DFSM constituted a refusal to recommend him for the 'Federation Star' thus satisfying the requirements of s110V(1)(a) and (b) of the Defence Act. Therefore, the Tribunal has jurisdiction to review the decision by the Directorate to refuse to recommend Lieutenant Commander Heather for the Third and subsequent Clasps to the DFSM. The role of the Tribunal is to determine whether the decision of the Directorate is the correct or preferred decision having regard to the applicable law and the relevant facts.

Conduct of the Review

6. In accordance with its *Procedural Rules 2011*, on 22 February 2018 the Tribunal wrote to the Secretary of the Department of Defence informing him of Lieutenant Commander Heather's application for review and requested a report on the material questions of fact and the reasons for the decision to refuse to recommend Lieutenant Commander Heather for the Third and subsequent Clasps to the DFSM. A written submission (the Defence Submission) was received from the Directorate on 11 April 2018.⁶ The Defence Submission was provided to Lieutenant Commander Heather on 16 April 2018.⁷ On 30 April 2018 Lieutenant Commander Heather acknowledged the Defence Submission and stated that he had decided 'not to exchange his DFSM for the DLSM' but wanted consideration by the Tribunal to:

*receive the additional Bars and Federation Stars for the service I have given to the ADF...*⁸

7. The Tribunal met on 8 June 2018 and confirmed that it had jurisdiction and confirmed the decision under review. The Tribunal heard oral evidence by telephone from Lieutenant Commander Heather during a hearing held in Canberra on 6 August 2018. The Respondent was represented at the hearing by Ms Jo Callaghan (Assistant Director Assessments) and Ms Allison Augustine (Assessments Manager) from the Directorate.

Australian Long Service Awards

8. Australian service personnel have received honours and awards under two systems – the Imperial system and the Australian system. The Imperial System was used until February 1975 when the Government introduced the Australian system.

⁶ DH&A OUT/2018/0019 to the Tribunal - *Defence Submission*, dated 11 April 2018.

⁷ DHAAT OUT/2018/148 to Lieutenant Commander Heather dated 18 April 2018.

⁸ E-mail from Lieutenant Commander Heather to the Tribunal dated 30 April 2018.

When the Australian system was established, the National Medal was intended to replace all existing Imperial long service and good conduct medals for the Australian Defence Force and other services including police, ambulance and emergency services. Regulations governing the award of the National Medal were published in the Commonwealth Gazette on 17 February 1975.⁹ The eligibility criteria for the award of the National Medal included a qualifying period of fifteen years of service.

9. The National Medal was unpopular amongst service personnel and following several representations and reviews it was decided that there should be a long service medal introduced which would recognise the uniqueness of defence service.

10. **The Defence Force Service Awards.** The Defence Force Service Awards Regulations were introduced by Letters Patent on 20 April 1982 for the purpose of:

... according recognition to persons who render long and efficient service as members of the Defence Force...for a period of 15 years...¹⁰

11. Three awards were established; the DFSM awarded to members of the Permanent Forces; the Reserve Forces Decoration for Reserve officers and the Reserve Forces Medal for Reserve members who were not officers.

12. The Regulations for the Defence Force Service Awards were amended on 26 May 1998¹¹ and again on 30 March 2000.¹² The relevant extracts of the Regulations as amended state:

...

Conditions for Award of the Defence Force Service Medal

4. *The Defence Force Service Medal may be awarded to a person who has, on or after 14 February 1975 and before 20 April 1999, completed the qualifying service as a member of the Defence Force required by regulation 5.*

5. *(1) Subject to sub-regulation (2), the qualifying service as a member of the Defence Force required for the award of the Defence Service Medal is efficient service as a member of the Defence Force for a period of 15 years or for periods that in the aggregate, amount to 15 years, being service that includes efficient service as a member of the Permanent Forces for a period*

⁹ Commonwealth of Australia Gazette No S28 dated 17 February 1975.

¹⁰ Commonwealth of Australia Gazette No S78, Defence Force Service Awards Regulations dated 27 April 1982.

¹¹ Commonwealth of Australia Gazette No S352, Amendments to the Defence Force Service Awards Regulations dated 10 July 1998.

¹² Commonwealth of Australia Gazette No S160, Amendment of the Defence Force Service Awards Regulations dated 30 March 2000.

not less than 12 years or for periods that, in the aggregate, amount to not less than 12 years.

(2) Service that has been taken into account as part of the qualifying service for the award of the Reserve Force Decoration, the Reserve Force Medal or a clasp to the decoration or medal shall not be taken into account for the purpose of sub-regulation (1).

