



Australian Government

Defence Honours and Awards Appeals Tribunal

Spiro and the Department of Defence [2021] DHAAT 16 (15 December 2021)

File number (s) 2020/031

Re **Mr Terry Peter Spiro**
Applicant

And **Department of Defence**
Respondent

Tribunal Ms Anne Trengove (Presiding Member)
Mr David Ashley AM

Hearing Date 10 August 2021

Appearances Mr Terry Spiro

 Mrs Allison Augustine
 Assistant Director, Current Recognition
 Directorate of Honours and Awards
 Flight Lieutenant Simon Hall
 Staff Officer Honours and Awards – Air Force
 Department of Defence

DECISION

On 15 December 2021 the Tribunal decided:

- to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Mr Terry Peter Spiro is not eligible for the award of the Reserve Force Decoration or the Defence Long Service Medal; and
- that it has no jurisdiction to review Defence's decision in respect of Mr Spiro's eligibility for the National Medal.

CATCHWORDS

DEFENCE AWARDS – Reserve Force Decoration - Defence Long Service Medal - dispute as to length of RAAF Reserve service - dual service in Air Force Reserve and Cadet Forces - whether active or inactive service in the Reserve Forces - whether Cadet Forces is a CDF determined philanthropic organisation.

LEGISLATION

Defence Act 1903 – ss 62C(2), 110T, 110V(1) 110VB(2)
Defence Regulation 2016, Section 36

Air Force Act 1923

Air Force Amendment Act 1976

Cadet Forces Regulations 1977, created under Statutory Rule No 206/1977 dated 27 October 1977

Commonwealth of Australia Gazette No S78, Defence Force Service Award Regulations Letters Patent, dated 27 April 1982

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

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

Commonwealth of Australia Gazette Defence Long Service Medal Regulation, Directions by the Chief of the Defence Force, dated 13 April 2000

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

Defence Long Service Medal Regulations, Chief of Defence Force Determination - Minimum Periods of Annual Qualifying Service dated 6 February 2013

DI(G) PERS 31-1 dated 27 February 2007 - Australian Awards for long service for members of the Australian Defence Force and Officers and Instructors of Cadets

REASONS FOR DECISION

Introduction

1. Mr Terry Peter Spiro, (the Applicant), seeks review of the decision of Ms Allison Augustine, then Assessments Manager, Directorate of Honours and Awards of the Department of Defence (the Directorate) dated 10 May 2018, that he is not eligible for the award of the Reserve Force Decoration (RFD) or the Defence Long Service Medal (DLSM).

Decision under review

2. Mr Spiro applied to the Directorate on 17 July 2017 for ‘an Australian Defence Force long service award’.¹ Some 10 months later on 10 May 2018, Ms Augustine replied to Mr Spiro advising him that she could not recommend him for a long service award to recognise his Australian Defence Force (ADF) service, including the National Medal (NM), the Reserve Force Medal (RFM), the RFD and the DLSM, and set out reasons as to why she considered he did not qualify for each award. In summary, Ms Augustine found that Mr Spiro had not completed the requisite 15 years qualifying service for each award.²

3. On 7 September 2020, Mr Spiro applied to the Tribunal for review of Ms Augustine’s decision in relation to the NM, the RFD and the DLSM.³

4. On 10 September 2020, Mr Jay Kopplemann, then Acting Executive Officer of the Tribunal, informed Mr Spiro that the NM is not listed as a defence honour or a defence award within the Tribunal’s jurisdiction set out in paragraph 8 below. This meant that the Tribunal did not have power to review the decision relating to his eligibility for the NM.⁴ On 11 September 2020, Mr Spiro advised the Tribunal that he only sought review in relation to the DLSM and the RFD. The review proceeded on this basis.⁵

5. We observe that Mr Spiro has made four applications for medallic recognition of his Air Force Reserve service. The first application was on 26 December 1992, following which the Director Personnel Services and Pay – Air Force on 15 January 1993 refused to recommend him for the RFD.⁶ As a result of a second application of 13 May 1995, Mr D.B. Capus, Director Administrative Review - Air Force on 22 May 1995 again refused to recommend Mr Spiro for the RFD.⁷ As a result of a third application of 31 January 2002, Mr Paul Waddell of the Defence Personnel Executive

¹ Letter signed by Ms Petrina Cole, Director of Honours and Awards to the Tribunal dated 6 November 2020 para 15.

² Letter from Ms Allison Augustine, Assessments Manager, Directorate of Honours and Awards to Mr Terry Spiro dated 10 May 2018.

³ Application for Review to the Tribunal from Mr Spiro dated 7 September 2020.

⁴ Letter from Mr Jay Kopplemann to Mr Spiro dated 10 September 2020.

⁵ Letter from Mr Spiro to Mr Kopplemann dated 11 September 2020.

⁶ Letter signed by Ms Helen Rudkin for the Director Personnel Services and Pay dated 15 January 1993, to Wing Commander Spiro.

⁷ Letter from Mr DB Capus, Director of Administrative Review – Air Force, to Flying Officer Spiro.

on 8 April 2004 refused to recommend Mr Spiro for the RFD and the NM.⁸ The outcome of Mr Spiro's fourth application is now before the Tribunal.

6. Importantly, until the date of hearing for this review, Mr Spiro had been consistently advised by Defence that he had no qualifying service in the RAAF Reserve (RAAFR) or RAAF General Reserve (RAAFGR) beyond 2 November 1977 for any ADF long service awards. This is because of Defence's contention that, as an Air Training Corps (AIRC) Officer of Cadets, he could not have performed any qualifying service beyond that date, when the AIRC was officially separated from the Air Force Reserve.

