



## Australian Government

### Defence Honours and Awards Appeals Tribunal

#### **Hare and the Department of Defence [2019] DHAAT 13 (17 October 2019)**

File Number(s) 2019/008

Re **Mr Stanley Hare**  
Applicant

And **The Royal Australian Navy** on behalf of **the Department of Defence**  
Respondent

**Tribunal** Brigadier Mark Bornholt, AM (Retd) (Presiding Member)  
Rear Admiral James Goldrick, AO, CSC, RAN (Retd)  
Ms Josephine Lumb

**Hearing Date** 17 September 2019

#### **DECISION**

On 17 October 2019 the Tribunal decided to recommend to the Minister for Defence Personnel that the decision by the Chief of Navy to not recommend Mr Stanley Hare for a defence honour for his actions in HMAS *Duchess* in 1965 – 1966 be affirmed.

#### **CATCHWORDS**

DEFENCE HONOUR – *Bravery – Gallantry Decorations – Vietnam – Royal Australian Navy – HMAS Duchess*

#### **LEGISLATION**

*Defence Act 1903 – ss 110V(1), 110VA, and 110VB(1)*  
*Defence Regulation 2016 – Section 35*

## REASONS FOR DECISION

### Introduction

1. The applicant, Mr Stanley Hare seeks review of a decision by the Chief of Navy to not recommend him for a defence honour for his actions in dealing with a displaced 4.5 inch High Explosive projectile whilst he was serving in HMAS *Duchess* in 1965 – 1966.

2. On 4 November 2016, the President of the Vietnam Veterans' Peacekeepers' and Peacemakers' Association of Australia, Central Coast Branch (VVPPA) made application to the Directorate of Honours and Awards in the Department of Defence (the Directorate) on behalf of Mr Hare and two of his shipmates seeking that they 'be recognised for their actions in preventing a catastrophic incident'.<sup>1</sup> The application indicated that during a live firing exercise conducted by *Duchess* during operational duties sometime in 1965-66, a 4.5 inch High Explosive Variable Time projectile fell from its loading ring damaging the fuze, and Ordinary Seaman Hare, fearing the projectile would detonate, picked it up and made his way onto the upper decks before disposing of it overboard.

3. The Directorate sent the original application to Navy Strategic Command on 21 March 2017 for consideration.<sup>2</sup> On 1 August 2018, the Staff Officer Honours and Awards at Navy Strategic Command determined that in the absence of documentary evidence to support the application, 'no award will be processed'.<sup>3</sup> On 27 August 2018 Mr Hare wrote to the Directorate refuting the Navy response, challenging the veracity of the Reports of Proceedings (ROP) relied upon in making the determination and seeking that the Directorate reconsider the matter.<sup>4</sup>

4. On 7 February 2019, during conversations with Directorate staff, Mr Hare provided further information and confirmed that he was seeking a gallantry award to recognise his actions because he 'believed that (he) was saving lives'.<sup>5</sup> He said that at the time of the incident:

*the ship was loaded with ammunition and I believed that the shell might detonate and then detonate all the stored ammunition on board.*

5. Navy Headquarters reviewed the matter and produced a position paper dated 27 February 2019 (the Navy Report).<sup>6</sup> That report was subsequently considered by the

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<sup>1</sup> VVPPA letter to DH&A dated 4 November 2016.

<sup>2</sup> DH&A letter 600556 to VVPPA dated 21 March 2017.

<sup>3</sup> Navy Strategic Command SACA 15433 to VVPPA dated 1 August 2018.

<sup>4</sup> Mr Hare letter to DHA dated 27 August 2018.

<sup>5</sup> Email Correspondence between DH&A and Mr Hare dated 7 February 2019.

<sup>6</sup> Navy Headquarters letter BS1601919 to DH&A dated 27 February 2019.

Defence Historical Honours Review Board (the Review Board) on 28 February 2019. The Review Board decided that:

*Mr Hare's actions were a young man's reaction to a perceived dangerous situation, but not of such merit to deserve retrospective recognition*<sup>7</sup>

6. On 16 March 2019 the Chief of Navy wrote to Mr Hare to inform him that he had agreed with the Review Board's determination to not recommend a defence honour.<sup>8</sup> He acknowledged Mr Hare's service and his 'noteworthy' actions and presented him with a memento, in the form of a Chief of Navy coin, to express his personal recognition of Mr Hare's 'positive behaviour'.

7. On 3 April 2019 Mr Hare made application to the Tribunal for a review of the Chief of Navy's decision.<sup>9</sup>

### **Tribunal Jurisdiction**

8. Pursuant to s110VB(1) of the *Defence Act 1903* (the 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.

9. The Tribunal was satisfied that the letter dated 4 November 2016 by the VVPPA to the Directorate seeking recognition for Mr Hare constituted an application as defined in s110V(1)(c) of the Defence Act. The Tribunal noted that Mr Hare had clarified in later correspondence that he was seeking a gallantry award for his actions. Section 35 of the *Defence Regulation 2016* lists defence honours including gallantry awards for the purposes of s110T of the Act.

10. The Tribunal was satisfied that the Chief of Navy's letter to Mr Hare dated 16 March 2019 constituted a refusal to recommend him for a gallantry award, thereby meeting the requirements of s110V(1)(a) and (b) of the Act. Accordingly, the Tribunal has jurisdiction to conduct a merits review of the decision.

11. In accordance with s110VB(1) of the Act, as the matter under review relates to 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.

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<sup>7</sup> Historical Honours Review Board meeting minutes dated 28 February 2019.

<sup>8</sup> Chief of Navy letter CN/2019/OUT/168 to Mr Hare dated 16 March 2019.

<sup>9</sup> Application for Review of Decision by Mr Hare dated 29 March 2019 and covered by a letter to the Tribunal dated 3 April 2019.

## Conduct of the review

12. In accordance with its *Procedural Rules 2011*, on 11 April 2019, the Tribunal wrote to the Secretary of the Department of Defence informing him of Mr Hare's review and requested a report on the material questions of fact and the reasons for the decision made in relation to Mr Hare's recognition.<sup>10</sup>

13. On 8 July 2019, the Directorate provided the Defence Submission recommending that the decision of the Chief of Navy be affirmed.<sup>11</sup> The Defence Submission was forwarded to Mr Hare and his comments were received on 1 August 2019.<sup>12</sup>

14. The Tribunal met on 25 July 2019 at the Australian National Maritime Museum where it considered the material provided by Defence and Mr Hare and the Tribunal's own research. The Tribunal visited HMAS *Vampire*, a similar class of vessel (modified Daring Class Destroyer) to *Duchess*, to familiarise itself with the physical environment in which the incident occurred. Although there were design differences between the two ships, the Tribunal was satisfied that their layout is the same in the compartments relevant to Mr Hare's application.

