



# Australian Government

## Defence Honours and Awards Appeals Tribunal

### **Webster and the Department of Defence [2022] DHAAT 5 (6 May 2022)**

File Number(s) 2021/011

Re **Ms Kelly Webster**  
Applicant

And **The Department of Defence**  
Respondent

**Tribunal** Mr Stephen Skehill (Presiding Member)  
Rear Admiral Allan du Toit AM, RAN (Retd)

**Hearing Date** 4 May 2022

**Attendances** Ms Kelly Webster, Applicant  
Ms Jo Callaghan and Mr Wayne Parker  
Directorate of Honours and Awards, Department of Defence  
Mr Kevin Lawson, A/g Director, Nature of Service Directorate,  
Department of Defence

#### **DECISION**

On 6 May 2022 the Tribunal decided:

1. pursuant to section 110VB(2)(a) of the *Defence Act 1903*, to affirm the decision that Ms Webster is not eligible to receive the Australian Service Medal with Clasp 'SOLOMON IS'; and
2. pursuant to section 110VB(2)(a) of that Act, to affirm the decision that Ms Webster is not eligible to receive the Australian Active Service Medal with Clasp 'EAST TIMOR'; but
3. pursuant to section 110VB(3) of the Act, to recommend to the Minister that, to protect the integrity of the defence honours and awards system, the Department of Defence be directed to review the eligibility of any member of the ship's company of HMAS *Manoora* who had been awarded the Australian Active Service Medal with Clasp 'EAST TIMOR' for service between 17 and 18 April 2000 and, if any such person was found not to be eligible to have received that award, to take all reasonable steps to withdraw that award and require return of the relevant medal and/or clasp.

## **CATCHWORDS**

*DEFENCE AWARD – Australian Active Service Medal with Clasp ‘EAST TIMOR’ – prescribed operation – Operation TANAGER – whether allotted for service*

*DEFENCE AWARD – Australian Service Medal with Clasp ‘SOLOMON IS’ – prescribed operation – Operation PLUMBOB – Operation TREK – whether service was rendered for the required period*

## **LEGISLATION**

*Defence Act 1903 – Part VIIIIC – Sections 110T, 110V(1), 110VB(2), 110VB(6)  
Defence Regulation 2016 Section 36*

### **Australian Active Service Medal with Clasp ‘EAST TIMOR’**

*Commonwealth of Australia Gazette S335 Australian Active Service Medal Regulations, Letters Patent, dated 2 November 1988*

*Commonwealth of Australia Gazette S110, Australian Active Service Medal Regulations, Ministerial Declaration and Determination, Clasp ‘EAST TIMOR’ dated 29 February 2000*

*Australian Active Service Medal Regulations, Ministerial Declaration and Determination, Clasp ‘EAST TIMOR’ dated 29 September 2001 (not gazetted)*

*Commonwealth of Australia Gazette S515, Australian Active Service Medal Regulations, Declaration and Determination, Clasp ‘EAST TIMOR’ dated 16 December 2004*

*Australian Active Service Medal Regulations, Instrument of Delegation dated 23 September 2018*

### **Australian Service Medal with Clasp ‘SOLOMON IS’**

*Commonwealth of Australia Gazette S336, Australian Service Medal Regulations Letters Patent dated 2 November 1988*

*Commonwealth of Australia Gazette S230, Australian Service Medal Regulations Declaration and Determination, Clasp ‘SOLOMON IS’ dated 29 June 2001*

*Commonwealth of Australia Gazette S21, Australian Service Medal Regulations Declaration and Determination, Clasp ‘SOLOMON IS’ dated 29 January 2004*

*Australian Service Medal Regulations, Instrument of Delegation, dated 23 September 2018*

## Introduction

1. The Applicant, Ms Kelly Renata Webster, seeks review of a decision, dated 11 December 2017, of Ms Allison Augustine, Assessments Manager in the Directorate of Honours and Awards of the Department of Defence (the Directorate), that Ms Webster is not eligible for either the Australian Active Service Medal (AASM) with Clasp ‘EAST TIMOR’ or the Australian Service Medal with Clasp ‘SOLOMON IS’ for her service in HMAS *Manoora* in 2000.<sup>1</sup>