6. *A clasp to the Defence Force Service Medal may be awarded to a member of the Defence Force after the completion of each period of 5 years' efficient service as a member of the Permanent Forces after the completion of the qualifying service required by regulation 5.*

...

Making of awards

...

16A. Service that is also qualifying service under the DLSM Regulations.

(1) In this regulation:

...

Category B member means a member, or former member, of the Defence Force who:

- (a) has completed the qualifying service required for the award of a medal under these Regulations, regardless of whether the member has received the award; and*

...

- (3) A Category B member may make an election in accordance with subregulation (4) to have all of the member's service recognised as qualifying service for the DLSM Regulations.*

(4) An election made under subregulation (2) or (3) must:

- (a) be in writing, signed by the member; and*
(b) be lodged with the Chief of the Defence Force or a delegate of the Chief of the Defence Force.

...

(6) If the member elects to have the service recognised as qualifying service for the DLSM Regulations:

- (a) the member is not eligible for an award under these Regulations in relation to any service; and*

(b) all awards (if any) previously made to the member under these Regulations are taken to have been cancelled, without the possibility of reinstatement; and

(c) no award may be made to the member under the DLSM Regulations until the member has returned to the Registrar all medals and clasps previously awarded to the member under these Regulations.

...

13. Replacing the Defence Force Service Awards with one Award - the Defence Long Service Medal. In 1994, the *Committee of Inquiry into Defence Awards* held a review of the Defence honours and awards system. The report recommended that the Defence Force Service Awards be replaced by one single long service award - the Defence Long Service Medal. The DLSM was introduced by Letters Patent on 26 May 1998 for the purpose of:

... according recognition to persons who render long and efficient service as members of the Defence Force...who have given qualifying service for a period of at least 15 years...where the service was given as a member of the Permanent Services or the Reserve Forces... and gave efficient service...¹³

14. The Regulations for the DLSM were amended on 30 March 2000¹⁴ and again on 2 January 2002.¹⁵ The relevant extracts of the Regulations as amended state:

...

Award of the Medal

3. *(1) The Medal may be awarded to a member, or former member, of the Defence Force (the member) who:*

(a) has given:

(i) qualifying service for a period of at least 15 years or periods that, in total, amount to at least 15 years; and

(ii) at least 1 day's qualifying service on or after 20 April 1994; or

(b) has given:

(i) qualifying service for a period of at least 15 years or periods that, in total amount to at least 15 years; and

¹³ Commonwealth of Australia Gazette No S352 Defence Long Service Medal Regulations dated 10 July 1998.

¹⁴ Commonwealth of Australia Gazette No S160, Amendment of the Defence Force Service Awards Regulations dated 30 March 2000.

¹⁵ Commonwealth of Australia Gazette No S2, Amendment of the Defence Long Service Medal Regulations dated 3 January 2002.

- (ii) *at least 1 day's qualifying service on or after 14 February 1975; and*
- (iii) *all of the qualifying service before 20 April 1994; and*
- (iv) *qualifying service, none of which can be recognised for the Defence Force Service Awards Regulations, either by reason of its length or its character.*

(2) *The Medal must not be awarded to a member who:*

- (a) *has completed the qualifying service required for the award of a medal under the Defence Force Service Awards Regulations (the DFSA Regulations), regardless of whether the member has received the award; and*
- (b) *has given other qualifying service that cannot be recognised for the DFSA Regulations, either by reason of its length or its character;*

unless the member:

- (c) *has made an election under sub-regulation 16A (2) or (3) of the DFSA Regulations to have all of the member's service recognised as qualifying service for these Regulations; and*
- (d) *has returned to the Registrar all medals and clasps (if any) previously awarded to the member under the DFSA Regulations.*

Award of clasp

4. *A clasp may be awarded to a person who:*

- (a) *has been awarded the Medal: and*
- (b) *has given qualifying service for each period of at least 5 years or periods that, in total, amount to at least 5 years, additional to the period mentioned in regulation 3.*

...

Award under the Defence Force Service Awards Regulations

6. *A person is not eligible to be the holder of both an award under the Defence Force Service Awards Regulations and an award under these Regulations.*

Note Regulation 16A of the Defence Force Service Awards Regulations provides for members and former members of the Defence Force to elect between awards under those Regulations and awards under these Regulations in relation to service that is qualifying service both for those Regulations and for these Regulations. ...