15. The Tribunal noted that in accordance with its *Procedural Rules 2011* the hearing into this matter would need to be conducted in public and accordingly, Mr Hare was invited to provide evidence at a hearing held in Terrigal on 17 September 2019. Mr Hare was accompanied by his wife Mrs Christine Hare at the hearing. An eye-witness to the incident, Mr Kevin Donnelly gave evidence by telephone and a further eye witness, Mr John Dunn tabled a supplementary statement. During the hearing Captain Damien Allan, RAN (Retd), the Director, Navy Heritage Collections gave expert evidence relating to the gunnery systems on *Duchess*. Navy was represented at the hearing by Commodore K.A.R. Richards, CSC, RAN, the Chief of Staff at Navy Headquarters. The Directorate was represented by the Director Ms Petrina Cole.

## What Does Mr Hare Seek?

16. The VVPPA original application to the Directorate asked that '... the incident be investigated and the appropriate award be awarded ...'.<sup>13</sup> On 7 February 2019 the Directorate asked Mr Hare what outcome he sought from the application and in an email response he said that he had 'received medals for my active service but it would be nice

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<sup>10</sup> DHAAT letter DHAAT/OUT/2019/084 to the Secretary of Defence dated 11 April 2019.

<sup>11</sup> DH&A letter DH&A/OUT/2019/0020 to the Tribunal dated 8 July 2019 covering the Defence Submission.

<sup>12</sup> Email by Mr Hare to the Tribunal dated 30 July 2019.

<sup>13</sup> VVPPA letter to DH&A dated 4 November 2016.

to receive something for my bravery that night'.<sup>14</sup> He later annotated the response with the words:

*gallantry award to the highest degree!*<sup>15</sup>

17. Mr Hare also made other claims including in relation to under age employment, however that matter is not relevant to his request for recognition and the Tribunal has no jurisdiction to deal with that issue. During the hearing Mr Hare was apprised of this to allow the discussion to focus on recognition. Mr Hare in his oral submissions at the hearing confirmed that he was seeking 'recognition of what had happened' and that he felt that what occurred was more than 'noteworthy'.

18. In response to a question at the hearing about what level of award he sought, Mr Hare initially stated that he thought the Star of Gallantry may have been appropriate. However he subsequently said that he wanted a gallantry award but had not turned his mind to which decoration he should receive.<sup>16</sup> It was clear to the Tribunal that Mr Hare was not familiar with the application of the Gallantry Decorations Regulations and therefore he could not be expected to make an informed decision on which award he was seeking. The Tribunal advised him that, regardless of which decoration he sought, its first task would be to determine whether or not his actions could be considered to be gallant before turning to actual decorations.

### **Mr Hare's Service Record**

19. Mr Hare applied for entry to the Royal Australian Navy on 14 January 1964 at sixteen years of age.<sup>17</sup> His application included an under-age consent certification executed by his father.<sup>18</sup> Mr Hare was enlisted into the Permanent Naval Forces as a Junior Recruit for a twelve-year term of engagement on 3 April 1964.<sup>19</sup>

20. Mr Hare's service record indicates that he spent his first year in the Navy undergoing training at HMAS *Cerberus* and qualified as an Ordinary Seaman on 3 April 1965.<sup>20</sup> On completion of his training on 16 April 1965 he was posted to HMAS *Duchess*.<sup>21</sup> At the hearing he said that he returned to *Cerberus* 'for about a week to undertake category training' shortly after his posting to *Duchess* and before she began work-up training. He described this training as a period of familiarisation including the basics of Morse code and flag recognition.

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<sup>14</sup> Email Correspondence between DH&A and Mr Hare dated 7 February 2019.

<sup>15</sup> Email Correspondence between DH&A and Mr Hare dated 7 February 2019.

<sup>16</sup> Mr S. Hare, Oral evidence, Public Hearing, Terrigal, 17 September 2019.

<sup>17</sup> Royal Australian Navy Application for Entry – Stanley Ernest George Hare dated 14 January 1964.

<sup>18</sup> Royal Australian Navy Certificate of Parent or Guardian – Stanley Ernest George Hare.

<sup>19</sup> Permanent Naval Forces Form of Engagement – Junior Recruit Stanley Ernest George Hare dated 3 April 1964.

<sup>20</sup> Historical Record LSROS Stanley Ernest George Hare dated 6 October 2016.

<sup>21</sup> Ratings Record of Service Card - Stanley Ernest George Hare.

21. It is Mr Hare's service in *Duchess* which is relevant to this matter. He was posted to the ship for a period of twelve months until 26 April 1966 when he returned to *Cerberus* to undertake formal category training as a communicator. Mr Hare completed his twelve-year engagement and was discharged from the Navy on 2 April 1976.<sup>22</sup>

22. For his service in the Royal Australian Navy, Mr Hare has received the following defence and foreign awards:

- Australian Active Service Medal 1945-75 with Clasp 'MALAYSIA' and Clasp 'VIETNAM';
- General Service Medal 1962 with Clasp 'BORNEO' and Clasp 'MALAY PENINSULA';
- Australian Service Medal 1945-75 with Clasp 'FESR';
- Vietnam Logistic and Support Medal;
- Australian Defence Medal; and
- Pingat Jasa Malaysia medal.

### **HMAS *Duchess* and her 1965-66 Deployments**

23. HMAS *Duchess* was originally loaned to the Royal Australian Navy by the Royal Navy following the loss of HMAS *Voyager* in 1964.<sup>23</sup> She was commissioned into the Royal Australian Navy at Williamstown on 8 May 1964 and spent the remainder of that year being refitted. On 20 November 1964 she departed for her home port of Sydney where she began work-up in preparation for her first deployment on 19 January 1965.

24. *Duchess* patrolled in the Straits of Malacca and in the Straits of Singapore as part of the Far East Strategic Reserve (FESR) for two weeks in February 1965 before returning to Australia on 19 March 1965. Relevant to this matter and corroborating Mr Hare's service record which states that he was posted to *Duchess* on 16 April 1965 and then completed a week of familiarisation training back at *Cerberus*, the ship's ROP for April 1965 states that:

*78 Ordinary Seamen joined the ship in April and consequently carried out the appropriate basic training in Gunnery, T.A.S. and A.I.O. at HMAS Cerberus and HMAS Watson.*<sup>24</sup>

25. On 29 April 1965, the Australian Government announced its intention to commit an infantry battalion to the conflict in Vietnam. The Navy's fast troop transport,

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<sup>22</sup> Historical Record LSROS Stanley Ernest George Hare dated 6 October 2016.

<sup>23</sup> "HMAS *Duchess*". Royal Australian Navy. Retrieved 19 August 2019.

