



Australian Government

Defence Honours and Awards Appeals Tribunal

Clarke and the Department of Defence [2022] DHAAT 06 (27 May 2022)

File Number	2021/006
Re	Wing Commander Nicholas Clarke MBE, CSC Applicant
And	The Department of Defence Respondent
Tribunal	Ms Josephine Lumb (Presiding Member) Air Commodore Anthony Grady AM (Retd)
Appearances	Wing Commander Nicholas Clarke, Applicant Mrs Catherine Morris Ms Victoria Beahan (11 November 2021 only) Mr Wayne Parker (25 February 2022 only) Directorate of Honours & Awards, Department of Defence
Hearing Dates	11 November 2021 25 February 2022

DECISION

On 27 May 2022 the Tribunal decided, pursuant to section 110VB(2)(a) of the *Defence Act 1903*, to affirm the decision of the Department of Defence that Wing Commander Clarke is not eligible for the award of the Defence Long Service Medal.

CATCHWORDS

DEFENCE AWARD – Defence Long Service Medal – eligibility criteria – qualifying service – Reserve service – no provision for service caused injury – alternative approaches for determining qualifying years – efficient service.

LEGISLATION

Defence Act 1903 – ss 110VB(2), 110VB(3), 110VB(6)

Defence Regulation 2016 - Section 36

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

Commonwealth of Australia Gazette No S160, Amendment to the Letters Patent for the Defence Long Service Medal, 30 March 2000

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

Commonwealth of Australia Gazette No S2, Letters Patent and Amending Regulations for the Defence Long Service Medal, 3 January 2002

Commonwealth of Australia, Defence Long Service Medal Regulations - Determination by the Chief of the Defence Force dated 6 February 2013

Defence Long Service Medal Regulations, Instrument of Delegation dated 23 September 2018

Defence Long Service Medal Determination 2021, 16 March 2021

REASONS FOR DECISION

Introduction

1. The Applicant, Wing Commander Nicholas Clarke MBE, CSC, seeks a review of a decision dated 13 August 2018, of Ms Allison Augustine, Assessments Manager in the Directorate of Honours and Awards of the Department of Defence (the Directorate), that he is not eligible for the award of the Defence Long Service Medal (DLSM).¹

Decision under review

2. On 17 May 2018, Wing Commander Clarke made application to the Directorate to determine his eligibility for the DLSM. On 13 August 2018, in response to Wing Commander Clarke's application, Ms Augustine advised Wing Commander Clarke that he is not eligible for the award, stating that *"In order to be eligible for the DLSM after 14 February 1975 you must have served 15 years of qualifying service in the Australian Defence Force. For these purposes qualifying service means the minimum annual obligations as per the Chief of the Defence Force Determination – Minimum periods of annual qualifying service dated 13 February 2013...Examination of your application, service record and ADF pay record data shows that while you served longer than 15 years, you do not have 15 qualifying years of service as you did not complete the minimum annual obligation in each year of service."*²

3. On 6 April 2021, Wing Commander Clarke applied to the Tribunal for a review of the above decision.^{3 4}

Tribunal jurisdiction

4. 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. Included in the defence awards listed in Regulation 36 is the DLSM. Therefore, the Tribunal has jurisdiction to review decisions in relation to this award.

Wing Commander Clarke's service

5. Wing Commander Clarke enlisted in the (United Kingdom's) Royal Air Force (RAF) on 5 August 1980. In December 2002, he transferred to the Royal Australian

¹ Letter, Ms Augustine to Wing Commander Clarke, dated 13 August 2018.

² Ibid.

³ Application for Review, Wing Commander Clarke, dated 6 April 2021.

⁴ It should be noted that on 15 February 2021, Wing Commander Clarke submitted a further application for the DLSM, which was refused by the Directorate (Mr Ivan Soldo) on 25 March 2021.