Lieutenant Commander Heather's Service Record

15. Lieutenant Commander Heather joined the Permanent Air Force on 9 January 1969, serving initially as a Radio Technician Air before being commissioned as a Navigator. On 21 July 1988 he discharged from the Permanent Air Force and enlisted in the Permanent Naval Force on the following day. He served in the Permanent Naval Force until 12 August 1997 having completed 28 years, seven months and four days of permanent service. For this permanent service Lieutenant Commander Heather qualified for and was awarded the DFSM with First and Second Clasps.

16. On 13 August 1997 Lieutenant Commander Heather enlisted in the Australian Naval Reserve and is still serving as a Reservist.

17. For his service to date Lieutenant Commander Heather has been awarded the:

- Australian Service Medal 1945-75 with Clasp 'SE ASIA',
- Australian Service Medal with Clasps 'KUWAIT' and 'SPECIAL OPS',
- DFSM with First and Second Clasps, and
- Australian Defence Medal.

Lieutenant Commander Heather's Submission

18. Lieutenant Commander Heather's initial application for the issue of a medal in June 2011 was for the 'Federation Star'.¹⁶ Following the rejection of this application and the offer to exchange his DFSM for the DLSM, Lieutenant Commander Heather advised the Directorate that he had decided not to exchange his medals.¹⁷

19. In 2013 Lieutenant Commander Heather again raised the matter of his entitlements with the Directorate by telephone. On 23 July 2013 he was again advised of the requirement to make a formal election and return his DFSM if he wished to pursue the DLSM.¹⁸ On 25 July 2013 he again affirmed his desire to retain the DFSM and acknowledged that 'I will not be entitled to the Federation Star'.¹⁹

20. On 3 June 2016 Lieutenant Commander Heather once again contacted the Directorate seeking confirmation that 'the issue of the Federation Star ... still comes with the caveat of handing back my DFSM ..?'²⁰ He was again advised that 'the election/exchange process remained the same and that should he proceed to make the election and exchange the medals, he would be entitled to the DLSM with 6 Clasps'.²¹

21. On 2 August 2016 Lieutenant Commander Heather informed the Directorate that he had decided to accept the exchange and 'surrender the DFSMs'.²² To date,

¹⁶ Application for the Issue of Medals, Lieutenant Commander Heather dated 15 June 2011.

¹⁷ E-mail from Lieutenant Commander Heather to Mr O'Brien DH&A dated 9 July 2011.

and despite follow-up enquiries, the DFSM has not been returned to the Directorate and no formal advice of an election to exchange has been received.

22. On 8 February 2018 Lieutenant Commander Heather referred the original decision to the Tribunal for review. Lieutenant Commander Heather's reasons for wanting the 'Federation Star' are best summarised in his comments on the Defence Submission.²³ He stated:

... the report [Defence Submission] succinctly outlines a long period of indecision on my part to hand back my DFSM for the DLSM in order to have my dedicated and effective service approaching 50 years recognized by the appropriate amount of Clasps and Federation Stars being awarded ... my final comment/decision after many months of reflection is to not exchange my DFSM award for the DLSM ...

I respectfully request consideration on being able to retain my DSM (sic DFSM) and receive the additional Bars and Federation Stars for the service I have given to the ADF ...

DHA are using the current policy that denies me receiving them without first handing in and thus destroying my DSM which means more to me than the DLSM. There would be very few current serving members that would have the DSM that would have reached the entitlement to the Federation Star let alone two and 11 months on the 9 Jan 19 three. Any amendment to the current policy to allow those DSM members to be awarded would not affect the spirit of DHA awards granted to all Defence members.

Should DHA grant those serving members to retain their DSM and add additional clasps and stars to it, it would serve two very important issues. Firstly, the honour and respect of being able to retain the first service medal most ever got to wear with pride, and secondly, it would simply be cheaper for the ADF in that they do not need to issue, engrave, post and handle the new honours, and also require the member pull apart his/her mounted medals and bear the cost of remounting.

I have currently served our nation in both the RAAF and RAN for over 49 years and intend in my current posting to bring up my 50th year of service and another Federation Star which I may never get to wear in recognition of my

¹⁸ E-mail from Mr Soldo DH&A to Lieutenant Commander Heather dated 23 July 2013.

¹⁹ Email from Lieutenant Commander Heather to Mr Soldo DH&A dated 25 July 2013.

²⁰ E-mail from Lieutenant Commander Heather to the Directorate dated 3 June 2016.

²¹ E-mail from Mr O'Brien DH&A to Lieutenant Commander Heather dated 25 July 2016.

²² E-mail from Lieutenant Commander Heather to the Directorate dated 2 August 2016.