<sup>24</sup> HMAS *Duchess* - Report of Proceedings – April, 1965 dated 4 May 1965.

HMAS *Sydney* (III), embarked the 1st Battalion, the Royal Australian Regiment on 27 May and departed Sydney escorted by *Duchess* and other ships. On arrival at Vung Tau on 8 June 1965, *Sydney* commenced unloading operations. While at anchor, *Sydney* and her consorts undertook the self-protective anti-sabotage measures known as Operation Awkward. The ships departed Vung Tau on 11 June 1965, proceeding south to Singapore. *Sydney* and *Duchess* returned to Sydney on 5 July 1965 where *Duchess* entered a period of leave and maintenance.

26. *Duchess* put to sea on 11 August 1965 and proceeded northwards to Singapore for her second FESR deployment. *Duchess* was detached from patrol duties on 10 September and proceeded to Manus Island where she and *Vendetta* rendezvoused with *Sydney* and once again escorted the troop transport to Vung Tau. The trio anchored off Vung Tau on 28 September 1965 and, after *Sydney* had unloaded her army cargo, *Duchess* proceeded to Hong Kong for self-maintenance. She departed Hong Kong on 26 October 1965 to return to FESR duties, though was back in Hong Kong briefly over the Christmas/New Year period for further maintenance. *Duchess* departed again on 4 January 1966 to recommence patrols around Borneo and to act as Tawau Guard Ship.

27. *Duchess* arrived in Darwin on 2 March 1966, ending a seven-month deployment. She returned to her home port of Sydney on 12 March 1966 and immediately began a refit at Garden Island Dockyard. As previously stated, Mr Hare left the ship on posting on 26 April 1966.

## **The Incident**

28. **Mr Hare's Description of the Incident.** Mr Hare stated in a declaration supporting the application for recognition that:

*...the mishap occurred (sic) in Alpha Gunbay which was my action station. I was accompanied by two other Ordinary Seamen, those being Kevin Donnelly and John Dunn, all of us only just out of J.R. training school HMAS Cerberus in April (P.S. we were only 17 years old).*

*A 4.5 inch HEVT shell accidentally dropped off the ring badly damageing (sic) the nose cone of the proximity fuse. I without hessitation (sic) picked up the round (very heavy) and I remember 'Blue' Kevin Donnelly open (sic) the Gunbay door for me. I managed to make my way down through the ship as fast as possible to the break - near the torpedo tubes and dispose the shell overboard.*

*As I made my way back to the Gunbay I felt very disturbed and physically sick, knowing that I had personally prevented a major catastrophic (sic) chain of events, saving the crew and the ship. I have been affected ever since – PTSD.<sup>25</sup>*

29. Mr Hare provided a supplementary statement attached to his declaration. He said:

*... we had no experience or full on training to handle any explosives of any kind – just how to load the ammo into the shouts (sic) to carry the shells and cordite up to the Gun house/turret.*

*I took action as it was required. No time for messing about, as it seemed at the time to be – we, the three of us were in a serious situation ...*

*... As young men (boys) we were told to obey orders and don't ask questions.*

*That's why at the time of the 4.5 inch Gunbay – I was afraid to say anything, so was (sic) the other boys, John and Kevin. Because I had left my duty in the Gunbay, as we were at action stations – but the guys covered for me.*

*All I can say to finish with is that I did what was best in the interest of the safety of the ship's crew and the ship itself.<sup>26</sup>*

30. During the hearing Mr Hare opined that the projectile had become dislodged from the gun ring due to the rough weather.<sup>27</sup> He also confirmed that, although he had not been formally trained in gunnery, he had had previous experience in completing his gunbay duties during work-up training in Jervis Bay and that he had participated in drills and live firings on approximately six occasions prior to the incident.

31. In response to whether the ship was at defence stations or action stations when the incident occurred, Mr Hare confirmed that she was at action stations and despite this there was no supervisor in the gunbay.

32. He described his transit through the ship with the projectile and confirmed that Mr Donnelly had unlatched the gunbay door for him. He said that he had the projectile under one arm and opened the next two doors on his own before disposing of it overboard and returning to the gunbay. Mr Hare said that the transit with the projectile and return took 'about two minutes' and that there were no other witnesses as the rest of the crew were at their action stations.

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<sup>25</sup> Statutory Declaration by Mr Hare declared at Erina NSW on 28 October 2016.

<sup>26</sup> Attachment 'To Whom it May Concern' to Mr Hare's 28 October 2016 declaration and dated 26 October 2016.

<sup>27</sup> Mr S. Hare, Oral evidence, Public Hearing, Terrigal, 17 September 2019.



33. After the hearing, Mr Hare provided further explanation by email of how he had been able to get to the upper deck through a number of watertight doors while handling the heavy 4.5 inch shell.<sup>28</sup>

34. **Witnesses to the Incident.** Mr Donnelly witnessed the incident and provided a supporting statement.<sup>29</sup> He said:

*Our duties were assembling and hoisting the HE 4.5 inch and Cordite to the Gunhouse above for firing. Somehow, accidentally a 4.5 inch shell fell from the circular rack landing on its nose onto the steel deck. We were all horrified as we contemplated the proximal fuse setting off the shell with catastrophic results for ourselves and the ship itself if the surrounding ordinance (sic) and the magazine below exploded.*

*We were all 17 years old and fresh out of Junior Recruit training at HMAS Cerberus and were not Ordinance (sic) experts. Stan [Mr Hare] picked up the HE Shell and I undogged the door as he rushed from the Gunbay and anxiously made his way to the upper deck unobserved, as all crew were closed up in Action Station conditions. Stan heaved the shell overboard. I believe Stan's quick thinking was a very brave and courageous act and potentially saved the ship and the crew.*

*The incident was not reported to our superiors as we feared disciplinary action ...*

35. Mr Donnelly's evidence at hearing confirmed his and Mr Hare's view that they had not received any specific training on ammunition. He said that their training in relation to gunhouse duties was rudimentary and only extended to how to extract ordnance from hoists, place them onto gun rings and then prepare them for transfer to the turret. In response to questions about how the subject projectile came to be displaced from the gun ring, he opined that the projectiles on the ring were probably pushed too hard, causing one projectile to strike the rear of the next in line and to then rise above the ring restraints and be dislodged. He said that at the time of the incident and in the aftermath, Mr Hare was extremely agitated.

36. Mr Dunn was also a witness to the incident and provided a supporting statement.<sup>30</sup> He said:

*Whilst on operational service aboard HMAS Duchess in 1965, in Alpha Gunbay, a 4.5 inch HEVT round accidentally dropped off the ring and badly*

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<sup>28</sup> E-mail from Mr Hare to the Tribunal dated 30 September 2019.