Air Force (RAAF), commencing as a member of the Permanent Air Force (PAF) on 2 May 2003.⁵

6. Wing Commander Clarke served with the PAF (RAAF) until 3 July 2006 when he transferred to the General Reserve Air Force (GRAF). He served in the GRAF until 3 December 2006. On 4 December 2006, Wing Commander Clarke transferred back to the PAF where he served in a full time capacity until 1 November 2015. During this period, Wing Commander Clarke deployed to Iraq and Afghanistan. On 2 November 2015, Wing Commander Clarke transferred to the Active Reserve Air Force (ARAF) where he is still serving.⁶

7. Wing Commander Clarke has been awarded the following for his service with the RAAF:

- Conspicuous Service Cross;
- Australian Active Service Medal with Clasps 'IRAQ 2003' and 'ICAT';
- Iraq Medal;
- Afghanistan Medal;
- Australian Defence Medal;
- United States Meritorious Service Medal;
- NATO Non-Article 5 Medal with Clasp 'ISAF';
- Returned From Active Service Badge.⁷

8. Wing Commander Clarke has been awarded the following for his service with the RAF (UK):

- Member of the British Empire (MBE)
- Queen's Golden Jubilee Medal
- General Service Medal 1962 with Clasp 'NORTHERN IRELAND'⁸

Conduct of the review

9. On 28 April 2021, following receipt of Wing Commander Clarke's application for review, the Tribunal wrote to the Secretary of the Department of Defence informing him of Wing Commander Clarke's application and seeking a report on the reviewable decision. On 9 June 2021, Defence provided its Report, which was in turn provided to Wing Commander Clarke for his comment, which was received on 8 July 2021.

10. Over the course of this review, the Directorate made a number of supplementary submissions to its initial Report,⁹ in response to questions from the Tribunal. Wing Commander Clarke in turn provided a number of responses. The various submissions deal with discrete aspects of this review, a number of which only emerged as issues following the first hearing and as such were not canvassed in the parties' initial

⁵ Clarke, Nicholas RAAF Service Record Extracts Letter from Defence Personnel Policy to Commonwealth Superannuation Administration dated 12 August 2003.

⁶ Clarke, Nicholas RAAF Service Record-ADP Report.

⁷ Letter, Ms Petrina Cole, Director of Honours and Awards to the Tribunal dated 9 June 2021.

⁸ Clarke, Nicholas RAAF Service Record Extracts.

⁹ Letter, Ms Cole to the Tribunal dated 9 June 2021 (Initial defence report).

submissions to the Tribunal. For the sake of clarity, the parties' submissions in relation to each issue will be separately summarised in the relevant section below as appropriate.

Initial application

11. In his *initial application* to the Tribunal,¹⁰ Wing Commander Clarke conceded that he does not meet the qualification requirements for the DLSP, despite having served for more than 15 years with the RAAF. He submitted however that it is due to a service-related medical condition that he cannot serve the (few) additional days required, having been diagnosed with Post-Traumatic Stress Disorder (PTSD), liability for which has been accepted by the Department of Veterans' Affairs (DVA).

12. Wing Commander Clarke submitted that his treating psychiatrist has advised that he cease Reserve work to avoid exacerbating his PTSD. He submitted medical certificates in support of his application.¹¹ Wing Commander Clarke pointed to the considerable contribution he has made to the military over the course of his life (both in the United Kingdom and Australia), and noted the injuries he has sustained as a result. He emphasised that if it were possible to continue Reserve work without compromising his medical wellbeing he would do so. In all these circumstances, Wing Commander Clarke submitted that the award of the DLSP is appropriate in his case.

Defence Submissions – initial Defence Report

13. In its *initial Report*,¹² the Directorate submitted that to be eligible for the DLSP after 14 February 1975 personnel must have rendered 15 years of 'qualifying service' in the Australian Defence Force (ADF). Members are required to render service throughout a year. A year is calculated as a 12 month period. Each subsequent year is calculated as a further 12 months of service.