## Decision under review

2. On 25 April 2017, Ms Webster submitted an online application to the Directorate for an assessment of her eligibility for the AASM with Clasp ‘EAST TIMOR’ and the ASM with Clasp ‘SOLOMON IS’.<sup>2</sup>

3. On 11 December 2017, in response to Ms Webster’s application, Ms Augustine stated in respect of Ms Webster’s eligibility for the AASM: “*Our records show that although HMAS Manoora was in East Timor waters from 17 April 2000 to 18 April 2000 it was not allotted to Operation TANAGER, the prescribed operation.*”

4. In respect of Ms Webster’s eligibility for the ASM, Ms Augustine stated that: “*The ASM ‘SOLOMON IS’ may be awarded to a member of the ADF who rendered service for a period of 30 days in the area comprising the Solomon Islands and its territorial sea that commenced on 4 November 2000 and ended 15 March 2002. Our records show HMAS Manoora was in Solomon Islands’ waters from the 4 December 2000 to the (sic) 12 December 2000, a total of 9 days.*”<sup>3</sup>

5. On 8 July 2021, Ms Webster made application to the Tribunal seeking a review of the above decision.<sup>4</sup>

## Tribunal jurisdiction

6. 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 AASM and the ASM. Therefore, the Tribunal has jurisdiction to review decisions in relation to these awards.

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<sup>1</sup> Letter to Ms Webster from Ms Allison Augustine dated 11 December 2017.

<sup>2</sup> Letter to Tribunal from Ms Petrina Cole dated 26 August 2021.

<sup>3</sup> Letter to Ms Webster from Ms Allison Augustine dated 11 December 2017.

<sup>4</sup> Application for review of decision, Ms Kelly Webster, dated 8 July 2021.

## Ms Webster's service

7. Ms Webster enlisted in the Permanent Naval Force (PNF) on 17 February 1997 on an open ended enlistment. Ms Webster initially started her training as a cook but completed category training as a boatswain's mate.<sup>5</sup>

8. Relevant to this application, Ms Webster was posted to the *Kanimbla* class amphibious warfare ship HMAS *Manoora* from 31 May 1999 to 4 December 2000. However, on 5 November 2000 Ms Webster was admitted to Townsville's Lavarack Barracks Hospital and later evacuated on an RAAF flight from Townsville around 21 November 2000. Ms Webster did not thereafter return to *Manoora*.

9. Ms Webster was discharged from the PNF on 9 August 2001 and has been awarded the Australian Defence Medal for her service.<sup>6</sup>

10. Relevant to this application, Defence records confirm that on 17 April 2000, *Manoora* arrived in Dili, East Timor and departed the following day. *Manoora* is recorded as having 'offload (ed) civil aid material for East Timor and embark(ed) cargo for return to Australia'.<sup>7</sup> During this time, Dili was within the prescribed area of operations for Operation TANAGER, in support of the United Nations Transitional Administration in East Timor (UNTAET).

11. Those same records confirm that on 8 June 2000, *Manoora* deployed to the Solomon Islands for Operation PLUMBOB, entering the Solomon Islands Area of Operations on 11 June 2000, and that the ship was 'on standby in anticipation of the requirement to conduct evacuations by sea. Departed the Solomon Islands Area of Operations on 21 June 2000.'<sup>8</sup>

12. On 8 November 2000, *Manoora* departed Townsville on a further deployment to the Solomon Islands for Operation TREK to conduct operations in support of the International Peace Monitoring Team. The ship entered the area of the prescribed operation on 12 November 2000, where it remained until 12 December 2000.<sup>9</sup> At the date of *Manoora*'s departure for the Solomon Islands, according to her service record Ms Webster had already been hospitalised and was therefore not physically on board *Manoora*.

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<sup>5</sup> Service Record Webster, KR W163120.

<sup>6</sup> Service Record Webster, Kelly Renata W163120 RAN Certificate of Service.

<sup>7</sup> Ship's Movements HMAS *Manoora* Feb 2000 to Jun 2002.

<sup>8</sup> Ibid.

<sup>9</sup> Ibid.