<sup>29</sup> Statutory Declaration by Mr Donnelly declared at Gympie QLD on 24 October 2016.

<sup>30</sup> Statutory Declaration by Mr Dunn declared at Winthrop WA on 28 September 2016.

*damaged the nose cone of the proximity fuse. Ord. Seaman Stan Hare gathered up the round, took it to the upper deck and jettisoned it overboard.*

*This occurred during the first watch, 2000 hrs – 2359 hrs. These rounds weigh 25 kilos and had it exploded would have caused a catastrophic chain of events as the Gunbay was packed with high explosives, ready to be hoisted up to the Gunhouse.*

37. Mr Dunn was scheduled to provide evidence at the hearing but at late notice he had to withdraw to travel overseas. He provided a supplementary statement which was tabled at the hearing.<sup>31</sup> In his statement he said:

*Mr Hare, Mr Donnelly and myself were all HMAS Cerberus junior recruits, not HMAS Leeuwin junior recruits, at no time did we receive any gunnery instruction or handbooks about gunnery when we were junior recruits. We did receive instruction in gunnery immediately prior to joining HMAS Duchess, this consisting of continual practise of manning the gunbay and drilling over and over again of sending projectiles and cordite via the hydraulic driven ammunition hoists up to the gunhouse until we achieved an acceptable rounds per minute per gun.*

*We also were told about the different fuses used by the Navy i.e. direct action, time mechanical and proximity fuses. The proximity fuses we were told had a battery and radar inside the plastic nose cone. This was the type of fuse that was badly misshapen when the shell fell off the ring in Alpha Gunbay. Not being sure if it would eventually detonate is when Ord Seaman Hare made the decision to jettison it overboard while Ords Donnelly and myself held the fort so to speak.*

*His action was quite courageous in my view and beyond the call of duty. I still can't recall why there only the three of us in the gunbay at that time. I don't know where the rest of the gunbay crew had gone to. Also being during the first watch nobody would have seen Ord Hare as everyone would have been closed up in their station or been asleep in their hammocks. Remembering also that I was only 16 and Hare and Donnelly were only 17 years old, we were not worldly-wise and too scared to report what happened in case we would be on report for what happened ie acting without orders - we stayed silent. This is why this incident was not officially reported to the higher echelons and thus not included in report of proceedings.*

*Thank you for allowing me this statement, it is a true testimony as to what happened that night and I am still mentally scarred by it.*

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<sup>31</sup> E-mail from Mr Dunn to the Tribunal dated 12 September 2019.

38. Mr Hare's wife provided a statutory declaration describing the impact the incident has had upon Mr Hare's health. She attributed it as a causal factor to his diagnosed Post Traumatic Stress Disorder.<sup>32</sup> Mrs Hare was not a witness to the incident.

39. **When Did the Incident Occur?** Mr Hare was unable to recall exactly when the incident occurred, stating that it was:

*during either one of these [Duchess] trips to Vietnam in operational waters at action stations the mishap in question occurred.*<sup>33</sup>

40. The Tribunal notes Mr Donnelly stated that the incident occurred when they were:

*fresh out of recruit school*

and Mr Hare stated that they were:

*just out of junior training ... in April.*

41. Mr Hare's original application for recognition stated that the incident occurred:

*during the time escorting HMAS Sydney in operational waters.*<sup>34</sup>

## **The Defence Submissions**

42. Mr Hare's application for recognition has been the subject of a number of separate reviews including by the Staff Officer Navy Honours and Awards at Navy Strategic Command<sup>35</sup>, the Director Navy Honours and Awards<sup>36</sup>, the Defence Historical Honours Review Board<sup>37</sup>, and by the Directorate.<sup>38</sup> The Chief of Navy also wrote to Mr Hare regarding retrospective recognition and providing his decision in relation to the application.<sup>39</sup> These reviews and reports are summarised below.

43. **The Navy Report.** The Navy review of the matter found that there was nothing in the *Duchess*' ROP for the periods in question that support the claim that the incident occurred.<sup>40</sup> The review by Navy commissioned technical advice which led it to

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<sup>32</sup> Statutory Declaration by Mrs Christine Hare declared at Erina NSW on 31 October 2016.

<sup>33</sup> Attachment 'To Whom it May Concern' to Mr Hare's 28 October 2016 declaration and dated 26 October 2016.

<sup>34</sup> VVPPA letter to DH&A dated 4 November 2016.

<sup>35</sup> Navy Strategic Command SACA 15433 to VVPPA dated 1 August 2018.

<sup>36</sup> Enclosure 1 to Navy Headquarters letter BS1601919 dated 27 February 2019.

<sup>37</sup> Historical Honours Review Board meeting minutes dated 28 February 2019.

<sup>38</sup> Enclosure 1 to DH&A letter DH&A/OUT/2019/0020 to the Tribunal dated 8 July 2019, *the Defence Submission*.

<sup>39</sup> Chief of Navy letter CN/2019/OUT/168 to Mr Hare dated 16 March 2019.

<sup>40</sup> Navy Headquarters letter BS1601919 dated 27 February 2019.

determine that the likelihood of a projectile detonating when dropped was ‘not credible’.<sup>41</sup>

44. The Navy Report stated that it would be reasonable ‘to assume that personnel involved in handling ammunition would have been briefed on what to do in the event of accidentally damaging it’.<sup>42</sup> Navy suggested that it was ‘unusual for three ordinary seamen to have been left unsupervised in a gunbay during action stations, particularly when handling ordnance’. However, the Navy Report does concede that ‘it is reasonable to accept that they may have been assigned duties in that location’. Further, the Navy Report states that Mr Hare’s extraction from the gunbay with the damaged projectile was ‘considered unusual’ in that ‘his plight went unobserved and unassisted’.

45. The conclusion to the Navy Report stated that:

*... the young Mr Hare certainly appears to have acted responsibly demonstrating a high level of initiative when faced with a situation he and his shipmates did not fully comprehend. Although there was no danger of the projectile detonating, the three sailors clearly did not appreciate this and to that end their actions may be viewed as noteworthy.*

*They are not, however, viewed as an act of bravery in the face of catastrophic risk to HMAS Duchess. Consequently, Navy is unable to support a recommendation for a retrospective honour or award.*

46. **The Historical Honours Review Board Consideration.** The Navy Report formed the basis of the evidence provided to the Review Board on 28 February 2019.<sup>43</sup> The Review Board noted that:

*Although the ship was not in any danger from the unexploded shell, Hare’s perception of danger has stayed with him ...*

47. During the Review Board’s consideration, an invited guest (Captain Sean Andrews RAN, the Director Sea Power Centre) briefed the Board on the extraction route taken by Mr Hare. Captain Andrews opined that:

*training at Leeuwin would have been conducted before Mr Hare’s posting at sea, and he would have been given information via daily orders and a master gunner pocket book regarding safety on the ship.*

and:

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<sup>41</sup> Brief: Characterisation of the Risk to Platform and Personnel from the Occurrence of Dropped 4.5” Projectile in HMAS Duchess dated 27 February 2019, para viii.