Conduct of the review

7. Following receipt of Mr Spiro's application for review, Defence's Report in response to his application, and his comment on the Defence Report, the hearing was set down for 10 August 2011. During this hearing, Defence changed its long-held position as to Mr Spiro's service. Defence submitted that 'it could not disprove' that Mr Spiro had continued membership in the RAAF Reserve Forces beyond 2 November 1977. After hearing submissions from both parties, the Tribunal provided Mr Spiro with three weeks to submit any additional evidence as to service in the RAAF Reserve Forces beyond 2 November 1977 that would demonstrate his eligibility for either claimed award. On 11 August 2021 the Tribunal also wrote to the Directorate seeking additional information, which was provided on 26 August 2021.⁹ On 30 August 2021, the Tribunal provided Mr Spiro with the additional information from Defence and Mr Spiro responded on 14 September 2021 with more material.¹⁰ On 15 September 2021 the Tribunal wrote to the Directorate and asked for its response to Mr Spiro's material and to answer further questions of the Tribunal. The response of 29 September 2021¹¹ from Ms Petrina Cole, Director Honours and Awards, was sent to Mr Spiro. Mr Spiro provided final submissions on 3 October 2021.¹² The Tribunal carefully considered all of the written material before it as well as the oral evidence of Mr Spiro at hearing and the submissions from Defence representatives.

Tribunal jurisdiction

8. Pursuant to s110VB(2) of the *Defence Act 1903* the Tribunal has jurisdiction to review a reviewable decision if an application is properly made to the Tribunal. The term *reviewable decision* is defined in s110V(1) and includes a decision made by a person within the Department of Defence to refuse to recommend a person for a defence award in response to an application. Regulation 36 of the *Defence Regulation 2016* lists the defence awards that may be the subject of a reviewable decision. The RFD and the DLSM are included in the defence awards listed in Regulation 36. Therefore, the Tribunal has jurisdiction to review decisions in relation to these awards. As stated, the Tribunal does not have jurisdiction to review Mr Spiro's eligibility for the NM as this award is not listed in Regulation 36.

⁸ Letter from Mr Paul Waddell, Defence Personnel Executive to Mr Spiro.

⁹ Letter from Ms Petrina Cole, Director of Honours and Awards to the Tribunal dated 26 August 2021.

¹⁰ Letter from Mr Spiro to the Tribunal, dated 14 September 2021.

¹¹ Letter from Ms Petrina Cole, Director of Honours and Awards to the Tribunal dated 29 September 2021.

¹² Letter from Mr Spiro to the Tribunal, dated 3 October 2021.

9. The role of the Tribunal is to determine whether the decision of the Directorate is the correct or preferred decision having regard to the applicable law and the relevant facts.

Reserve Force Decoration

10. The RFD may be awarded to an officer who has, on or after 14 February 1975 and before 20 April 1999, completed 15 years efficient commissioned service in the ADF, with a minimum period of 12 years as a commissioned officer in the Reserve Forces.

11. The Regulations governing eligibility for the RFD are set out in *Commonwealth of Australia Gazette No S78 Defence Force Service Awards Regulations* dated 27 April 1982¹³ as amended in 2000.¹⁴ In relation to the RFD they provide, relevantly:

3. *(1) For the purpose of determining whether a person has rendered efficient service as member of the Defence Force but without limiting the matters that may be taken into account for that purpose, regard shall be had to such matters (if any) as are for the time being specified in directions given by the Chief of the Defence Force Staff or his delegate for the purposes of this sub-regulation.*

(2) For the purposes of these Regulations, a person shall be taken to have rendered service in the Reserve Forces throughout a year if –

(a) the person, by virtue of his membership of the Reserve Forces, was required to undergo training or render service in the capacity of a member of the Reserve Forces for a period not less than, or for periods that in the aggregate were not less than, a period determined by the Chief of the Defence Force Staff or his delegate; and

(b) the person completed that training or rendered that service as the case may be.

(3) For the purpose of the application of sub-regulation (2) in relation to a particular person, “year” means the period of 12 months that commenced on the day on which the person became a member of the Reserve Forces or on the anniversary of that day.

...

7. *The Reserve Force Decoration may be awarded to a person who has, on or after 14 February 1975, and before 20 April 1999, completed the qualifying service as a member of the Defence Force required by regulation 8.*

¹³ *Commonwealth of Australia Gazette No S78 Defence Force Service Awards* dated 27 April 1982.

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

8. (1) *Subject to sub-regulation (2), the qualifying service as a member of the Defence Force required for the award of the Reserve Force Decoration is efficient service as an officer of the Defence Force for a period of 15 years or for periods that, in the aggregate, amount to 15 years, being service that includes efficient service as an officer of the Reserve Forces for a period not less than 12 years or for periods that, in the aggregate, amount to not less than 12 years.*

.....

Members of philanthropic organizations

14. *A medal or clasp may be awarded to a person, who as a member of a philanthropic organization, has been engaged in the performance of philanthropic services for the Defence Force as if the person, while so engaged, has been a member of the Defence Force*¹⁵

Qualifying/efficient service for the RFD

12. The minimum periods of a member's annual qualifying service, that is efficient service for the RFD, are set out in the *Defence Force Service Awards Regulations Determination by the Chief of the Defence Force* dated 6 February 2013. For a member of the RAAFGR or RAAFR, the requirement is one day per annum to 19 April 2000 and 20 days per annum from 20 April 2000.

Defence Long Service Medal

13. The DLSM may be awarded to a member who has, on or after 14 February 1975, completed 15 years qualifying service in the Australian Defence Force. This includes efficient service in Permanent and Reserve Forces.

14. The eligibility criteria for awarding the DLSM are set out in the *Commonwealth of Australia Gazette S352, Defence Long Service Medal Regulations*, dated 10 July 1998. Further amendments were published in *Commonwealth of Australia Gazette S160*, dated 30 March 2000, and *Commonwealth of Australia Gazette S2*, dated 3 January 2002. The amended Regulations state, relevantly:

"Award of the Medal

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

¹⁵ Commonwealth of Australia Gazette, No S78, *Defence Force Service Award Regulations*, dated 27 April 1982.