²³ E-mail from Lieutenant Commander Heather to the Tribunal dated 30 April 2018.

service if not granted this request. My 20 years of continuous reserve service while serving as a Senior Search and Rescue (SAR) Coordinator with the National SAR organisation was in excess of 100 days per year. This adds to my request in as much as I was performing effective service to our Country ...

23. During the hearing Lieutenant Commander Heather stated that he wished to retain his DFSM and was not seeking to receive both medals; he acknowledged that this was not possible under the Regulations.²⁴ His major issue remained that his overall service of nearly 50 years should be recognised by one medal (being the DFSM) and the associated Federation Stars. He acknowledged that having read the associated Regulations, this was not possible as the DFSM is for Permanent service only.

Defence Submission

24. The Directorate's advice to Lieutenant Commander Heather regarding his eligibility to both awards have been consistent since 2011 at which time he was correctly told that his Reserve service from 13 August 1997 to the present could not be counted towards Clasps to the DFSM.²⁵ He was also advised at that time that he could make an election and exchange his DFSM for the DLSM. This advice was repeated in 2013,²⁶ and again in 2016.²⁷

25. The Defence Submission identified that the decision maker held an appropriate delegation.²⁸ On receipt of the Application for Review, the Directorate re-assessed Lieutenant Commander Heather's entitlement to the additional Clasps to the DFSM. The re-assessment found that Lieutenant Commander Heather had the appropriate qualifying service for the DFSM with First and Second Clasps but did not have 'sufficient qualifying service to establish entitlements to the Third or subsequent Clasps'.²⁹

26. The re-assessment established that Lieutenant Commander Heather was eligible for the DLSM with six Clasps, however it would be necessary for him to return his DFSM and DFSM Clasps before the DLSM and DLSM Clasps could be issued. It was further established by the Directorate that the effective date of qualification for the DLSM Sixth Clasp was 8 January 2014.

²⁴ Lieutenant Commander Heather, Oral Evidence, Hearing, Canberra, 6 August 2018.

²⁵ Email from Mr O'Brien DH&A to Lieutenant Commander Heather dated 4 July 2011.

²⁶ E-mail from Mr Soldo DH&A to Lieutenant Commander Heather dated 23 July 2013.

²⁷ E-mail from Mr O'Brien DH&A to Lieutenant Commander Heather dated 25 July 2016.

²⁸ DH&A OUT/2018/0019 to the Tribunal - *Defence Submission*, dated 11 April 2018, p.3.

²⁹ *Ibid.* p.31.

Tribunal Consideration

27. **General.** The Tribunal is required to review decisions ‘on the merits’. This requires an examination of the merits of the matter in dispute rather than the lawfulness of the decision under review.³⁰ The merits review revolves around the evidence and accordingly, the Tribunal conducts an independent review, with values, expertise, methods and procedures of its own, and not those of the decision-maker.

28. The facts, law and policy aspects of the decision are all considered afresh and a new decision made.³¹ 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.³² The Tribunal is bound to make what it regards as the ‘correct or preferable’ decision and must reach a decision that is legally and factually correct.

29. **The Reviewable Decision.** The *reviewable decision* is the decision by the Directorate of 4 July 2011 that informed Lieutenant Commander Heather that his Naval Reserve service from 13 August 1997 to the present could not be counted towards Clasps to the DFSM.³³ As Lieutenant Commander Heather was entitled to and was issued the DFSM with First and Second Clasps, the decision in effect refused to recommend him for subsequent Clasps.

30. The Tribunal is bound to consider the *reviewable decision* which is his entitlement to subsequent Clasps to the DFSM. Regardless of the final decision, should Lieutenant Commander Heather wish to pursue his entitlement to the DLMS, he should follow the procedures outlined in the Regulations for that award.

31. **Lieutenant Commander Heather’s Service Record.** Relying on the service record, the Tribunal was satisfied that Lieutenant Commander Heather joined the Permanent Air Force on 9 January 1969.³⁴ Relying on the Defence Submission and the Applicant’s own statement,³⁵ the Tribunal was reasonably satisfied that he transferred to the Permanent Naval Force on 22 July 1988 without a break in service and continued to serve in the Permanent Force until 12 August 1997. Lieutenant Commander Heather confirmed these dates during the hearing. The service record and Defence Submission indicate that Lieutenant Commander Heather’s Permanent Service was ‘efficient’ for the purposes of the Defence Force Service Awards Regulations and that for this service he qualified for and was awarded the DFSM with First and Second Clasps.