<sup>42</sup> Enclosure 1 to Navy Headquarters letter BS1601919 dated 27 February 2019.

<sup>43</sup> Historical Honours Review Board meeting minutes dated 28 February 2019.

*Had Mr Hare's actions been witnessed, he would not have been disciplined but most likely referred for additional training.*

48. The Review Board minutes of the meeting noted that:

*Although Hare was convinced that he did not receive appropriate training [in relation to ammunition handling and safety], it is reasonable to expect that he would have received training to know each state of the ship. As a Leeuwin recruit he would have received appropriate training.*

49. The Tribunal noted that Mr Hare did not attend HMAS *Leeuwin* before his posting to *Duchess* but instead underwent his initial entry training at HMAS *Cerberus* and, as he was not a gunner, it is improbable that he would have been given a master gunner pocket book. Mr Hare subsequently confirmed in writing and at the hearing that he had never received such a book or been trained on ammunition safety prior to his deployment. During the hearing the Respondent conceded that their reports and accounts in relation to these matters were in error.<sup>44</sup>

50. The Review Board concluded that:

*Mr Hare's actions were a young man's reaction to a perceived dangerous situation, but not of such merit to deserve retrospective recognition;*

and

*The original decision by the Chief of Navy to not support a retrospective award for Mr Hare should stand.*

51. The Tribunal noted that the original decision referred to in the Review Board minutes above was in fact not by the Chief of Navy but by the Staff Officer Honours and Awards at Navy Strategic Command who determined that in the absence of documentary evidence to support the original application, 'no award will be processed'.<sup>45</sup> During the hearing the Respondent again conceded that the Review Board's minutes were in error regarding the decision maker.

52. **Chief of Navy's Decision and Letter.** On 16 March 2019 the Chief of Navy wrote to Mr Hare to inform him that he had agreed with the Review Board's determination to not recommend a defence honour.<sup>46</sup> The Chief noted that neither Mr Hare nor either of his shipmates were ordnance experts and, accordingly, would not

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<sup>44</sup> Commodore Richards, Oral evidence, Public Hearing, Terrigal, 17 September 2019.

<sup>45</sup> Navy Strategic Command SACA15433 to VVPPA dated 1 August 2018.

<sup>46</sup> Chief of Navy letter CN/2019/OUT/168 to Mr Hare dated 16 March 2019.

have known that the design of the ammunition and built in safety measures meant that there was no risk that the shell would have detonated.

53. The Chief said that as such there was never a situation of catastrophic risk and, in those circumstances, Navy was not able to support the request for a defence honour or award for bravery. The Chief said that, after careful consideration, the Defence Historical Honours Review Board had determined not to recommend a defence honour or award and that he agreed with that conclusion.

54. The Chief told Mr Hare that in his view:

*You demonstrated a high level of initiative when faced with a situation that clearly shocked and frightened you and your shipmates. Your actions were noteworthy in the circumstances as you perceived them.*

55. He said that ‘today when I become aware of a junior sailor who has displayed the type of positive behaviour you showed, I like to offer my coin as a present of my personal recognition’. The Chief asked that Mr Hare accept the coin as a token of his respect and admiration for his actions. During the hearing Commodore Richards advised the Tribunal that recognition of junior sailors using the Chief’s coin was rare. Mr Hare said that he valued the coin and acknowledged its significance.

56. **The Defence Submission.** The Directorate provided the Defence Submission on 8 July 2019.<sup>47</sup> The Submission summarised the various reports that had already been conducted, provided additional evidentiary material including photographs and a copy of a Navy Career Booklet and the Quartermaster Gunner Pocket Book. The Submission concluded that ‘the decision to not recommend Mr Hare for a gallantry decoration for his actions on board HMAS *Duchess* during the period 1965-1966 was the correct decision’ and that it should be affirmed by the Tribunal.

57. **The Respondent’s Submissions at Hearing.** The Respondent read from and tabled a statement at the hearing.<sup>48</sup> In this statement the Respondent asserted that Mr Hare would have been trained to handle ammunition during his recruit training as ammunition handling was prescribed in the syllabus for that course:

*During Mr Hare’s time in HMAS Cerberus prescribed training was outlined in Australian Book of Reference (ABR) 697 amendment number four dated May 1962. This document lists the mandatory and secondary knowledge topics. Further to this, mandatory knowledge requirements included duties of the Navy in peace and war and weapons and machinery training.*

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<sup>47</sup> DH&A letter DH&A/OUT/2019/0020 3 covering the *Defence Submission* dated 8 July 2019.

<sup>48</sup> Defence Opening Statement by Commodore K.A.R. Richards, Version 1.3 dated 13 September 2019

58. The Respondent stated that the Defence position regarding the review of historic honours recognition was ‘that it should only proceed where there is clear evidence of maladministration in the recognition or processing of an award, or compelling new evidence that was not available to the commanders of the day’.

59. The Tribunal acknowledged this position but noted that, as the incident was never reported, the current application perhaps should have been treated as ‘new evidence’ and considered on its merits. In any event, the Tribunal is required by legislation to conduct a merits review of Mr Hare’s actions.

60. The Respondent also discussed the role of the Review Board and its deliberations in this matter. The Tribunal noted that Commodore Richards was present and gave evidence during the Review Board’s consideration. She said that the Board ‘placed significance upon Mr Hare’s actions, every member independently reviewed the material prior to the Board and shared their opinion of the incident during the meeting’.

61. Commodore Richards said that the Review Board had noted that:

*if Mr Hare, or a witness, had reported the event at the time, a more experienced crew member could have explained the round was not at risk of detonating and therefore, the ship’s company was not at risk of a catastrophic accident caused by a high explosive round having been dropped.*

62. Commodore Richards said that the Review Board discussed and noted that, while the ship was not endangered, Mr Hare’s account that it was, ‘has stayed with him and prompted the request for recognition’. She stated that ‘while respecting Mr Hare’s recollection of the incident and his long-held belief of the danger at the time, as well as the responsibility he would have felt as a 17-year-old on operational service, Navy is unable to support any recommendation for a valour, bravery, conspicuous or distinguished award’. She said that the Review Board formed the view that:

*Mr Hare’s actions were not considered courageous as there was no imminent danger and, should he have reported the incident at the time, it would have become known that there had been no imminent danger to himself or shipmates.*

and

*Mr Hare’s actions were a young man’s reaction to a perceived dangerous situation, but not of such merit to deserve retrospective recognition.*

63. In response to questions from the Tribunal regarding the Review Board’s deliberations, particularly whether the incorrect evidence provided by Captain Andrews regarding training may have influenced the Board’s decision, Commodore Richards

stated that the Review Board had given greater weight to the fact that the round would not have detonated rather than the training issue. Commodore Richards also elaborated on her statement regarding the inclusion of training on ammunition in the recruit syllabus and acknowledged that this training was likely to be basic and focussed on ‘respect for ammunition’ rather than function.