- (i) *qualifying service for a period of at least 15 years or periods that, in total, amount to at least 15 years; and*
 - (ii) *at least 1 day's qualifying service on or after 20 April 1994; or*
- (b) *has given:*
- (i) *qualifying service for a period of at least 15 years or periods that, in total, amount to at least 15 years; and*
 - (ii) *at least 1 day's qualifying service on or after 14 February 1975; and*
 - (iii) *all of the qualifying service before 20 April 1994; and*
 - (iv) *qualifying service, none of which can be recognised for the Defence Force Service Awards Regulations, either by reason of its length or its character.* ¹⁶

....
....

Qualifying service

4. *Service in the Defence Force is qualifying service if:*
- (a) *where the service was given as a member of the Permanent Forces or the Reserve Forces – the member:*
 - (i) *fulfilled the requirements specified in the directions given by the Chief of the Defence Force; and*
 - (ii) *gave efficient service; or*
 - (b) *where the service was given as a member of a **philanthropic organisation**¹⁷ who provides a philanthropic service to the Defence Force – the member gave efficient service* ¹⁸

¹⁶ Defence Long Service Medal Regulations as amended by the Commonwealth of Australia Gazettes No S160 dated 30 March 2000 and S2 dated 3 January 2002.

¹⁷ Emphasis added.

¹⁸ *Commonwealth of Australia Gazette, No S352, Defence Long Service Medal Regulations*, dated 10 July 1998, defines a 'philanthropic organisation', means an organisation determined to be a philanthropic organisation by the Chief of the Defence Force or a delegate of the Chief of the Defence Force.

Qualifying/efficient service for the DLSM

15. The *Defence Long Service Medal Regulations, Directions by the Chief of the Defence Force*¹⁹ set out that ‘efficient service’ for the purpose of the award of a Defence Force Service Award under the Defence Force Service Award Regulations (such as the RFD) may be classified as qualifying service for the purposes of the DLSM providing certain conditions have been met.

16. The *Defence Long Service Medal Regulations, Determination by the Chief of the Defence Force*²⁰ sets out the minimum periods of qualifying service (but not efficient service) required for each year served, as set out below. The days shown are to be remunerated at Defence rates of pay, unless they are approved voluntary unpaid Reserve service. For a member of the RAAFR or the RAAFGR to qualify for the DLSM, the requirement is one day of qualifying service per annum to 19 April 2000 and 20 days of qualifying service per annum from 20 April 2000.

17. The Defence Long Service Medal Regulations state that a person is not eligible to be the holder of both the DLSM and an award under the *Defence Force Service Award Regulations* (including the RFD).

18. Both awards rely upon 15 years of qualifying service in the ADF. However, RAAFR/GR non-commissioned service does not count towards the RFD as this award is for commissioned officers only. Such service can count towards the DLSM or the RFM.

Mr Spiro’s service record

19. It is agreed that on 1 December 1967 Mr Spiro was appointed for Reserve duties as a Cadet instructor with the Air Training Corps (ATC). He was posted to 14 Flight of the West Australian Squadron ATC (WASQNATC), which was then a Reserve Squadron and part of the ADF.

20. Mr Spiro’s service is complicated by legislative changes which took effect on 3 November 1977, when it was legislated that Cadets and Cadet Instructors would no longer be members of ADF and therefore the Reserve Forces.

21. The name of the Cadet Forces in Air Force has changed over time. Initially it was known as the Air Training Corps (ATC), then the Air Training Corps (AIRC) in 1976, and then in 2001 it became the Australian Air Force Cadets (AAFC).

22. In his case, Mr Spiro’s eligibility for either award requires him to establish that he had some dual service – that is with the Reserve Forces and the Cadet Forces from 3 November 1977 and that his Reserve service established 15 years qualifying service for either award.

¹⁹ Dated 13 April 2000.

²⁰ Dated 6 February 2013.

23. Mr Spiro's service record has been disputed over the years, particularly in respect to any end date of his Reserve service in the RAAF. Mr Spiro asserts he served in the Reserve Forces as well as the Cadet Forces until he voluntarily retired from both on 30 September 2005. Defence dispute whether Mr Spiro rendered any Reserve service beyond 15 January 1993. Importantly, the Tribunal had to determine the length of Mr Spiro's Reserve service.

24. The following sets out the Defence position in relation to Mr Spiro's service which has changed over time.

25. **Original Defence position – No service by Mr Spiro in RAAF Reserve Forces beyond 2 November 1977.** Until the date of hearing, Defence maintained its long held position that Mr Spiro's service in the RAAF Reserve Forces ceased on 2 November 1977 with the legislative changes which came into force in relation to the Cadet Forces.²¹ Further, the Defence Report prepared for hearing stated that Mr Spiro's tenure in the RAAF Reserve Forces was terminated on 12 March 1971, as indicated by a letter from Wing Commander N.T. Raffin on behalf of the Air Member for Personnel.²² However, it was accepted by Defence at hearing that there was no termination on this date or break in service at this time.

26. Defence now accepts that records do not support that Mr Spiro's service category changed in terms of his Reserve service at 2 November 1977. While the *Air Force Amendment Act 1976* established the AIRTC as a separate body and that officers, instructors and cadets were not members of the Air Force,²³ the Act did not provide transitional arrangements for those Officers of Cadets such as Mr Spiro who had *already* been appointed to the RAAF Reserve. It would seem that the effect on at least some of those members, such as Mr Spiro, was to allow their appointments within the RAAF Reserve Forces to continue within the newly formed AIRTC.²⁴ Further, there was no evidence that Mr Spiro made an election to discharge from the Reserve Forces upon his appointment to the newly formed AIRTC.