14. 'Qualifying service' means the minimum annual obligation as per the *Chief of Defence Force Determination - Minimum Periods of Annual Qualifying Service* dated 13 February 2013. From 20 April 2000, the annual obligation for both the PAF and AFAR is 20 days.

15. The Directorate further submitted that while Wing Commander Clarke joined the RAAF in 2003, his various periods of service do not amount to the minimum qualifying service prescribed. As Wing Commander Clarke remains a serving ADF member in the RAAF Active Reserve, he could still complete the minimum requirement for qualifying service for the DLSP.

Eligibility Criteria for the Defence Long Service Medal

16. The precise eligibility criteria applicable to Wing Commander Clarke's case became a threshold issue for the Tribunal to determine. The Tribunal observes that this task was complicated by the convoluted chronology of relevant DLSP-related

¹⁰ Application for Review, Wing Commander Clarke, dated 6 April 2021.

¹¹ Medical Certificate from Dr Saker for period 14 September 2020 to 14 September 2021.

¹² Letter, Ms Cole to the Tribunal dated 9 June 2021.

Regulations (and associated amendments) and various arguably applicable (and potentially overlapping) CDF Determinations.

17. The Regulations and Determinations potentially applicable in Wing Commander Clarke's case are set out below:

Letters Patent and Regulations

18. The DLSM was instituted by Letters Patent issued on 26 May 1998 *for the purpose of according recognition to persons who render long and efficient service as members of the Defence Force*¹³ Regulations 3 and 5, as amended, made under the Letters Patent relevantly provide:

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:*
 - (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*
- ...*

Qualifying service

5. *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 directions given by the Chief of the Defence Force; and*
 - (ii) gave efficient service; or*¹⁴
- ...*

19. Amendments to the Regulations in 2000 inserted the following definition of efficient service into Regulation 2

*efficient service means service determined to be efficient service by the Chief of the Defence Force*¹⁵

¹³ *Commonwealth of Australia Gazette No S352, Letters Patent and Regulations for the Defence Force Long Service Medal*, 10 July 1998.

¹⁴ *Ibid*, as amended by *Letters Patent and Amending Regulations for the Defence Long Service Medal*, *Commonwealth of Australia Gazette No S160*, 30 March 2000, and *Letters Patent and Amending Regulations for the Defence Long Service Medal*, *Commonwealth of Australia Gazette No S2* 3 January 2002.

¹⁵ *Commonwealth of Australia Gazette No S 160, Letters Patent and Amending Regulations for the Defence Long Service Medal*, 30 March 2000.

CDF Determinations

20. *2021 CDF Determination* - On 16 March 2021 the Chief of the Defence Force (CDF) issued a Determination, relevant to Wing Commander Clarke's case, which stipulated the minimum period of annual qualifying service for all members of the Air Force from 20 April 2000 to be 20 days.¹⁶ The 2021 CDF Determination expressly revoked the previous CDF Determination dated 6 February 2013.

21. *2013 CDF Determination* - While the 2021 and 2013 Determinations differ in a number of aspects - none of which are central to Wing Commander Clarke's case - both Determinations stipulate 20 days for all Air Force members.¹⁷

22. *2000 CDF Determination* - On 13 April 2000 CDF issued a Determination, which – *inter alia*, and arguably relevant to Wing Commander Clarke's case – provides:

“...1b. On and after 20 April 2000 a member will undertake qualifying service for the purpose of the Defence Long Service Medal if the member undertakes a minimum of 20 days service per year **calculated at the anniversary of the enlistment or appointment of the member** [emphasis added].”¹⁸

23. The Tribunal notes that neither the 2013 nor the 2021 CDF Determination expressly revoke the 2000 CDF Determination. This issue of whether the 2000 Determination remains in force and thus operates concurrently with the later 2013 and 2021 Determinations is canvassed further below.

Tribunal consideration

Which CDF Determinations apply to Wing Commander Clarke's case?

