



## Australian Government

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### Defence Honours and Awards Appeals Tribunal

#### **Ian Patrick and the Department of Defence [2014] DHAAT 13 (17 April 2014)**

**File number** 2013/010

**Re** **Ian Norman Patrick**  
Applicant

**And** **Department of Defence**  
Respondent

**Tribunal** Ms C. Heazlewood (Chair)  
Vice Admiral D. Chalmers AO, RAN (Retd)

**Hearing Date** 11 March 2014

#### **DECISION**

On 17 April 2014 the Tribunal decided to affirm the decision of the Director Honours and Awards of the Department of Defence that Mr Ian Patrick is not eligible to receive the Australian Defence Medal.

#### **CATCHWORDS**

*DEFENCE AWARD* – refusal to recommend the award of the Australian Defence Medal – enlistment period - ‘free discharge’ from the Royal Australian Navy.

#### **LEGISLATION**

*Defence Act 1903* – ss 110V(1), 110VB(2)  
*Defence Force Regulations* – Reg 93C  
*Australian Defence Medal Regulations 2006* – Reg 4  
*Naval Defence Act 1910*  
Australian Book of Reference 5106

## **REASONS FOR DECISION**

### **Introduction**

1. The applicant, Mr Ian Norman Patrick (Mr Patrick) seeks review of the ultimate decision of the Director Honours and Awards of the Department of Defence (the Director) on 10 June 2010 that he was not eligible for the Australian Defence Medal (ADM). Mr Patrick sought review of this decision by the Tribunal on 10 April 2013

2. Mr Patrick first applied for the ADM on 19 July 2006. The Director rejected this claim on 30 November 2006, which resulted in Mr Patrick requesting a reassessment on 30 January 2007. The Director affirmed the original decision on 27 August 2007. On 24 August 2009 the Director received a request from the Deputy Prime Minister to reassess Mr Patrick's eligibility. A further assessment was undertaken and the original decision was affirmed on 10 June 2010.

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

3. Pursuant to s110VB(2) of the *Defence Act 1903* (the Defence Act) the Tribunal has jurisdiction to review a reviewable decision 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 a defence award in response to an application. The Directorate made a decision to refuse to recommend Mr Patrick for the ADM following his application. Reg 93C of the *Defence Force Regulations* defines a *defence award* as being those awards set out in Part 2 of Schedule 3. Included in the defence awards set out in Part 2 is the ADM. Therefore the Tribunal has jurisdiction to review this decision.

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

4. In accordance with the *Defence Honours and Awards Appeals Tribunal Procedural Rules 2011 (No.1)*, on 10 April 2013, the Tribunal wrote to the Secretary of the Department of Defence informing him of Mr Patrick's application for review and requesting that he provide a report. On 5 June 2013, the Directorate on behalf of the Secretary provided the Tribunal with a report. A copy of the report of the Directorate was forwarded to Mr Patrick for comment. Mr Patrick provided a response to the Tribunal in writing on 28 June 2013.

### **The Australian Defence Medal**

5. The ADM was instituted by Her Majesty The Queen by Letters Patent on 20 March 2006, *for the purpose of according recognition to Australian Defence Force personnel who have served for a minimum of six years since the end of World War II*. The Defence Force Service Awards Regulations are set out in the Schedule attached to the Letters Patent. Those Regulations were amended between 2005 when they were originally instituted and 20 March 2006. As a result of that amendment the minimum period of service became four years. Regulation 4 of the amended Regulations states:

- (1) *The Medal may be awarded to a member, or former member, of the Defence Force who after 3 September 1945 has given qualifying service that is efficient service:*
  - (a) *by completing an initial enlistment period; or*
  - (b) *for a period of not less than 4 years service; or*
  - (c) *for periods that total not less than 4 years; or*
  - (d) *for a period or periods that total less than 4 years, being service that the member was unable to continue for one or more of the following reasons:*
    - (i) *the death of the member during service;*
    - (ii) *the discharge of the member as medically unfit due to a compensable impairment;*
    - (iii) *the discharge of the member due to a prevailing discriminatory Defence policy, as determined by the Chief of the defence Force or his or her delegate.*
- (2) *For subregulation (1), the Chief of the Defence Force or his or her delegate may determine that a period of the member's qualifying service is efficient service.*

6. The Chief of the Defence Force (CDF) has made three determinations pursuant to Reg 4(2), none of which is relevant to this matter. Under Reg 4(1)(d)(iii) the CDF has determined that the following defence policies were discriminatory:

- discharge of a female members upon marriage;
- discharge of a female members upon childbirth; and
- discharge of Australian Defence Force members on grounds of homosexuality.

### **Mr Patrick's Service Record**

7. Mr Patrick enlisted in the Royal Australian Navy (RAN) on 9 April 1966 for a period of nine years. He received a 'free discharge' on 16 October 1968 after two and a half years of service.

8. Mr Patrick was 17 years old when he enlisted and 19½ years old when he was discharged. The record of service reveals that a 'free discharge' was applied for in either late 1967 or early 1968. This application was not approved on 24 January 1968. A further application was made and then approved on 11 September 1968.