27. Defence concedes that this would explain the yearly notifications sent by the Directorate of Reserves – AF to Mr Spiro after 1977 concerning his willingness to remain in the General Reserve. While service in the General Reserve is inactive service, a member can be called up for service during this period. Existing records in Mr Spiro's Personnel File show that he was sent and/or responded to notifications between the

²¹ In 1973 Mr Spiro automatically became a member of the RAAFGR by virtue of section 4(D) of the *Air Force Act 1923*.

²² Letter from WGCdr NT Raffin on behalf of the Air Member Personnel, dated 13 June 1971.

²³ See sections 8(3) and 8(4) of the *Air Force Amendment Act 1976*, No 138 of 1976. Section 8(3) provides that "a person appointed to be an officer or instructor in the Air Training Corps/ [AIRTC] does not become a member of the Air Force by virtue of that appointment.". Further, section 62C(2) of the *Defence Act 1903* states "A person with a role in administering, managing, supervising or training cadets does not become a member of the Defence Force because of that role".

²⁴ Air Cadets-Memo from CO NSW AIRTC to Reservists NSW AIRTC dated 16 March 1977, sets out that staff and officers of Cadets' retention in the Reserves would be considered, however, membership of the Reserve would not relate in any way to appointments or status in the AIRTC. As such, any further service with the AIRTC from 3 November 1977 onwards was not regarded as service with the ADF. However, any member who remained on the General Reserve (parallel service) was to be assessed separately for his/ her service and in accordance with the relevant Regulations. It is also relevant in this respect that *Air Force Organisation Directive No 10/76 Reorganisation of Air Training Corps* states that with the formation of the AIRTC "All Reservists who wish to do so will remain on the RAAF Reserve".

years 1979 to 1991,²⁵ referencing his Reserve service number O57628. On each occasion Mr Spiro responded by stating that he wished to continue in the Reserves, that he was medically fit to continue, and that he was able assist with relief manning. As an illustration of this, Mr Spiro said that during the Gulf War his availability for relief manning was inquired of him but his AIRTC duties would not allow it at the time.²⁶ Defence properly conceded at the hearing that this led to a state of affairs where Mr Spiro believed he was both a RAAF Reservist, during at least the period of the annual notifications (1979 to 1991), and an AIRTC Officer of Cadets.

28. However, Defence emphasised that, from 1977, AIRTC and RAAF Reserves were separated for medallic purposes and any recognised service would need to be rendered under each separate organisation.²⁷

29. **Revised Defence position - end date of 15 January 1993 for Reserve Service.** Defence submitted at hearing that Mr Spiro's service in the RAAF Reserve likely ceased in 1994 or 1995. This is because at that point ADF computer generated correspondence ceased and that those who had been inactive in the Reserve 'fell off' the annual circulation list. In short, Defence submitted that all annual RAAF Reserve notifications would have ceased around this time.²⁸

30. In further written submissions of 26 August 2021,²⁹ Defence submitted that the end date of Mr Spiro's RAAF Reserve service was 15 January 1993. In doing so, Defence relied upon the response of 15 January 1993 signed by Miss Helen Rudkin on behalf of the Director Personnel Services and Pay – Air Force, which Defence submitted made it clear that Mr Spiro's service was only with AIRTC from that point.³⁰ Defence submitted that 15 January 1993, being the date of the letter, is the end date of Mr Spiro's Reserve service.

31. Mr Spiro does not agree to this end date and maintains that he had membership in the RAAF Reserve until his voluntary retirement on 30 September 2005. We will come to his contention regarding his Reserve service dates shortly.

32. Defence now state that Mr Spiro's service is as follows:

- On 1 December 1967 he was appointed for part-time duties with the Air Training Corps (ATC) and posted to 14 Flight of the Western Australian Squadron of ATC (WASQNATC) within RAAF Reserve (RAAFR). [01/12/1967 – 27/8/1972]

²⁵ RAAF Personnel Annual Notifications/ responses 1979, 1980, 1985 and 1991.

²⁶ Letter from Mr Spiro to the Tribunal dated 30 November 2020, providing his comments on the Defence Report.

²⁷ Defence advise that the exact date of separation could not be located, however, for award entitlement purposes the day prior (2 November 1977) to the date of the gazettal for the *Cadet Forces Regulations* 1977 of 3 November 1977 is used as the end date for qualifying service towards the RFD (and the RFM).

²⁸ The Tribunal notes that there are no records of any annual notifications in Mr Spiro's Personnel file after the 1991 annual notification which was signed by the applicant on 24 July 1992.

²⁹ Ms Petrina Cole, Director of Directorate of Honours and Awards, in response to Tribunal questions/

³⁰ Letter to Mr Spiro from Miss Helen Rudkin and referred to by Ms Cole, letter to Tribunal dated 26 August 2021.

- On 28 August 1972 he was appointed to a Commission with the RAAFR as Pilot Officer for part-time ATC instructional duties with WASQNATC. [28/8/1972 – 15/1/1993]
- On 3 November 1977 he was appointed to the newly formed AIRTC as an Officer of Cadets posted to WAAIRTC. On 30 September 2005, his service as an Officer of Cadets within Australian Air Force Cadets (AAFC) ceased. [3/11/1977 – 30/09/2005]³¹

33. In summary, relevant to this application, Defence now submits that Mr Spiro was a member of the ADF Reserves from 1 December 1967 to 15 January 1993, but that any duty performed by him from 3 November 1977 was in his capacity as an Officer of Cadets, not as a Reservist.