64. The Tribunal asked the Respondent if it had a view regarding perception of danger as, despite Defence finding that there was no danger or threat, the fact was that Mr Hare thought there was a significant threat of detonation and took action which he considered appropriate in what he thought was a dangerous circumstance. The Respondent acknowledged that Mr Hare and his colleagues were at the time ‘terrified’.

65. However, the Respondent was of the view that, for the purposes of the Gallantry Decorations Regulations, there must be a real rather than perceived danger, threat or risk to the individual.

### **The Merits Review**

66. **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.<sup>49</sup> 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.

67. The facts, law and policy aspects of the decision are all considered afresh and a new decision made.<sup>50</sup> 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 decision was correct.<sup>51</sup> 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.

68. **The Reviewable Decision.** The Tribunal was satisfied that the Chief of Navy’s letter to Mr Hare dated 16 March 2019 was the *reviewable decision*. The Chief of Navy refused to recommend Mr Hare for a defence honour to recognise him for his actions in dealing with a displaced 4.5 inch High Explosive projectile whilst he was serving in HMAS *Duchess* in 1965 – 1966. Mr Hare clarified that he sought a gallantry award for his actions.

69. **Mr Hare’s Service Record.** There is no dispute that Mr Hare was posted to HMAS *Duchess* from 16 April 1965 to 26 April 1966. Contrary to the conflicting accounts regarding training, Mr Hare did not attend HMAS *Leeuwin* prior to his posting

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<sup>49</sup> *Council of Australian Tribunals Practice Manual* dated 7 April 2006 p.1.3.1.2.

<sup>50</sup> Pearson, Linda, “Merit Review Tribunals”, in Creyke, Robin and McMillan, John, *Administrative Law – the Essentials*, AIAL 2002, p. 68.

<sup>51</sup> *McDonald v Director-General of Social Security* (1984) 1 FCR 354.



to *Duchess*. Mr Hare's service record indicates that he spent his first year in the Navy undergoing training at HMAS *Cerberus* and qualified as an Ordinary Seaman on 3 April 1965.<sup>52</sup> There was no evidence that he was trained in gunnery. He undertook category training as a communicator after his posting to *Duchess*, although he did participate in communications familiarisation training for a week shortly after joining *Duchess*.<sup>53</sup>

70. **The Incident.** Relying on Mr Hare's account of the incident and two eye witness statements, the Tribunal was reasonably satisfied that a 4.5 inch High Explosive Variable Time projectile weighing approximately 25 kilograms fell from a loading ring in the Alpha Gunbay and landed on its nose on the internal steel deck of HMAS *Duchess*. The projectile's fuze assembly appeared to be damaged and, fearing that the projectile would detonate in the gunbay, Mr Hare picked it up and made his way through the ship to the upper deck and threw the projectile overboard.

71. **Finding When the Incident Happened.** Neither the Applicant or Defence were able to determine exactly when the incident occurred or where. The Tribunal noted Mr Hare's statement that the incident occurred 'during the time escorting HMAS *Sydney* in operational waters'.<sup>54</sup> The Tribunal noted that *Duchess* escorted *Sydney* to Vietnam twice in 1965, firstly between 27 May and 8 June<sup>55</sup> and again between 20 and 28 September.<sup>56</sup>

72. The Tribunal also noted that Mr Hare and Mr Donnelly stated that the incident occurred proximate to their completion of recruit training. Relying on these statements and Mr Hare's statement regarding HMAS *Sydney*, the Tribunal was reasonably satisfied that the incident in all likelihood occurred between 27 May and 8 June 1965.

73. Mr Hare indicated the incident occurred at night and Mr Dunn said it occurred during the 'first watch'. All witnesses indicated that the incident occurred whilst they were at action stations. The Tribunal was therefore reasonably satisfied that the incident most likely occurred whilst *Duchess* was conducting live fire gunnery exercises or drills during the early evening.

74. The Tribunal reviewed the *Duchess*' ROP for the period 27 May to 8 June 1965 and noted one relevant entry:

*... from Thursday, 27 May until the end of the month HMAS Duchess remained in company with HMAS Sydney on passage to the Far East Station. During this*

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<sup>52</sup> Historical Record LSROS Stanley Ernest George Hare dated 6 October 2016.

<sup>53</sup> Mr S. Hare, Oral evidence, Public Hearing, Terrigal, 17 September 2019.

<sup>54</sup> VVPPA letter to DHA dated 4 November 2016.

<sup>55</sup> "HMAS *Duchess*". Royal Australian Navy. Retrieved 19 August 2019.

<sup>56</sup> HMAS *Duchess* - Report of Proceedings – September, 1965 dated 5 October 1965.

*period gunnery, T.A.S, A.I.O., R.A.S. and O.O.W exercises were carried out at every opportunity.*<sup>57</sup> (emphasis added by Tribunal)

75. The Tribunal reviewed the *Duchess*' ship's log and noted that the entries do not include detail on states and conditions so it was not possible to determine when the ship closed up to action stations during the subject period.

76. Relying on the witness statements and the ROP, the Tribunal finds that in all likelihood the incident occurred in the evening during gunnery exercises between 27 May and 8 June 1965. This finding was not disputed at the hearing and there was no suggestion that at the time of the incident the ship was 'in action', although it was enroute to Vietnam and was therefore undertaking operational service.

77. **Finding Whether Mr Hare Was Trained to Deal with Ammunition.** The Tribunal noted that the Respondent asserted at hearing that Mr Hare would have been trained to handle ammunition as it was prescribed as a mandatory subject in the HMAS *Cerberus* syllabus. However, there was no evidence of the extent of this training or the ammunition types involved and, having reviewed ABR 697, the Tribunal formed the view that in all likelihood the training was for indoctrination and familiarity purposes only.

78. The Tribunal noted that Mr Hare gave evidence that he had not been trained to deal with ammunition, although he conceded that he had had previous experience in completing his gunbay duties and had participated in drills and live firings on approximately six occasions prior to the incident. Mr Donnelly's evidence corroborated this view and also confirmed that their training in relation to gunhouse duties was rudimentary.