9. The Tribunal learned that before 1960 a 'free discharge' could be applied for under s 29 of the *Naval Defence Act 1910*. This section was repealed and replaced by clause 0885 of the Australian Book of Reference 5016 (Regulations and Instructions for the Royal Australian Navy). Clause 0885 provided that a member can be discharged before their engagement expires in exceptional circumstances which are usually only compassionate grounds.

### **Mr Patrick's Submission**

10. In his application for review Mr Patrick said that he was in receipt of the TPI [Totally and Permanently Incapacitated] (Special Rate) Pension as a result of his RAN

service. He suffers from Post Traumatic Stress Disorder (PTSD), depression, heart disease and diabetes. He thought that he was subject to a discriminatory policy because a member had to serve longer in the RAN to be entitled to receive the ADM. The example he provided was that members of philanthropic organisations did not have to serve as long as RAN personnel to be eligible to receive the ADM.

11. In his written submission to the Tribunal Mr Patrick said that he did not apply for a discharge. In October 1968 he had been told that his discharge was through. He said that he did not understand why he was discharged at the time and no one in the RAN explained his discharge. Mr Patrick said that he now thought his discharge might have had something to do with his mother. He reiterated his complaint that other military personnel were eligible to receive the ADM after serving for periods less than four years.

12. Mr Patrick said that he was not medically unfit when he was discharged but he was now. He had contracted pleural plaque as a result of being exposed to asbestos when he served in the RAN. Mr Patrick said that he does a lot of voluntary work for the Vietnam Veterans Association, Legacy, the Returned and Services League of Australia (RSL) and the TPI Association.

13. The Tribunal spoke to Mr Patrick by conference telephone on 11 March 2014. Mr Patrick told the Tribunal that he was under a great deal of stress and is finding it very difficult to sleep. He reiterated his earlier advice that he had not applied for a discharge. He had assumed that his mother had applied for him to be discharged. His brother was in the Army but he was not serving in Vietnam at that time. His mother was divorced and she might have applied to the RAN for his discharge because she needed him at home to help care for his two sisters. He had not wanted to be discharged because he wanted to pursue a career in the RAN. His whole family had served in the Armed Forces.

14. The Tribunal discussed with Mr Patrick his claim that he had been discriminated against because RAN personnel had to serve a longer period to receive the ADM. The example referred to by Mr Patrick was that national servicemen only had to serve for one year to be eligible for the ADM. The Tribunal explained the eligibility criteria set out in the Regulations and pointed out that a member had to serve their enlistment period to be eligible for the ADM. If a national serviceman's period of enlistment was one year, then he would satisfy the criteria after one year's service.

### **The Director's Submission**

15. The Director submitted that a 'free discharge' was given to a long serving member of the RAN to enable a swift and simple exit. It then developed into a method for providing a compassionate discharge in special circumstances.

16. An examination of Mr Patrick's service record revealed that he had enlisted for an initial enlistment period of nine years on 9 April 1966. He was discharged 'free' at his own request on 16 October 1968. Mr Patrick did not meet the eligibility criteria and therefore could not be awarded the ADM.

## **The Tribunal's Consideration**

17. Regulation 4(1) states that a former member of the Defence Force must have served either his initial enlistment period or a period of service that amounted to four years in total. There are exceptions to these criteria set out in Reg 4(1)(d); the first two of which do not apply to Mr Patrick. The Determinations of the CDF under Reg 4(2) do not apply to Mr Patrick's situation. The three Defence policies determined by the CDF to be discriminatory do not apply to Mr Patrick.

18. The Tribunal finds that Mr Patrick enlisted in the RAN on 9 April 1966 for an initial enlistment period of nine years. Mr Patrick was given a 'free discharge' on 16 October 1968. He served for a total period of two and a half years and thus did not serve for his initial enlistment period or for a period of four years. Therefore Mr Patrick is not eligible to be awarded the ADM.

19. The Tribunal is not able to say why Mr Patrick was given a 'free discharge' because the reason is not recorded in his service record. However it seems reasonable to conclude that his family situation may have influenced the decision.

20. Mr Patrick claimed that he was discriminated against because there was a Defence policy that a RAN member had to serve for a longer period than any other serviceman and therefore the exception set out in Reg4(1)(iii) should apply to him. The Tribunal was not provided with any policy indicating that a member of the RAN had to serve for a longer period than any other member of the Defence Force and concludes that no such policy exists.

21. The Tribunal can understand why Mr Patrick believed that he was discriminated against. He has met a number of people who were former national servicemen who have been awarded the ADM. They served for a lesser period than he did and this seemed to Mr Patrick to be unfair and lead him to believe that he was being discriminated against. The Tribunal explained to Mr Patrick that the Regulations required the member to serve their initial enlistment period and this could be for a period of as little as one year for some national servicemen. The Tribunal could understand why Mr Patrick thought this was unfair but explained that it must make its decision according to the law set out in the Regulations.

22. The Tribunal notes that Mr Patrick suffers from a debilitating condition as a result of his service with the RAN. He is receiving a special rate pension because of this disability. In spite of his incapacity Mr Patrick has continued to provide support to former members of the Defence Force. The Tribunal applauds Mr Patrick's kindness but notes that this cannot change the decision.

## **TRIBUNAL DECISION**

23. The Tribunal has decided to affirm the decision of the Director Honours and Awards of the Department of Defence that Mr Ian Patrick is not eligible to receive the Australian Defence Medal.