



# Australian Government

## Defence Honours and Awards Appeals Tribunal

### **Olinski and the Department of Defence [2019] DHAAT 04 (23 April 2019)**

File Number 2019/038

Re **Mr Eric Olinski on behalf of Mr Sydney Olinski**  
Applicant

And **Department of Defence**  
Respondent

Tribunal Mr David Ashley AM (Presiding Member)  
Rear Admiral James Goldrick AO CSC RAN (Retd)

Appearances Mr Eric Olinski by telephone  
Ms Jo Callaghan, Directorate of Honours and Awards  
Mr Mark Jordan, Directorate of Honours and Awards

Hearing Date 1 April 2019

#### **DECISION**

On 23 April 2019 the Tribunal decided to affirm the decisions of the Directorate of Honours and Awards of the Department of Defence that Mr Sydney Olinski is not eligible for the Australian Service Medal 1945-75 with Clasp 'PNG', and that Mr Olinski is not eligible for the Meritorious Service Medal.

#### **CATCHWORDS**

DEFENCE AWARD – *Meritorious Service Medal – Australian Service Medal 1945 – 1975 with Clasp 'PNG'*

#### **LEGISLATION**

*Defence Act 1903 – Part VIIIIC – Sections 110T, 110VB(2)*  
*Defence Amendment Regulations (No.1) 2010 – Schedule 3 Part 2*  
*Defence Regulation 2016 – Part 6*  
*Commonwealth of Australia Gazette S74, Instrument of Declaration and Determination for the Australian Service Medal 1945-1975 with Clasp 'PNG' dated 30 April 2009*  
*The Australian Meritorious Service Medal Regulations 1932, published in Regulations for The Efficiency Decoration, The Efficiency Medal, The Medal for Long Service and Good Conduct (Military), the Meritorious Service Medal, The Cadet Forces Medal, reprinted with amendments dated 1 October 1958.*

## REASONS FOR DECISION

### Introduction

1. On 26 August 2008, the Applicant Mr Eric Olinski (Mr Olinski) submitted an application to the Directorate of Honours and Awards in the Department of Defence (the Directorate) on behalf of his late father, Mr Sydney Olinski (WO1 Olinski), for an assessment of his father's eligibility for the award of the Meritorious Service Medal (the MSM).<sup>1</sup>
2. On 15 September 2008, the Directorate wrote to Mr Olinski stating in part, '*Defence can no longer make recommendations to the Governor-General, or indeed the Sovereign, in respect of eligibility for Imperial awards*' and '*Given the circumstances described above, you will note that a claim...for the MSM for your father's service cannot be progressed*'.<sup>2</sup>
3. On 22 September 2008, Mr Olinski submitted an application to the Directorate on behalf of his father for both the MSM and the Australian Service Medal (ASM) 1945-1975 with Clasp 'PNG'.<sup>3</sup>
4. On 27 October 2008, the Directorate wrote to Mr Olinski reiterating its earlier advice to Mr Olinski regarding the MSM and stating '*examination of Mr Olinski's service records indicate that he served in PNG from 14 November 1975 to 9 December 1977. As he did not serve in PNG for 30 days during the qualifying period he does not qualify for the ASM 1945-75 with Clasp 'PNG*'.<sup>4</sup>
5. From that date until his application for review to the Tribunal, various correspondence occurred between Mr Olinski and the Directorate regarding medallic recognition for his father.
6. On 16 July 2018, Mr Olinski applied to the Tribunal for a review of the decision of 15 September 2008 in respect of his father's eligibility for the MSM. Mr Olinski also attached an application for review of a decision of the Directorate to refuse to issue him with the Returned from Active Service Badge (RASB) in respect of his father's service.<sup>5</sup>
7. On 26 July 2018, Mr Olinski provided further material in respect of his applications, and indicated that, in addition to the RASB, he sought review of decisions of the Directorate of his father's eligibility for the ASM 1945-75 with Clasp 'PNG'. In doing so, Mr Olinski provided a copy of a letter from the Directorate of 12 March 2015, refusing to recommend his father for this award, and asked the Tribunal to consider the letter in the context of his claim for the award.<sup>6</sup>

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<sup>1</sup> Letter, Mr Olinski to the Directorate of Honours and Awards, 26 August 2008.

<sup>2</sup> Letter, 2008/1045261/12(22) Directorate to Mr Olinski, 15 September 2008.

<sup>3</sup> Letter, Mr Olinski to the Directorate, 22 September 2008.

<sup>4</sup> Letter, 2008/1000100/287 (8) Directorate to Mr Olinski, 27 October 2008.

<sup>5</sup> Application for Review of Decision from Mr Olinski dated 16 July 2018. Note that The Defence Honours and Awards Manual states that the RASB is only to be worn by the person to whom it was issued, and is not issued posthumously.