79. The Tribunal preferred the evidence of Mr Hare and his witnesses that indicated that they were not trained to deal with the subject ammunition. Whilst they may have known how to move the ammunition components around the gunbay, they had no knowledge at the time of the incident of the workings of the ammunition or how fuze assemblies functioned. The Tribunal noted that the Navy Report conceded that Ordinary Seamen who were not category trained 'would have no understanding of the fail safes built into ordnance and weapons systems'.<sup>58</sup>

80. The Tribunal finds that, at the time of the incident, Mr Hare was not trained to deal with ammunition and accordingly had no knowledge of whether damage to the projectile's fuze assembly would cause detonation or not.

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<sup>57</sup> HMAS *Duchess* - Report of Proceedings – May, 1965 dated 9 June 1965.

<sup>58</sup> Enclosure 1 to Navy Headquarters letter BS1601919 dated 27 February 2019, p. 9.

81. **Finding Whether the Incident was Formally Reported.** The Tribunal notes that Mr Hare and the eye witnesses have consistently asserted that they were unsupervised in the gunbay at the time of the incident. The Respondent and the gunnery subject matter expert, Captain Allan stated that this would have been unusual. In the absence of evidence to the contrary and noting that Mr Hare's evidence at hearing was both credible and consistent, the Tribunal was reasonably satisfied that he and his colleagues were unsupervised at the time of the incident.

82. Concomitantly, the Tribunal was reasonably satisfied with Mr Hare's explanation that, as they were unsupervised, young, inexperienced and fearful of disciplinary action, they did not report the incident. The Tribunal notes Mr Hare's evidence that he did discuss the incident with his Mess Deck Leading Hand some time after the incident when he was having nightmares about the projectile detonating. However, given the circumstances of this discussion, the Tribunal did not consider that this could be regarded as a formal report.

83. The Tribunal finds that the incident involving the 4.5 inch projectile was never formally reported and was first raised to Defence when the application for recognition was made in 2016.

### **Tribunal's Summary of the Incident and Actions of Mr Hare**

84. **The Incident and Actions.** The Tribunal was reasonably satisfied that during an operational deployment to Vietnam between 27 May and 8 June 1965, HMAS *Duchess* was conducting night gunnery exercises when an incident occurred in the Alpha Gunbay. *Duchess* was closed up at action stations, although for reasons unknown, the gunbay was occupied at the time only by three young and inexperienced ordinary seamen who were untrained and unsupervised.

85. A 4.5 inch High Explosive Variable Time projectile fell from the loading ring and landed on its nose on the internal steel deck of the gunbay. The projectile's fuze assembly appeared to be damaged and, thinking that the projectile would detonate, Ordinary Seaman Hare picked it up and made his way through the ship to the upper deck where he threw it overboard. In his view and supported by his shipmates, he thought he had 'saved lives' and the ship because he stopped a potential 'catastrophic incident'. Fearful that they would be disciplined for leaving their stations, the three sailors did not report the incident, however the 'terror' of the experience has endured for each of them.

86. **Navy's Recognition.** Some fifty years later, after the incident was brought to light in 2016, the Chief of Navy decided that Mr Hare demonstrated 'a high level of initiative when faced with a situation that clearly shocked and frightened him and his shipmates'. He said that Mr Hare's actions were 'noteworthy in the circumstances' and presented him with a memento in the form of a Chief of Navy coin.

87. However, Mr Hare seeks higher recognition in the form of a gallantry decoration. At the hearing he said that, in his view, although he valued the Chief's coin, he felt that his actions were 'more than noteworthy' and that due consideration was not given to his age, his lack of training and the fact that he was and remains 'terrified' by the incident.

88. **The Tribunal's Consideration.** The Tribunal, having summarised the incident and clarified the issues in dispute must now decide if Mr Hare's actions were gallant and if so, whether he meets the conditions for the award of a gallantry decoration.

### **Gallantry Assessment**

89. **Contemporary Gallantry Awards.** Australian service personnel received honours and awards under the Imperial system until February 1975 when the Government introduced the Australian system. The two systems – the Imperial and the Australian – then operated in parallel until October 1992 when the Government announced that Australia would no longer make recommendations for Imperial awards.<sup>59</sup> This means that only contemporary Australian decorations may be considered. The eligibility criteria for gallantry awards in the Australian system are governed by Gallantry Decorations Regulations.<sup>60</sup>

90. **Gallantry Decorations.** The Star of Gallantry, the Medal for Gallantry and the Commendation for Gallantry were established as Gallantry Decorations by Letters Patent on 15 January 1991 for the purpose of:

*'according recognition to members of the Defence Force and certain other persons who perform acts of gallantry in action.'*

91. The honours are governed by Regulations set out in the Schedule, as amended in 1996:

...

#### ***Conditions for award of the decorations***

3. (1) *The Star of Gallantry shall be awarded only for acts of great heroism or conspicuous gallantry in action in circumstances of great peril.*

(2) *The Medal for Gallantry shall be awarded only for acts of gallantry in action in hazardous circumstances.*

(3) *The Commendation for Gallantry may be awarded for other acts of gallantry in action which are considered worthy of recognition.*

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<sup>59</sup> Prime Minister of Australia Media Release 111/92 dated 5 October 1992.

<sup>60</sup> *Commonwealth of Australia Gazette No. S25 – Gallantry Decorations Regulations* - dated 4 February 1991.

*3A. A decoration referred to in regulation 3 may be awarded for an act of a kind mentioned in relation to the particular decoration, although the act did not occur in action, if it occurred in circumstances similar to armed combat or actual operations and those concerned were deployed under military command.*<sup>61</sup>

...

92. **What is Gallantry?** The Tribunal noted that all the gallantry decorations accord recognition for individuals ‘who perform acts of gallantry in action’. Whilst ‘in action’ is a relatively straightforward concept, ‘gallantry’ is an abstract term, which is not defined in the Regulations. Various dictionary definitions such as ‘dashing courage; heroic bravery’;<sup>62</sup> and ‘courageous behaviour, especially in battle’;<sup>63</sup> are largely circuitous and unhelpful. Some countries have attempted to differentiate between ‘bravery’ and ‘gallantry’; defining the latter as recognition of military personnel who carry out acts which put their lives at risk while involved in operational service; whilst ‘bravery’ is defined as saving or attempting to save the life of another person in the course of which they place their own life at risk.<sup>64</sup> Again this is largely unhelpful in defining gallantry in the context of the Australian Honours and Awards system.

93. The Tribunal considered that there is an expectation that all service personnel on operations conducting themselves in accordance with their training, will be acting bravely. The Tribunal considered that gallantry requires a higher standard of conduct than bravery and usually a special and additional element of courage, fearlessness, daring or heroism will have been demonstrated. What amounts to an ‘act of gallantry’, necessarily varies according to the individual circumstances of each action, and depending on many factors, including the level of threat, the person’s training, role and responsibility, the risk to the individual and/or the group, and the consequences of undertaking, or not undertaking, the particular act.