³⁰ *Council of Australian Tribunals Practice Manual* dated 7 April 2006 p.1.3.1.2.

³¹ Pearson, Linda, “Merit Review Tribunals”, in Creyke, Robin and McMillan, John, *Administrative Law – the Essentials*, AIAL 2002, p. 68.

³² *McDonald v Director-General of Social Security* (1984) 1 FCR 354.

³³ Email from Mr O’Brien DH&A to Lieutenant Commander Heather dated 4 July 2011.

³⁴ AFPEMS Personal Record Arthur Heather, Extract as at 11 April 1988.

³⁵ Application for Issue of Medals dated 15 June 2011.

32. The Tribunal therefore finds that Lieutenant Commander Heather completed 28 years, seven months and four days of efficient Permanent service.

33. Relying on the Defence Submission and the Applicant's own statement,³⁶ the Tribunal was reasonably satisfied that Lieutenant Commander Heather transferred to the Naval Reserve on 13 August 1997 and remains serving as a Reservist. Lieutenant Commander Heather confirmed these dates during the hearing. The Defence Submission indicates that Lieutenant Commander Heather's service in the Reserve has been 'efficient' in each of his enlistment years since transferring from the Permanent Force, however the Tribunal notes that there may be some doubt as to his status for enlistment year 2001-2002 as evidenced in the statement by the Directorate:

*According to available records, for enlistment year 13/08/2001 to 12/08/2002 you completed 15 days (minimum requirement) 20 days.*³⁷

34. **The Eligibility Criteria.** There is no dispute that Lieutenant Commander Heather qualified for and received the DFSM with First and Second Clasps. At issue is whether or not his period of Reserve service from 13 August 1997 to the present time entitles him to additional Clasps to this award. The Regulations clearly state that for the purposes of the DFSM, Clasps are for service 'as a member of the Permanent Force':

*6. A clasp to the Defence Force Service Medal may be awarded to a member of the Defence Force after the completion of each period of 5 years' efficient service as a **member of the Permanent Forces** after the completion of the qualifying service required by regulation 5.*³⁸ (Emphasis added by the Tribunal)

35. The Tribunal was reasonably satisfied that for the purposes of the Regulations, Lieutenant Commander Heather is a 'Category B member'. Accordingly, he retains an entitlement to elect to have his Permanent service recognised as qualifying service for the DLSM Regulations. However, *Regulation 16A* requires that should he make such an election, he would subsequently be ineligible for the DFSM, which would then be 'cancelled, without the possibility of reinstatement' and the award would have to be returned to the Registrar.

36. The Tribunal has no discretion in this matter. The Regulations are clear and unequivocal. Additionally, the DLSM Regulations clearly state that:

³⁶ Ibid.

³⁷ Email from Mr Steven O'Brien DH&A to Lieutenant Commander Heather dated 1017 hours 4 July 2011.

³⁸ *Commonwealth of Australia Gazette No S78 – Defence Force Service Awards Regulations* dated 27 April 1982.

6. A person is not eligible to be the holder of both an award under the Defence Force Service Awards Regulations and an award under these Regulations.

37. Accordingly, the Tribunal finds that Lieutenant Commander Heather is not entitled to subsequent Clasps to the DFSM as his service from 13 August 1997 was not in the Permanent Force and the Regulations preclude him from being the holder of both the DFSM and the DLSM.

38. **Lieutenant Commander Heather's Other Contentions.** Lieutenant Commander Heather submitted that if individuals were permitted to retain both awards it would provide 'honour and respect' and 'be cheaper for the ADF'. The Tribunal dismissed these assertions as the Regulations are explicit regarding retention of both awards. Additionally, honour and respect are not included in the purpose statements for either award.

39. Lieutenant Commander Heather also submitted that his service as a Senior Search and Rescue Coordinator 'adds to my request in as much as I was performing effective service to our Country'. The Tribunal dismissed this assertion as the subject awards are for Defence Service only.

Finding

40. For the reasons set out above, the Tribunal finds that Lieutenant Commander Heather is not eligible for the Third and subsequent Clasps to the DFSM and accordingly, the Tribunal finds that the decision of the Directorate is correct and is therefore affirmed.

41. In making this finding, the Tribunal acknowledges and thanks Lieutenant Commander Heather for his long and dedicated service to the nation in both a Permanent and Reserve capacity in the aggregate of almost fifty years.

DECISION

42. The Tribunal decided that Lieutenant Commander Arthur Heather, RAN is not eligible for the award of the Third and Subsequent Clasps to the Defence Force Service Medal.