<sup>6</sup> Letter, Mr Olinski to the Tribunal Secretariat, 26 July 2018.

8. On 9 August 2018, the Chair of the Tribunal wrote to the Secretary of the Department of Defence seeking a report on the decisions of Defence to deny WO1 Olinski the ASM 1945-75 with Clasp 'PNG' and the MSM.<sup>7</sup> On 20 September 2018, Defence provided its report.<sup>8</sup>

9. On 10 August 2018 the Tribunal wrote to Mr Olinski accepting jurisdiction in regard to the MSM and ASM 1945-75 with Clasp 'PNG', and in doing so informed him that the Tribunal has no jurisdiction to review eligibility for the RASB.<sup>9</sup>

10. For his 26 years of service with the Australian Regular Army, WO1 Olinski was recognised with the following defence awards, and foreign awards:

- Australian Active Service Medal 1945-1975 with Clasp 'VIETNAM'
- Vietnam Medal
- Defence Force Service Medal with First and Second Clasps
- National Medal with First Clasp
- Australian Defence Medal
- Long Service and Good Conduct Medal
- Republic of Vietnam Campaign Medal

11. Of relevance to the claim for the ASM 1945-1975 with Clasp 'PNG', WO1 Olinski served in Papua New Guinea from 14 November 1975 to 9 December 1977.

### **The Tribunal's Jurisdiction**

12. 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. Schedule 3, Part 2 of the *Defence Force Amendment Regulations 2011 (No.1)*, which amended the *Defence Force Regulations 1952*, defines what constitutes a defence award. Included in the Schedule are both the MSM and the ASM 1945-1975. The RASB is not included in this schedule.<sup>10</sup>

13. The Tribunal is therefore satisfied that it has jurisdiction to review the application for the MSM and ASM 1945-1975 with Clasp 'PNG', but concluded that it does not have jurisdiction to review the decision by Defence in respect of the RASB.

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<sup>7</sup> Letter, DHAAT/OUT/2018/493, Tribunal to Department of Defence dated 9 August 2018.

<sup>8</sup> Report, DH&A/OUT/2018/0071 Review of Recognition dated 20 September 2018.

<sup>9</sup> Letter DHAAT/OUT/2018/516, Tribunal to Mr Olinski dated 10 August 2018.

<sup>10</sup> 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 Mr Olinski's applications were made on 22 September 2008 and 1 August 2014, the *Defence Force Regulations 1952* apply.

## The Meritorious Service Medal

14. The MSM is an award established under the Imperial Honours and Awards System. Awards under this system were used to recognise the long service of Australian Defence Force members until 13 February 1975, when the Australian Honours and Awards System was introduced, commencing with the National Medal.

15. The eligibility criteria for the MSM for the Australian Army are found in *The Australian Meritorious Service Medal Regulations, 1932*, published in Regulations for *The Efficiency Decoration, The Efficiency Medal, The Medal for Long Service and Good Conduct (Military), The Meritorious Service Medal, The Cadet Forces Medal*, reprinted with amendments - dated 1 October 1958. These state:

“4. To be qualified to receive the Medal, a soldier of the Permanent Military Forces of the Commonwealth must:

- (a) have completed twenty-two years of efficient, faithful, valuable, and meritorious qualifying service within the meaning of these Regulations; and
- (b) have been awarded previously a Medal for long service and good conduct; and
- (c) have served in the rank of sergeant or a superior rank in a force mentioned in regulation 5; and
- (d) be recommended by his Commanding Officer.

.....

6. (1) The service of a soldier shall be regarded as meritorious within the meaning of these Regulations only if he has displayed ability, zeal, and devotion to duty, above the average.
- (2) Notwithstanding that a soldier would be entitled, if being discharged, to an exemplary character, his Commanding Officer shall have regard to the number and nature of the offences recorded in the soldier's conduct sheets, irrespective of the punishments imposed, and shall not recommend an award of the Medal, unless in his opinion, the soldier is, in every way, worthy of the distinction that would be conferred by the award.<sup>11</sup>

## Australian Service Medal 1945-1975 with Clasp ‘PNG’

16. The eligibility criteria for awarding the ASM 1945-1975 with Clasp ‘PNG’, are contained in paragraphs (b) and (c) of the *Commonwealth of Australia Gazette S74, Instrument of Declaration and Determination for the Australian Service Medal 1945-1975 with Clasp ‘PNG’* – dated 30 April 2009. These:

- (b) **declare**, under regulation 3 of the Regulations, the following non-warlike operation in which members of the Australian Defence Force who render service in the Territory of Papua and the Territory of New Guinea, as

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<sup>11</sup> Regulations Relating to the Meritorious Service Medal in the Australian Permanent Military Forces (short title ‘The Australian Meritorious Service Medal Regulations, 1932’), p.28

administered in an administrative union under the name of the Territory of Papua and New Guinea or the name of Papua New Guinea, and inclusive of all islands forming part of either territory to a distance of 161 kilometres to seaward from the coast:

- (i) Activities in which members of the Australian Defence Force who render service engaged in nation building tasks, training and administering prospective members of the national armed forces of the Territory of Papua New Guinea and humanitarian relief in aid of the territory of Papua New Guinea, during the period commencing on 3 September 1945 and extending to the independence of Papua New Guinea on 16 September 1975;

to be a *prescribed operation* for the purposes of the Regulations;

- (c) **determine** under subregulation 4(2) of the Regulations, that the conditions for the award of the Australian Service Medal 1945-1975 with Clasp ‘PNG’ (“the medal”) for that *prescribed operation* are that:
  - (i) The Medal may be awarded to a member of the Australian Defence Force who rendered assigned service as such a member of the Australian element for duty to the *prescribed operation for a prescribed period*;
  - (v) in this paragraph “*prescribed period*” for the *prescribed operation* at subparagraph b(i), means, in relation to subparagraphs c(i), c(iii), and (iv) a period of not less than an aggregate of 30 days.<sup>12</sup>

## Summary of the Hearing

17. The hearing was conducted in Canberra on 1 April 2019, at which Mr Olinski appeared by telephone.

18. The Tribunal stated to Mr Olinski that it is limited to dealing with honours and awards identified at Schedule 3 to the *Defence Force Amendment Regulations 2011* (No. 1). The Tribunal confirmed with Mr Olinski that, as the RASB is not included in that Schedule, the Tribunal has no jurisdiction to deal with this award.

19. The Tribunal then discussed the ASM 1945-75 with Clasp ‘PNG’. The Tribunal drew Mr Olinski’s attention to his response to the Defence Report.<sup>13</sup> In this response Mr Olinski stated ‘*After reading all material in this report I am of the view that I have made an error in making the application for the Aust Service Medal 1945-75 with Clasp ‘PNG’ for my father. I was not aware of the qualifying period extending to the independence of PNG on 16 Sep, so he is not entitled to this award*’. After being asked by the Tribunal, Mr Olinski agreed to the Tribunal’s stated intention to affirm the decision of Defence not to award his father the ASM 1945-1975 with Clasp ‘PNG’.

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<sup>12</sup> Commonwealth of Australia Gazette S74, Instrument of Declaration and Determination for the Australian Service Medal 1945-1975 with Clasp ‘PNG’ dated 30 April 2009

<sup>13</sup> Letter from Mr Eric Olinski to DHAAT dated 11 October 2018.

20. The Tribunal then informed Mr Olinski that it would exclusively address the Defence refusal to recommend his father for the MSM.

21. In his statement, Mr Olinski asserted that his father's records of performance were 'above average' and that 'many years before – just for that (discipline) – judged pretty hard' and 'didn't take into account the remarks in his reports – above average'. He then stated that he 'sticks by his submission'.

22. The Tribunal called Mr Olinski's attention to the Directorate's letter of 15 September 2008, which discussed the relationship between, and availability of Imperial and Australian long service awards. In particular, Mr Olinski's attention was drawn to the statement in the letter '*Further in 1992, the then Prime Minister announced that Her Majesty the Queen had indicated her view that Australian citizens should be recognised exclusively by the Australian Honours and Awards System. Statutes for Imperial awards were amended to exclude recognition of Australians for Australian service. As a consequence, the Department of Defence can no longer make recommendations to the Governor-General, or indeed the Sovereign, in respect for eligibility for Imperial awards*'. Mr Olinski did not dispute the technical accuracy of this statement. The Tribunal went on to explain to Mr Olinski that in light of the decisions discussed in the letter, it did not have the power to make recommendations for Imperial awards.

23. The Tribunal called Mr Olinski's attention to the eligibility criteria for the MSM, as set out in the Regulations.<sup>14</sup> The Tribunal stated that while it appears that Mr Olinski's father met the criteria of sub-paras (b) through (d), paragraph 4 (a) states that the member must '*have completed twenty-two years of efficient, faithful, valuable and meritorious qualifying service within the meaning of these Regulations*'.

24. The Tribunal then drew Mr Olinski's attention to the 'paper trail' of the recommendation for the MSM by his father's unit, the endorsement of that recommendation by 3 EME Group; and the non-approval by Army Office. The Tribunal advised Mr Olinski that the non-approval appeared to state the reason as being his father's discipline record, specifically the award of a Severe Reprimand on 2 November 1962. The Tribunal asked Mr Olinski if it might be the case that because of his father's discipline record, Army Office made the decision that his father's service did not satisfy the criteria required at paragraph 4 (a) to the Regulations. Mr Olinski stated that it would be '*hard to say*' whether this might be the case.