24. The ‘reviewable decision’ - Before determining which CDF Determination/s apply in Wing Commander Clarke's case, the Tribunal must first identify the ‘reviewable decision’ in this case. This threshold determination is necessary as s110VB(6) of the Defence Act dictates that the Tribunal is bound by the eligibility criteria that *governed the making of the reviewable decision* in each individual case.

25. The term *reviewable decision* is defined in s110V(1) and includes a decision made by a person within the Department of Defence to refuse to recommend a person for an award in response to an application. The Tribunal observes that two decisions from the Directorate arguably meet the definition of a ‘reviewable decision’ for the purposes of the Defence Act:

- Decision including attachments from the Directorate (Mr Ivan Soldo) dated 25 March 2021;¹⁹ and

¹⁶ *Defence Long Service Medal Determination 2021*, 16 March 2021

¹⁷ *Commonwealth of Australia, Defence Long Service Medal Regulations - Determination by the Chief of the Defence Force* dated 6 February 2013

¹⁸ *Commonwealth of Australia, Defence Long Service Medal Regulations - Directions by the Chief of the Defence Force* dated 13 April 2000

¹⁹ Email, Mr Soldo to Wing Commander Clarke dated 25 March 2021 Folio 158

- Decision including attachments from the Directorate (Ms Allison Augustine dated 13 August 2018).²⁰

26. The eligibility criteria that governed the making of Mr Soldo's decision would include the specific requirements set out in the 2021 CDF Determination. It follows that the eligibility criteria that governed the making of Ms Augustine's decision would include the specific requirements set out in the 2013 CDF Determination.

27. The Tribunal notes that in Wing Commander Clarke's case, in practical terms, the applicable eligibility criteria do not substantively differ across the 2013 and 2021 CDF Determinations. Both require 20 days' annual qualifying service for RAAF members. Further, in his application for review to the Tribunal, Wing Commander Clarke clearly seeks review of Ms Augustine's decision dated 13 August 2018.²¹

28. The Tribunal is therefore satisfied that for the purposes of this review the *reviewable decision* is the decision by the Directorate dated 13 August 2018. It follows, therefore, that the Tribunal is bound by the eligibility criteria as set out in the 2013 CDF Determination.

The Directorate's 'alternate assessment methodology' and the status of the 2000 CDF Determination

29. Notwithstanding the fact that this case centres around the 2013 eligibility criteria (per paragraph 28), the status of the *2000 CDF Determination* also emerged as a key issue for the Tribunal to resolve. As set out above (paragraph 22), the 2000 CDF Determination dictates that annual service be calculated by *enlistment year*. The question for the Tribunal was whether the eligibility criteria applicable to Wing Commander Clarke's case is that set out in a combination of the 2000 and 2013 CDF Determinations, operating concurrently and read together.

30. Inextricably linked to this issue is consideration of the Directorate's policy of dissecting an applicant's service alternatively by enlistment, calendar and financial years. In simple terms, if the 2000 CDF Determination remains in force, it follows that the alternate assessment methodologies employed by the Directorate are in fact inconsistent with that Determination.

Determining Qualifying service - the Directorate's Alternate Assessment Methodologies

31. Given that the Directorate had previously submitted breakdowns of other applicants' service by enlistment, calendar and financial years,²² during the first hearing the Tribunal questioned whether these alternate assessment calculations had been generated for Wing Commander Clarke's case.

32. The Directorate subsequently submitted its 'medal assessment working papers' which documented alternate assessment methodologies employed by the Directorate in

²⁰ Letter, Ms Augustine to Wing Commander Clarke dated 13 August 2018.

²¹ Application for Review, Wing Commander Clarke.

²² See *Jackson and the Department of Defence [2021] DHAAT 14*, *Spiro and the Department of Defence [2021] DHAAT 16*.

calculating Wing Commander Clarke's eligibility for the DLSM.²³ These assessments provided a breakdown of Wing Commander Clarke's service by financial year (FY), calendar year and enlistment year respectively. Tables showing these approaches are set out in Annexure A.