Mr Spiro's awards

34. For his service Mr Spiro has been awarded the following defence awards:

Australian Defence Medal

Australian Cadet Forces Service Medal³² (ACFSM) with four clasps³³

35. The Tribunal notes that a letter from Wing Commander RF Tompsett, Air Force Headquarters, dated 27 July 2011, states that the award to of the ADM Mr Spiro recognises his RAAF Reserve service between August 1972 and November 1977, and that the award of the ACFSM and four clasps recognises his 38 years' service in the Cadet Forces.³⁴

Mr Spiro's case for the RFD and DLSP

36. Mr Spiro states that at all relevant times he had dual eligibility in the Cadet Forces as well as the Reserve Forces, being some 38.5 years of service. He states that on this basis he easily satisfies the 15 year qualifying requirement for both medals because he rendered at least one day's Reserve service per annum to 19 April 2000 and 20 days per annum thereafter. Noting that the Defence Long Service Medal Regulations state that a person is not eligible to be the holder of both the DLSP and an award under the Defence Force Service Awards Regulations (such as the RFD), Mr Spiro stated that if he had to elect to receive one medal, then he would elect to receive the RFD.

37. Mr Spiro's main contention for both awards is on the basis of remunerated and voluntary service in the RAAF Reserve. He advanced a number of bases and much material in support of this contention. His alternate contention is that his service in the Cadet Forces should count as philanthropic service for either award.

³¹ Letter from Ms Petrina Cole, Director of Honours and Awards, to Tribunal dated 6 November 2020, and letter from Ms Petrina Cole, dated 26 August 2021.

³² The creation of the ACFSM was to recognise officers and instructors whose voluntary service had received no formal recognition since 1975 when Australia stopped issuing Imperial awards.

³³ Letter from Ms Petrina Cole, Director of Honours and Awards, to Tribunal dated 6 November 2020, para 14.

³⁴ Letter from Wing Commander RF Tompsett, Air Force Headquarters Deputy Director Ministerial Liaison & Review, dated 27 July 2011, RAAF History File Spiro TP.

Defence submission

38. Defence submits that there is no evidence that Mr Spiro has undertaken qualifying service as an efficient member of the Reserve Forces from 3 November 1977. It further submits that his service with the AIRTC and AAFC is not ADF service and it cannot be considered as qualifying service towards eligibility for the RFD or the DLSM, nor is Cadet service philanthropic service. As such, Defence considers him ineligible for either award.

39. Defence submits that all records point to Mr Spiro being an inactive member of the Reserve Forces from 3 November 1977 to 13 January 1993, as addressed below.

Issues before the Tribunal

40. The issues for us to determine are:

- an end date for Mr Spiro's service in RAAF Reserve Forces;
- **for the DLSM:** whether in each enlistment anniversary year from 1 December 1967, Mr Spiro performed 1 day of remunerated or 1 day of approved volunteer Reserve service to 19 April 2000 and 20 days of remunerated or approved volunteer Reserve service until 30 September 2005, up to a total of 15 years of qualifying service; and
- **for the RFD:** whether in each enlistment anniversary year from his commission as an officer from 28 August 1972, Mr Spiro performed 1 day of remunerated or 1 day of approved Reserve volunteer service to 19 April 2000 and 20 days of remunerated or approved volunteer Reserve service until 30 September 2005, up to a total of 15 years of qualifying service.

Importantly, we must determine whether Mr Spiro's service in the RAAF Reserve was active or inactive beyond 2 November 1977.

Determining Mr Spiro's Reserve service dates

Main Contention: Reserve remunerated/volunteer service - 3 November 1977 to 30 September 2005

41. Mr Spiro states that there is no evidence that his appointment in the Reserve was ever terminated or that he was discharged from the Reserve. He points to a number of factors as being illustrative of his active service in the Reserve, namely that he was promoted via Reserve postings, that he performed Reserve paid duties and/or Reserve approved volunteer service and that he was provided dental and medical treatment at RAAF Pearce until 1989 using his Reserve service number O/A567628.

42. **Supporting reasons: Mr Spiro says he was promoted via Reserve postings.** Mr Spiro points to his Personnel Occurrence Reports³⁵ which show that all of his promotions were via the 'same RAAF Reserve unit' being the WAATC and then WAAIRTC, noting that the WAATC was a formerly a Reserve unit.³⁶

43. Defence disagreed with this contention, stating that all of his promotions after 1977 were with the Cadet Forces. Further, Defence submitted that the WAATC ceased to be a Reserve unit due to the ATC ceasing to be part of the ADF (and therefore the Reserves) from 3 November 1977, when the AIRTC came into being. Defence also submitted that the WAAIRTC was not a Reserve unit and that, from 3 November 1977, the RAAF remained only the 'parent service' for its Cadet Forces.

44. We note, however, that all promotions in Personnel Occurrence Reports, from Flight Lieutenant FLTLT (AIRTC) in 1979, Squadron Leader SQNLDR (AIRTC) in 1982 and WGCDR (AIRTC) in 1989 via his posting with WAAIRTC, stipulate Mr Spiro's AIRTC service number A095049 and not his RAAF Reserve service number.

45. At hearing, Mr Spiro stated that he wore the same rank during both his Cadet instructor duties and for his duties in the Reserve. To Mr Spiro, Cadet rank was 'transferable' to the Reserve. He said that he was discharged at WGCDR rank 'as is customary' for Reserve entitlement and demonstrates his being a member of the Reserve. He did not accept that promotion arrangements were different in the Cadet Forces whereby it was easier to achieve higher rank than in the RAAF Reserve.³⁷ Defence argued that appointments or status in the AIRTC in no way related to appointment or status in the Reserve. The use of AIRTC (and today AAFC) in ranks is to distinguish the rank from RAAF service.³⁸ In a nod to this convention, Defence and the Tribunal noted that, in written correspondence, Mr Spiro would invariably use the rank 'WGCDR (AIRTC)'.³⁹ To Defence and the Tribunal, there was nothing customary about being discharged at WGCDR rank in the Reserve.

46. The Tribunal thus determines from the records and evidence before it that Mr Spiro's promotions from FLTLT (AIRTC) to WGCDR (AIRTC) were via Cadet Forces and Cadet postings and not via the Reserve or pursuant to any Reserve posting.