25. The Tribunal then called Mr Olinski's attention to the contemporary Army Office guidance given to Commanding Officers in recommending a member for the award of the MSM.<sup>15</sup> The Tribunal drew Mr Olinski's attention to paragraph 3(a) of that guidance which states a requirement for, '*A regimental conduct sheet clear of entries, for the last 10 years of the qualifying period of 18 years service for the LS & GCM, and for the additional four years for the MSM*'. The Tribunal then explained to Mr Olinski that his

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<sup>14</sup> Regulations Relating to the Meritorious Service Medal in the Australian Permanent Military Forces (short title 'The Australian Meritorious Service Medal Regulations, 1932'), p.28

<sup>15</sup> Director of Personnel Services Army Headquarters Minute A81/1(A3) 'Recommendations for Long Service Awards' dated 30 October 1959.

father's award of a Severe Reprimand fell within that qualifying period for the MSM. After some conversation Mr Olinski stated that he understood how those rules applied.

26. The Tribunal asked Mr Olinski if he disputed Army Office's authority to make the decision not to award the MSM to his father. After some discussion Mr Olinski stated *'How could I?'*

27. The Tribunal then asked Mr Olinski whether he had accepted that Defence can no longer make recommendations to the Governor-General for Imperial awards, and that his father seems to have been in receipt of the 'full-suite' of Australian long service awards, all with their own specific eligibility criteria. Given these facts, the question was what decision with regard to the MSM the Tribunal could, or should make. After some discussion, Mr Olinski only accepted that his father had been awarded a Severe Reprimand at a time when his Regimental Conduct Sheet should have been clear of entries.

28. In its statement, the Directorate acknowledged WO1 Olinski's service and his contribution to the defence of Australia, and restated its position that WO1 Olinski is not eligible for the MSM or the ASM 1945-1975 with Clasp 'PNG'.

29. In his closing statement, Mr Olinski stated that *'It did not seem fair – that he had that reprimand in 1962 and it was still on his record.'*

#### **Issues for the Tribunal:**

#### **Does the Tribunal have the power to make or recommend the making of an Imperial award?**

30. The Tribunal has no power to make or recommend an Imperial award.

#### **Did Army Office at the time of the non-approval of the MSM have the authority to deny the award, and was the decision appropriate in the circumstances?**

31. The Tribunal considers that Army Office at the time was the most appropriate authority to determine if a member of the Army met the criteria for the MSM, as set out in the Regulations for the award, specifically if the member, in this case WO1 Olinski, satisfied paragraph 4 (a) of those regulations, that the member *'have completed twenty-two years of efficient, faithful, valuable and meritorious qualifying service within the meaning of these regulations'*.

32. The Tribunal is satisfied the guidance provided by the Military Board dated 30 October 1959 was sufficient to allow the authority to make a determination not to approve the award of the MSM to WO1 Olinski. Specific to this decision is paragraph 3(a) of this document, which states that the requirement was for *'A regimental conduct sheet clear of entries, for the last 10 years of the qualifying period of 18 years service for the LS & GCM, and for the additional 4 years for the MSM.'*

33. The Tribunal is satisfied that on the evidence available, WO1 Olinski (then a Sergeant) was awarded a Severe Reprimand on 2 November 1962. The Tribunal is satisfied that this award of a Severe Reprimand fell within the period where ‘*A regimental conduct sheet clear of entries*’ applied in regard to the award of the MSM.

34. The Tribunal considers that the decision by Army Office not to award the MSM to the then WO1 Olinski was within their power and was appropriate in the circumstances.

### **Can the Tribunal make another award in lieu of the MSM?**

35. The Tribunal notes that, together with the Imperial Long Service and Good Conduct Medal, WO1 Olinski has been awarded the Australian Defence Medal, the National Medal and the Defence Force Service Medal with first and second clasp, with the latter in recognition of 25 years of service. The Tribunal notes that WO1 Olinski served for about 26 years. Noting that each Australian long service award has its own specific eligibility criteria and that the MSM has unique eligibility criteria, and is an Imperial award, it can make no award in lieu of the MSM.

### **Finding**

36. The Tribunal finds that Mr Sydney Olinski is not entitled to the award of the ASM 1945-75 with Clasp ‘PNG’, due to his service in country being after the end of the qualifying period.

37. The Tribunal finds for the reasons given in this report that Mr Olinski is not entitled to the award of the MSM.

### **Decision**

38. The Tribunal affirms the decisions of the Directorate of the Department of Defence that Mr Sydney Olinski is not eligible for the award of the Australian Service Medal 1945-75 with Clasp ‘PNG’, and is not eligible for the award of the Meritorious Service Medal.

39. The Tribunal acknowledges the courtesy and cooperation of the Directorate and the applicant, Mr Eric Olinski.

40. The Tribunal acknowledges the late Mr Sydney Olinski’s commitment to our nation through his service with the Australian Army for a period of 26 years.