33. The FY assessment submitted by Defence clearly shows that Wing Commander Clarke has served 15 sets of at least 20 days across 15 separate FYs.²⁴ However, in the FY in which the first set of at least 20 days was accrued (FY 2002-03), the applicant was not enlisted for the entirety of that FY period, as he did not commence with the RAAF until 2 May 2003. On this basis, the Directorate discounts Wing Commander's service in FY 2002-03, marking it as 'incomplete' in the relevant assessment table.

34. *Wing Commander Clarke's submission* - Having been provided with Defence's alternate calculation methodology (Annexure A) post-hearing, Wing Commander Clarke submits that:

*"If Defence had calculated my service in FY years from 3 May 2003 to 30 Jun 2003 as year one; across FY years I would have completed 15 years of service. At the Tribunal Defence stated they always take the most favourable solution for the member in my situation it would be FY and not Calander [sic] years."*²⁵

35. In considering Wing Commander Clarke's supplementary submission as set out above, the Tribunal submitted a series of follow-up questions to the Directorate regarding the basis for discounting Wing Commander's service in FY 2002-03. In response the Directorate pointed to the *Defence Honours and Awards Manual* Volume 1 Chapter 30.12 (the Manual) which states that:

...for service to be recognised, the 20 days has to be completed in conjunction with serving a full year as a member of the ADF, continuous or in aggregate. For example, a member who serves for 14 years and six months will not qualify for a DLSM. Service completed during their last six months is not qualifying service towards a DLSM because the member has not completed the final year of service.

36. The Directorate submitted that *"Therefore the 2002/03 Financial Year was not rendered over a full year of service and using the financial year method of assessment, would not count as a full eligible year towards WGCDR Clarke's total number of years of service"*.²⁶

37. The Tribunal considers that if the 2013 CDF Determination *were to be considered in isolation*, it would be arguable that the requirements contained therein had been met in Wing Commander Clarke's case, based on the dissection of his service by financial year. There is nothing in the 2013 CDF Determination that requires service over the *full* financial year, in addition to serving the qualifying 20 days during that 12 month period. The Tribunal is not bound by an internal Defence policy document, which

²³ Letter, Ms Cole to the Tribunal, dated 16 November 2021.

²⁴ Letter, Ms Cole to the Tribunal, dated 16 November 2021, Financial Year assessment.

²⁵ Wing Commander Clarke's response to Directorate letter dated 16 November 2021, dated 10 December 2021.

²⁶ Email, Ms Catherine Morris to the Tribunal, dated 6 December 2021.

arguably insists on an additional requirement over and above that envisaged by the 2013 CDF Determination.

38. However, the Tribunal considers that all arguments surrounding *financial year* calculations effectively become redundant if the 2000 CDF Determination remains in force, simply because that Determination clearly dictates that service *must* be calculated by *enlistment year*.

39. The Tribunal requested clarification of the Defence position in relation to the status of the 2000 CDF Determination. In response, the Directorate submitted that:

*“The CDF Determination of 2000 is applied in conjunction with the CDF Determination of 2013 for the purposes of assessing eligibility for the award of the DLSP. Schedule 3 of the CDF Determination dated 16 March 2021 revokes the Determination of 2013. Neither the 2013 or 2021 Determination expressly repeals the CDF Determination of 2000.”*²⁷

40. *Tribunal finding in relation to the 2000 CDF Determination* – having carefully considered the matter, the Tribunal is satisfied that the 2000 CDF Determination does remain in force and is intended to be read concurrently with the subsequent (2013 and 2021) CDF Determinations.