³⁵ Letter from Mr Spiro to Tribunal dated 14 September 2021, providing his response to the Defence material forwarded to him dated 26 and 30 August 2021.

³⁶ Written submission of Mr Spiro dated 3 October 2021.

³⁷ However, we note that this was at odds with his insignia at times when he would list his higher AIRTC rank, as well as, his lower 'RAAFR rank'.

³⁸ Matthew Glozier, *Australian Air Force Cadets 1941 – 2016*, writes at page 218 that volunteer civilian instructors replaced RAAF Reserve who had acted in those positions up to 1975. To reflect the change in status, on 31 October 1978 all AIRTC officers and instructors were allocated new service numbers. Staff members had to use the suffix (AIRTC) behind their rank, however this was not regularised until 1986. The instructors were civilians wearing RAAF uniform, with the introduction of white tape below the officer's rank braid from 1986. However, AIRTC staff members were still allowed to attend appropriate messes on RAAF bases and pay and receive compliments during parades.

47. **Supporting evidence: Mr Spiro says he performed duty in the Reserve from November 1977.** Mr Spiro conceded that most of his duties were for Cadet Forces, but he said he continued to attend all manner of duties with the Reserve Forces. Further, he stated that he received payment as a Reservist for his Reserve duties, as well as receiving Cadet Forces pay and allowances for his Cadet duties.

48. He states that as a member of the Reserve he:

- participated in annual seven day camps with the General Reserve between 1969 to 1989 before he became Commanding Officer of WAAIRTC;
- attended Commanding Officer (CO) conferences at RAAF Fairbairn in Canberra from 1989 to 1994;
- received specialist training via annual ‘Reserve Instructor Training Courses’ (RITC). These occurred at RAAF Pearce, which included promotion courses, advanced weapon training, Fire Range Officer courses, firefighting, approved driving and other courses; and
- performed authorised/approved volunteer duties as an appointee to the National Coordinator Vocational Training (from 1994) and the ATC National Council (1995 – 2002).

49. Mr Spiro provided undated photographs purporting to show him in the field as a Reservist on RITC training - and not as a Cadet member partaking in RITC training. Mr Spiro provided supporting evidence from Mr Adrian Stoffels, a retired WGCDR (AIRTC) Officer of Cadets, who said that he too was a participant in RITC in January 1979 and 1980 at RAAF Pearce. He recalled the course Commander was Flight Lieutenant Spiro.⁴⁰ Mr Angus Slater, another former RAAF reservist, also provided some support for Cadet members attending RITC lectures.⁴¹

50. Mr Spiro also provided an ‘RAAF Drivers Licence’ issued in 1984 which he said was obtained during an annual promotion course at RAAF Pearce. Noting that the licence was issued to Mr Spiro under his AIRTC service number A095049 and not his RAAF Reserve service number, the Tribunal did not find this was persuasive evidence of Reserve attendance as contended.

51. Mr Spiro said he attended Commanding Officer (CO) conferences with Reserve COs in his capacity as CO of WAAIRTC. However, it was difficult, without further evidence, to reconcile his being in attendance as a Reservist as opposed to his attendance being in his AIRTC capacity.

52. Correspondence shows that Mr Spiro was appointed to the AIRTC National Council in 1994 and to the position of National Coordinator Vocational Training (NCVT) in 1995. Mr Spiro says that he rendered authorised Reserve volunteer service in these Reserve roles.⁴²

⁴⁰ Email from Adrian Stoffels to Mr Spiro of 10 September 2021.

⁴¹ Letter from Angus Slater to Mr Spiro of 10 September 2021.

⁴² Letter from Wing Commander G McCloy, Director Personnel Reserves – Air Force to Wing Commander Spiro dated 14 October 1994, and Letter from Chairman of Air Training Corps, National Corps to Wing Commander Spiro dated 31 January 1995.

53. The Tribunal doubts this assertion. Firstly, the letters clearly show that these appointments were in Mr Spiro's capacity and experience a senior member of the AIRTC. There is nothing in the correspondence about being in a Reserve capacity or a volunteer capacity. Mr Spiro states that as the appointment to the NCVT came from Wing Commander G McCloy, Director Personnel Reserves – AF, it was a Reserve position. However, it must be remembered that the RAAF remained the parent organisation for the AIRTC. This did not make the appointed roles Reserve ones. Secondly, there are strict conditions for the consideration of qualifying volunteer service in terms of medallic recognition. Defence Instruction (General) PERS 31-1, *Australian Awards for long service for members of the Australian Defence Force and Officers and Instructors of Cadets*, sets out that Reserve Forces members who do not have an allocation of training days may voluntarily complete training and other ADF commitments without remuneration or other payment. This voluntary service may be accepted as qualifying/eligible service for medallic recognition. However strict conditions apply, which includes that the duty must be authorised by the member's Commanding Officer/Officer Commanding (CO/OC),⁴³ as well as the recording of such attendance. No such authorisations or endorsement by Mr Spiro's CO/OC as to any recognition of any volunteer service was before the Tribunal.

54. Mr Spiro then submitted that a two page handwritten record of duties performed between July 1994 and March 2005 showed 96 days Reserve Service Days. The handwritten entries are on a 'form PA 7', titled 'Attendance Register – RAAF Reserve'.⁴⁴ Each entry is signed by Mr Spiro to certify that the dates and times of attendances recorded are correct and covered by proper authority. Mr Spiro argues that this is further evidence of his Reserve service.

55. However, the Tribunal found that Mr Spiro was simply availing himself of the use of a RAAF Reserve Attendance Register form in name only. It is clear that Mr Spiro was recording attendance duties for his unit, being 'WAAIRTC, HQ', referencing his AIRTC service number 'A095049' and his rank 'WGCDR (AIRTC)'. To the Tribunal, none of the entries, under the hand of Mr Spiro, would appear to be a record of any RAAF Reserve attendance.