94. The Tribunal considered that the concept of gallantry is greater than collective or individual acts of bravery and above and beyond what was expected of an individual or group who were bravely doing what they were trained to do or expected to do as part of a role, rank or responsibility.

### **Did Mr Hare Perform an Act of Gallantry in Action?**

95. To be eligible for an Australian gallantry award, Mr Hare’s actions would need to demonstrate that he had performed ‘acts of gallantry in action’.<sup>65</sup>

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<sup>61</sup> *Commonwealth of Australia Gazette No. S420 – Amendment of the Gallantry Decorations Regulations* - dated 6 November 1996.

<sup>62</sup> The Macquarie Dictionary on-line accessed 20 October 2017.

<sup>63</sup> The Oxford Dictionary on-line accessed 20 October 2017.

<sup>64</sup> <http://medals.nzdf.mil.nz/category/d/index.html>

<sup>65</sup> *Commonwealth of Australia Gazette No. S25 – Gallantry Decorations Regulations* - dated 4 February 1991.

96. **Was Mr Hare In Action?** ‘In action’ is a straightforward concept involving armed conflict in close proximity to or under the fire of an adversary. At the hearing, the Respondent suggested that, as Mr Hare was not in action at the time of the incident, he could not be considered for a gallantry decoration. The Tribunal agrees that the evidence suggests that *Duchess* was not in action at the time of the incident and therefore neither was Mr Hare.

97. However, for the purposes of the Gallantry Decorations Regulations, the 1996 amendment can be applied to Mr Hare’s circumstances. *Duchess* was on operational service at the time of the incident as she was escorting HMAS *Sydney* to Vietnam and Mr Hare was posted to the ship and was deployed under military command. The incident therefore occurred ‘in circumstances similar to armed combat or actual operations’. The Tribunal therefore finds that Mr Hare satisfies the condition of ‘in action’ as amended in the Gallantry Decorations Regulations. The Respondent subsequently conceded this at the hearing.

98. **Were Mr Hare’s Actions An Act of Gallantry?** Turning to the question of whether Mr Hare performed an act of gallantry, the Tribunal noted that his actions have been assessed by a number of witnesses and individuals including the professional head of the Navy, as well as various groups and organisations.

99. The witnesses described Mr Hare’s actions as brave, courageous and beyond the call of duty. The Tribunal noted that the witnesses had little experience in assessing or recommending gallantry levels and therefore gave their views little weight.

100. The Tribunal also noted that the witness descriptions were not supported by Navy or the Review Board. However, the Tribunal gave some weight to the fact that the Review Board and Navy assessed Mr Hare’s actions as having demonstrated responsibility and initiative and being noteworthy.

101. The Tribunal noted that the Respondent concluded that Mr Hare’s actions could not be considered to be valorous or brave and that he was not courageous as there was no imminent danger. The Tribunal was also reasonably satisfied that there was no ‘imminent danger’ at the time of the incident. However, it gave significant weight to the fact that Mr Hare did not know there was no danger, but perceived that there was as he was not appropriately trained.

102. The Tribunal also gave weight to the Chief of Navy’s conclusion that there was no catastrophic risk, but that, in the circumstances, Mr Hare had displayed a high level of initiative and his actions were ‘noteworthy’.

103. **Assessment of the Actions Taken by Mr Hare.** The Tribunal reviewed Mr Hare's actions against the previously stated factors common in acts of gallantry. The Tribunal formed the view that despite Mr Hare believing that the ship and crew were in danger, it is a matter of fact that they were not – the projectile would not have detonated.

104. The Tribunal noted that, notwithstanding the fact that the projectile would not have detonated, Mr Hare was unaware of this at the time and perceived that there was significant danger. In the view of the Tribunal, Mr Hare acted instinctively when faced with a situation he was not prepared for.

105. The Tribunal considered that Mr Hare took what he considered to be the best course of action to remove what he thought was a serious threat to his shipmates and the ship. The Tribunal agreed with the Respondent that Mr Hare displayed initiative and responsibility, despite his lack of training and in the absence of supervision. The Tribunal was satisfied that Mr Hare's actions mitigated the perceived threat.

106. However, the Tribunal was satisfied that, regardless of Mr Hare's actions, there would have been no consequences if he had not disposed of the projectile. The Tribunal acknowledges that Mr Hare was 'terrified' when the projectile was dropped, however this does not translate into gallantry.

107. The Tribunal considers that all service personnel on operations face situations of fear and danger and they usually react appropriately and in the interests of the group regardless of their training. The Tribunal formed the view that this was what Mr Hare did when he collected the projectile and disposed of it.

108. Additionally, the Tribunal could not be reasonably satisfied that Mr Hare's actions demonstrated a special and additional element of courage, fearlessness, daring or heroism. The Tribunal considered that Mr Hare bravely did what would have been expected of him when faced with a threat for which he was not trained. The Tribunal concluded that Mr Hare demonstrated initiative and responsibility and agrees with the Chief of Navy that his actions should be considered as 'noteworthy'.

### **Finding in Relation to the Merits Review**

109. Having considered the facts and reviewed Mr Hare's actions against the previously stated factors common in acts of gallantry, the Tribunal finds that, for the purposes of the Gallantry Decorations Regulations, he did not perform an act of gallantry in action when dealing with a displaced projectile during gunnery exercises in HMAS *Duchess* between 27 May and 8 June 1965.

## **Conclusion**

110. For the reasons given above the Tribunal has decided that Mr Hare is not eligible for a gallantry decoration. This decision does not in any way diminish the contribution Mr Hare made to his country during his service in the Royal Australian Navy, which the Tribunal acknowledges.

111. Furthermore, the Tribunal considers that the presentation of a Chief of Navy coin in recognition of Mr Hare's actions in HMAS *Duchess* was a rare gesture which was valued by the recipient. The Tribunal takes this opportunity to thank Mr Hare for his service and expresses its hope that this decision, whilst not an outcome that he desires, will provide closure for him.

112. The Tribunal notes that the Respondent has acknowledged that this matter has taken too long to be concluded and has had a deleterious impact on Mr Hare which has been exacerbated by numerous errors and inaccuracies. The Respondent's apology to Mr Hare at the hearing is noted.

## **TRIBUNAL DECISION**

113. The Tribunal decided to recommend to the Minister for Defence Personnel that the decision by the Chief of Navy to not recommend Mr Stanley Hare for a defence honour for his actions in HMAS *Duchess* in 1965 – 1966 be affirmed.