41. The Tribunal observes that the 2000 CDF Determination was not provided to Wing Commander Clarke in the Statement of Reasons and associated enclosures attached to Ms Augustine’s decision of 13 August 2018. Nor does it appear on the Directorate’s public-facing website which is presumably designed to provide applicants with an ‘easy reference guide’ to DLSP eligibility criteria. Instead, the website currently includes an incomplete selection of DLSP-related Regulations (and associated amendments) and CDF Determinations.²⁸ The Tribunal notes the following advice from the Directorate regarding a review currently underway:

*The Directorate ... have been undertaking a review of medal regulations, following the Government’s agreement in 2018 to a full review of Defence Honours and Awards Medal Instruments...The Directorate have proposed changes to the Defence Force Service Awards and Defence Long Service Medal Regulations which would ensure consistent application of terminology in the Medal Regulations and allow for easier understanding of eligibility entitlements...This will be a matter of consideration for the incoming government.*²⁹

42. The Tribunal encourages the timely completion of this review process, as the current state of affairs does little to assist those attempting to understand DLSP requirements, whether they be Defence decision-makers, Tribunal members or staff, or indeed prospective applicants.

²⁷ Letter, Ms Elizabeth Allen, Acting Director, Honours and Awards to the Tribunal, dated 12 April 2022.

²⁸ Website, <https://www.defence.gov.au/adf-members-families/honours-awards/medals/australian-awards/long-service-awards/defence-long-service-medal>, accessed 18 May 2022.

²⁹ Email, Ms Catherine Morris to the Tribunal, dated 13 May 2022.

43. *Tribunal finding in relation to alternate assessment methodologies* - The Tribunal notes that in the same supplementary submission clarifying its position in relation to the 2000 CDF Determination, i.e. that it remains in force, the Directorate goes on to state that:

*“Where it may be in the best interest of the member and there are extenuating circumstances, Defence has completed, in addition to an enlistment year, an assessment using the calculations of a financial year or calendar year as occurred in the Tribunal case last year of Mr Jackson. This was to assess whether the 20 days required per annual period of service could be reached by dissecting the service in different ways.”*³⁰

44. The Tribunal considers that the Directorate’s policy of assessing an applicant’s service by financial year and calendar year can only be viewed as inconsistent with that Determination, given the clear stipulation contained therein that calculation of annual service be confined to enlistment year only. The Tribunal encourages Defence to address this issue as part of the internal review process currently underway.

Tribunal finding in relation to ‘qualifying service’

45. In summary, and having carefully considered all relevant issues as set out above, the central issue for the Tribunal to determine is whether Wing Commander Clarke has completed the requisite ‘qualifying service’ in accordance with the relevant Regulations and Determinations. The Tribunal finds that he does not, his qualifying service unfortunately falling just short of the stipulated requirements.

‘Efficient service’?

46. For the sake of completeness, the Tribunal makes the following observations in relation to the issue of ‘efficient service’. Regulation 5(a)(ii) 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*.³¹ It is an essential separate criterion, in addition to meeting the number of qualifying years of service.

47. There does not appear to be any current operative Determination by the CDF of *efficient service*, the 6 February 2013 Determination³² having been revoked by the 2021 CDF Determination,³³ and the previous 13 April 2000 Determination only referring to service prior to 20 April 2000 as *efficient service*.³⁴

48. The various CDF Determinations sets out minimum annual periods of service to be completed for a year of qualifying service. They make no mention of what amounts to *efficient service*.

³⁰ Letter, Ms Cole to the Tribunal dated 12 April 2022.

³¹ *Commonwealth of Australia Gazette No S160, Amendment to the Letters Patent for the Defence Long Service Medal*, 30 March 2000 Regulation 2 definition of *efficient service*.

³² Defence Long Service Medal Regulations, Determination by the Chief of the Defence Force, dated 6 February 2013.

³³ *Defence Long Service Medal Determination 2021*, Schedule 3, dated 16 March 2021.

³⁴ Defence Long Service Medal Regulations, Directions by the Chief of the Defence Force, dated 13 April 2000.

49. 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 CDF.