56. Rather, it would appear from the Register that Mr Spiro regularly attended Wednesday nights at WAAIRTC, HQ as well as parading at other Cadet Flights. Mr Spiro also records duty from 9 to 11 October 1994 for the AIRTC National Council⁴⁵ in Canberra. This would indicate that this was Cadet duty, as opposed to authorised approved Reserve volunteer duty as asserted by Mr Spiro. Likewise, there is reference to 'NC prep' and '2 days' 'NC' for late February/early March 1995. It is unclear if this is his 'National Council' or his 'National Coordinator' role. Again, the Tribunal makes the same observation that the entries appear to be for Cadet duties for some kind of cadet pay or allowance.

⁴³ Or an officer correctly placed to do so

⁴⁴ Letter from Mr Spiro to Tribunal dated 14 September 2021, providing his response to the Defence material forwarded to him dated 26 and 30 August 2021, including copy of Mr Spiro's attachment S8 Attendance Register.

⁴⁵ 'NAT/COU' 'CANB' is the notation on the applicant's Register.

57. None of the material discussed above assisted the Tribunal in making a finding that Mr Spiro served in the Reserve Forces beyond 15 January 1993 or that his Reserve service was active beyond 3 November 1977.

58. **Supporting reasons: Mr Spiro says he was authorised to serve as a Reservist.** At hearing, Mr Spiro conceded that as a Reservist he was not attached to or paid by a Reserve Squadron, such as 25SQN, at least until 25SQN moved to RAAF Pearce.

59. He says that authorisation for his RAAF Reserve duties derives from section 4(J)2 of the *Air Force Act 1923*. Section 4(J)2 states, in relation to service in the Air Force Reserves:

‘The regulations must set, or provide for the setting of, training periods in the Air Force Reserve

The notation under 4J(2) states

different training periods maybe set for different parts of the Air Force Reserve or for different classes of members of the Air Force Reserve.’

60. Mr Spiro states that the training he performed was ‘valid, authorised and evidenced by [this notation]’.⁴⁶ Defence submitted that only authorisations pursuant to section 4(J)4 can be used to undertake Reserve Service.

61. The Tribunal disagreed with Mr Spiro’s interpretation of section 4(J). From 1977 Cadet Forces were not part of the Air Force Reserve. The Tribunal found no evidence that beyond 2 November 1977 Mr Spiro was attached to a Reserve unit, including 25SQN.

62. **Supporting evidence: Mr Spiro says he was paid as a RAAF Reservist.** At hearing, Mr Spiro initially said he was paid cash for his RAAF Reserve service (at Reserve rank) but then he said he may have been paid via cheque. The Tribunal accepts that Mr Spiro was trying to recall how he had been paid as a Reservist, as distinct from his Cadet service, from a long time ago.

63. In written submissions Mr Spiro says he was remunerated in cash by Base Squadron Pay Section at RAAF Pearce for which signature was required and a small pay strip issued.⁴⁷ Mr Spiro submitted that for payment for training on the basis of seven days or more he was paid at the RAAF Reserve rate of pay at the rank held. Mr Spiro provided some supporting evidence from Mr Stoffels⁴⁸ who said that he too was paid in cash at RAAF Pearce in 1979 and 1980 after attending RITC training. However, Mr Stoffels’ statement is silent as to whether he was paid for this duty as a Reservist as opposed to an Officer of Cadets. Defence submitted at hearing that cadet instructors on field exercises were often paid by cash on completion as a per diem payment. To Defence this was likely what Mr Spiro was trying to recall now. Mr Spiro could not

⁴⁶ Letter from Mr Spiro to the Tribunal dated 14 September 2021, providing his response to the Defence material forwarded to him dated 26 and 30 August 2021.

⁴⁷ Ibid.

⁴⁸ Email from Adrian Stoffels to Mr Spiro of 10 September 2021.

recall with certainty whether he was paid by 25SQN or via which pay department. He was not able to produce RAAF Reserve pay advices or bank statements to show that he had performed RAAF remunerated Reserve service or received attendance advices which recorded approved voluntary Reserve service.

64. Mr Spiro was only able to provide one Pay Advice and this was for Cadet Forces (AAFC) pay for the pay period 29 July 2004 to 11 August 2004 via pay department 7 Wing AAFC, Perth.

65. Defence submitted that a search of Reserve pay records by Mr Garry O'Brien of the Reserve Pay Administration Centre, People Systems and Payroll Services Branch,⁴⁹ failed to find any record of Mr Spiro as a Reservist. Mr O'Brien stated that Mr Spiro may have been an inactive Reserve member as there was no record of his parading as a reservist or being paid as one from 3 November 1977. Further, Defence submitted that the material provided by Mr Spiro set out above did not change its position that Mr Spiro had provided inactive service in the Reserve from 3 November 1977 to 15 January 1993.

66. Mr Spiro submitted, and the Tribunal accepted, that he was told by Mr Waddell of the Defence Personnel Executive that there had been a loss of ADF Reserve records from 1977 to 1985. The Tribunal nonetheless expected there to be readily available pay records of any Reserve service for at least his more recent service, such as from the implementation of the PMKEYS pay system which commenced in 1997. We note that Mr Spiro was not provided with a PMKEYS employee ID for his Reserve service.

67. The Tribunal finds on the material before it that there is no evidence that Mr Spiro was remunerated as a Reservist from 3 November 1977 to 30 September 2005 or rendered approved voluntary Reserve service in that period.

Tribunal finding: Mr Spiro's Reserve dates of service and status

68. Taking all of the material into consideration we find that Mr Spiro continued as a member of the Reserve Forces beyond 3 November 1977. However, we accept the submission put forward by Defence that Mr Spiro's membership in the Reserve Forces ceased no later than 15 January 1993 when he was advised so by the letter signed on behalf of the Director Personnel Services and Pay – Air Force.