50. In Wing Commander Clarke's case it is unnecessary to consider whether he gave efficient service as he did not satisfy the 15 qualifying years criterion.

Service-related medical condition

51. Having determined the applicable eligibility criteria and having found that Wing Commander Clarke's qualifying service falls just short of that requirement, the Tribunal turned its attention to the issue of applicants - such as Wing Commander Clarke - who are prevented from completing the required number of days' service because of a service-related medical condition.

52. The Directorate does not dispute that Wing Commander Clarke has a service-related medical condition, liability for which has been accepted by DVA, and which precludes him from continuing his reserve service. However - unlike the Australian Defence Medal Regulations - the DLSM Regulations contain no exception clause for members who do not meet the eligibility criteria due to medical discharge. The Tribunal accepts that this is currently the case.

53. The Tribunal notes that in the previously determined case of *Jackson and the Department of Defence [2021] DHAAT 14*, a recommendation was made pursuant to section 110VB(3) of the Defence Act as follows:

*“that the Minister for Defence Personnel review whether an exception should be made to the requirement for 15 years of qualifying service for Australian long service awards where a member is discharged due to an accepted service caused medical condition.”*³⁵

54. Wing Commander Clarke has expressed his strong endorsement of this recommendation throughout the course of the current review. The Directorate has advised the Tribunal that no decision has yet been made in response to this recommendation, which remains with the Minister for consideration.³⁶ The Tribunal is of the view that, by virtue of the strong similarities between the Jackson and Clarke cases, and noting that the Jackson recommendation is yet to be finalised, the Minister be made aware of this second case. Notwithstanding, until such time as the Minister has formed a view with reference to the recommendation under consideration, the Tribunal has no discretion to consider any such exceptional circumstances as it is bound by the currently applicable eligibility criteria.

55. In making our finding in this case, we do not take anything away from the very commendable service of Wing Commander Clarke. We acknowledge his significant commitment to the RAAF over a period of many years, which has been recognised by the Australian Government with a number of awards. We also commend and thank Wing Commander Clarke for the professional and constructive manner in which he has

³⁵ *Jackson and the Department of Defence [2021] DHAAT 14*.

³⁶ Letter, Ms Cole to the Tribunal dated 12 April 2022.

assisted the Tribunal throughout what has become, largely as a result of needing to clarify the status of key artefacts, a protracted review process.

DECISION

56. The Tribunal decided, pursuant to section 110VB(2)(a) of the *Defence Act 1903*, to affirm the decision of the Department of Defence that Wing Commander Clarke is not eligible for the award of the Defence Long Service Medal.

ALTERNATIVE APPROACHES

ANNEXURE A

Working Paper by Enlistment Year – 12 years service

Long Service and Australian Defence Medal							
Start of 12mth	End of 12mth	Status	Days Required	Days Served	Qualifying Year	Aggregate Year	Remarks
02/05/2003	01/05/2004	PAF	20	>20	Yes	1	
02/05/2004	01/05/2005	PAF	20	>20	Yes	2	
02/05/2005	01/05/2006	PAF	20	>20	Yes	3	
02/05/2006	03/07/2006	PAF	20	>20	No		Incomplete year
04/07/2006	03/12/2006	RAR	20	0	No		Incomplete year
04/12/2006	03/12/2007	PAF	20	>20	Yes	4	
04/12/2007	03/12/2008	PAF	20	>20	Yes	5	
04/12/2008	03/12/2009	PAF	20	>20	Yes	6	
04/12/2009	03/12/2010	PAF	20	>20	Yes	7	
04/12/2010	03/12/2011	PAF	20	>20	Yes	8	
04/12/2011	03/12/2012	PAF	20	>20	Yes	9	
04/12/2012	03/12/2013	PAF	20	>20	Yes	10	
04/12/2013	03/12/2014	PAF	20	>20	Yes	11	
04/12/2014	01/11/2015	PAF	20	>20	No		Incomplete year
02/11/2015	01/11/2016	RAR	20	>20	Yes	12	
02/11/2016	01/11/2017	RAR	20	11.67	No		
02/11/2017	01/11/2018	RAR	20	0			
02/11/2018	01/11/2019	RAR	20	0			
02/11/2019	01/11/2020	RAR	20	0			
02/11/2020	01/11/2021	RAR	20	0			