69. Nevertheless, the available records on his Personnel file and the further material provided by Mr Spiro all point to him being inactive in the Reserve Forces from 3 November 1977. There is no evidence of any relief manning performed or of any Reserve annual day training requirements being met. No reserve pay records nor attendance records were provided. Mr Spiro relies solely upon his memory of performing paid and volunteer Reserve service, but we were presented with no satisfactory evidence to back up his recollection.

⁴⁹ Email, Mr Garry O'Brien, Reserve Pay Administration Centre, People Systems and Payroll Services Branch, dated 31 August 2021 to Ms Allison Augustine, Assessments Manager, Directorate, of Honours and Awards.

70. We therefore find that all of the evidence points to Mr Spiro being inactive in the Reserve Forces from 3 November 1977 to 15 January 1993 and that he was only active in the Cadet Forces during this time.

Mr Spiro's alternate contention: Philanthropic service

71. Mr Spiro alternatively contended that the Cadet Forces were a 'philanthropic organisation' and this should count for 'qualifying service' for both medals.

72. **Defence submission.** Defence submitted that the Cadet Forces are not considered a philanthropic organisation and therefore his Cadet duty was not qualifying service. While there is no CDF Determination in force defining 'philanthropic organisations' Defence referred to policy set out in the Philanthropic Manual, dated 3 December 2013.⁵⁰ It lists six currently accredited philanthropic organisations to the ADF, namely: The Returned & Services League – Australian Overseas Fund, Red Shield Defence Services, Everyman's Welfare Service, the Australian Red Cross Society, the Young Women's Christian Association and the Young Men's Christian Association. The Cadet Forces are not listed.⁵¹

Tribunal finding: Mr Spiro's alternate contention

73. The Tribunal finds that the Cadet Forces are not a philanthropic organisation and therefore Mr Spiro's service with the Cadet Forces cannot be counted towards qualifying service for either the RFD or the DLSP on that basis.

Efficient service

74. Regulation 5(a)(ii) of the DLSP Regulations provides that service can only be qualifying service if during that time the member gave *efficient service*, defined as *service determined to be efficient service by the Chief of the Defence Force*.⁵² It is an essential separate criterion, in addition to meeting the number of qualifying years of service.

75. We observe that there does not appear to be any current operative Determination by the Chief of the Defence Force of *efficient service*, the 6 February 2013 Determination⁵³ having been revoked by the current Determination,⁵⁴ and the previous 13 April 2000 Determination only referring to service prior to 20 April 2000 as *efficient service*.⁵⁵

⁵¹ Defence Philanthropic Manual, Foreword, paragraph 2.

⁵² Regulation 2 definition of *efficient service*.

⁵³ Defence Long Service Medal Regulations, Determination by the Chief of the Defence Force, 6 February 2013.

⁵⁴ Schedule 3, *Defence Long Service Medal Determination 2021*, 16 March 2021.

⁵⁵ Defence Long Service Medal Regulations, Directions by the Chief of the Defence Force, 13 April 2000.

76. The current Determination sets out minimum annual periods of service to be completed for a year of qualifying service.⁵⁶ It does not make any mention of what amounts to *efficient service*.

77. Defence appears to assume that, if a member serves for the requisite number of qualifying years, that member has given *efficient service*. This is a conflation of two discrete criteria. It is inconsistent with the Regulations which require a separate assessment of *efficient service* in accordance with a Determination by the Chief of the Defence Force.

78. In Mr Spiro's case, however, it is unnecessary to consider whether he gave *efficient service* as he did not satisfy the 15 qualifying years criterion.

Summary of Defence submissions: eligibility criteria

79. Defence submits that Mr Spiro is not eligible for the RFD or the DLSP because he has not rendered 15 years qualifying service for each award.

80. Defence submits that Mr Spiro completed 9 years, 11 months and 1 day qualifying Reserve service, with 5 years, 2 months and 5 days of that service as an officer. On this basis, he is ineligible for either award, falling short of the requisite 15 qualifying years for each award.

Tribunal's findings on the eligibility criteria

81. Mr Spiro states that at all relevant times he had dual eligibility in the Cadet Forces from 1967, as well as the Reserve Forces, being some 38.5 years of service to 2005. He states that on this basis he easily satisfies the 15 year qualifying requirement for both the DLSP and the RFD because he did at least one day's Reserve service to 19 April 2000 and 20 days thereafter.

82. The Tribunal disagreed, having found that he was not active in the Reserves after 3 November 1977, nor did he perform any duty in an approved philanthropic organisation. Therefore he did not have the requisite 15 years qualifying service for either award.

83. In relation to the DLSP, the Tribunal finds that Mr Spiro's total qualifying service is 9 years, 11 months and 1 day and therefore short of the required 15 years qualifying service.

84. In relation to the RFD, the Tribunal finds that Mr Spiro's total qualifying service is 5 years, 2 months and 5 days and therefore short of the required 15 years qualifying service.

85. The Tribunal therefore finds that Mr Spiro is not eligible for the RFD nor the DLSP as he does not meet the eligibility criteria for the respective awards. Accordingly, the Tribunal finds that the decision of the Directorate is the correct decision.

⁵⁶ Clause 5 and Schedule 1, *Defence Long Service Medal Determination 2021*, 16 March 2021.

86. Nevertheless, we take this opportunity to acknowledge Mr Spiro's very significant commitment and contribution through his service to the Cadet Forces.

DECISION

87. The Tribunal decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Mr Terry Peter Spiro is not eligible for the award of the Reserve Force Decoration or the Defence Long Service Medal.

88. The Tribunal further decided that, as previously advised to Mr Spiro by the Tribunal secretariat, it has no jurisdiction to review Defence's decision in respect of Mr Spiro's eligibility for the National Medal.