Working paper by Financial Year – 14 years service

Long Service and Australian Defence Medal							
Start of 12mth	End of 12mth	Status	Days Required	Days Served	Qualifying Year	Aggregate Year	Remarks
02/05/2003	30/06/2003	PAF	20	>20	No	Incomplete year	
01/07/2003	30/06/2004	PAF	20	>20	Yes	1	
01/07/2004	30/06/2005	PAF	20	>20	Yes	2	
01/07/2005	30/06/2006	PAF	20	>20	Yes	3	
01/07/2006	30/06/2007	PAF / RGR / PAF	20	>20	Yes	4	Transfer to RGR 04/07/2006 and the Transferred back to PAF 04/12/2006
01/07/2007	30/06/2008	PAF	20	>20	Yes	5	
01/07/2008	30/06/2009	PAF	20	>20	Yes	6	
01/07/2009	30/06/2010	PAF	20	>20	Yes	7	
01/07/2010	30/06/2011	PAF	20	>20	Yes	8	
01/07/2011	30/06/2012	PAF	20	>20	Yes	9	
01/07/2012	30/06/2013	PAF	20	>20	Yes	10	
01/07/2013	30/06/2014	PAF	20	>20	Yes	11	
01/07/2014	30/06/2015	PAF	20	>20	Yes	12	
01/07/2015	30/06/2016	PAF / RAR	20	>20	Yes	13	Transfer to RAR 02/11/2015
01/07/2016	30/06/2017	RAR	20	21.5	Yes	14	
01/07/2017	30/06/2018	RAR	20	0	No		
01/07/2018	30/06/2019	RAR	20	0	No		
01/07/2019	30/06/2020	RAR	20	0	No		
01/07/2020	30/06/2021	RAR	20	0			

Working Paper by Calendar Year – 13 years

Long Service and Australian Defence Medal							
Start of 12mth	End of 12mth	Status	Days Required	Days Served	Qualifying Year	Aggregate Year	Remarks
02/05/2003	31/12/2003	PAF	20	>20	No	Incomplete year	
01/01/2004	31/12/2004	PAF	20	>20	Yes	1	
01/01/2005	31/12/2005	PAF	20	>20	Yes	2	
01/01/2006	31/12/2006	PAF / RGR / PAF	20	>20	Yes	3	Transfer to RGR 04/07/2006 and the Transferred back to PAF 04/12/2006
01/01/2007	31/12/2007	PAF	20	>20	Yes	4	
01/01/2008	31/12/2008	PAF	20	>20	Yes	5	
01/01/2009	31/12/2009	PAF	20	>20	Yes	6	
01/01/2010	31/12/2010	PAF	20	>20	Yes	7	
01/01/2011	31/12/2011	PAF	20	>20	Yes	8	
01/01/2012	31/12/2012	PAF	20	>20	Yes	9	
01/01/2013	31/12/2013	PAF	20	>20	Yes	10	
01/01/2014	31/12/2014	PAF	20	>20	Yes	11	
01/01/2015	31/12/2015	PAF / RAR	20	>20	Yes	12	Transfer to RAR 02/11/2015
01/01/2016	31/12/2016	RAR	20	>20	Yes	13	
01/01/2017	31/12/2017	RAR	20	5.5	No		
01/01/2018	31/12/2018	RAR	20	0	No		
01/01/2019	31/12/2019	RAR	20	0	No		
01/01/2020	31/12/2020	RAR	20	0	No		
01/01/2021	31/12/2021	RAR	20	0			