## The Australian Active Service Medal with Clasp 'EAST TIMOR'

14. The AASM was created by Letters Patent, signed by The Queen on 13 September 1988. As set out in the *Australian Active Service Medal Regulations 1988*, 'the Governor-General, on the recommendation of the Minister, may declare a warlike operation in which members of the Defence Force are, or have been on or after 14 February 1975, engaged, to be a prescribed operation for the purposes of these Regulations.'<sup>10</sup>

15. On 1 March 2000, the Governor-General approved certain conditions for the creation of the AASM with Clasp 'EAST TIMOR'.<sup>11</sup> The Governor-General declared, relevantly:

(a) *declare under regulation 3, the following warlike operations in which members of the Australian Defence Force are engaged in the area comprising East Timor and the sea adjacent to East Timor out to a distance of 12 nautical miles from the low water mark to be a 'prescribed operation' for the purposes of the regulations:*

- (i) *Operation 'Faber' that commenced 16 September 1999;*
- (ii) *Operation 'Warden' that commenced 16 September 1999;*
- (iii) *Operation 'Tanager' that commenced 20 February 2000.*

16. On 16 December 2004, the above declaration and determination was revoked by *Commonwealth of Australia Gazette, S515, Australian Active Service Medal Regulations, Declaration and Determination*.<sup>12</sup>

[...]

(b) *declare under regulation 3, the following warlike operations in which members of the Australian Defence Force are engaged in the area comprising East Timor and the sea adjacent to East Timor out to a distance of 12 nautical miles from the low water mark to be a 'prescribed operation' for the purposes of the regulations:*

- (i) *Operation 'Faber' that commenced 16 September 1999 and ended on 23 February 2000;*
- (ii) *Operation 'Warden' that commenced 16 September 1999 and ended on 10 April 2000;*
- (iii) *Operation 'Tanager' that commenced on 20 February 2000 and ended on 19 May 2002;*
- (iv) *Operation 'Citadel' that commenced on 20 May 2002 and ended on 17 August 2003.*

(c) *determine, under subregulation 4(2) of the Regulations, that the conditions for the award of the AASM with Clasp 'EAST TIMOR' ("the Medal") for that prescribed operation are:*

- (i) *The Medal may be awarded to a member of the Australian Defence Force who*

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10 *Commonwealth of Australia Gazette, S335, Letters Patent, Australian Active Service Medal Regulations*, dated 2 November 1988.

11 *Commonwealth of Australia Gazette, S110, Australian Active Service Medal Regulations, Declaration and Determination*, dated 29 February 2000.

12 *Commonwealth of Australia Gazette, S515, Australian Active Service Medal Regulations, Declaration and Determination*, dated 16 December 2004.

*rendered allotted service as such a member while posted as a member of the Australian element for duty to the prescribed operation for a prescribed period;*

...

- (iv) *For the period that commenced on 16 September 1999 and ended on 17 August 2003, the Medal may be awarded to a member of the Australian Defence Force who rendered service as such a member and who for a prescribed period, undertook official visits, inspections or other occurrences of a temporary nature in connection with the military contribution in the prescribed operation;*

...

- (vi) *In this paragraph "prescribed period" means:*
  - (A) *in relation to subparagraphs (c)(i), (c)(ii) and (c)(v), a period of not less than one day; and*
  - (B) *in relation to subparagraph (c)(iv), a period of not less than an aggregate of 30 days;*

*PROVIDED THAT the qualifying period of service as described in subparagraphs (c)(i), (c)(ii) or (c)(iii) may be deemed by the Chief of the Defence Force or delegate to have been established notwithstanding that the member has not met the qualifying periods described if service in relation to the prescribed operation was terminated owing to the death, evacuation due to illness or injury or other disability due to service; [...]*

### **The Australian Service Medal with Clasp ‘SOLOMON IS’**

17. The eligibility criteria for awarding the ASM with Clasp ‘SOLOMON IS’ are set out in the Commonwealth of Australia Gazette, S21, Australian Service Medal Regulations, Declaration and Determination dated 29 January 2004<sup>13</sup> which states, relevantly:

[...]

- (b) *declare, under regulation 3 of the Regulations, the non-warlike activity, Operation TREK, in which members of the Australian Defence Force are engaged, in the area comprising the Solomon Islands and its territorial sea, that commenced on 4 November 2000 and ended 15 March 2002, to be a prescribed operation for the purposes of the Regulations; and*
- (c) *determine, under subregulation 4(2) of the Regulations, that the conditions for award of the Australian Service Medal with Clasp 'SOLOMON IS' ("the Medal") for the prescribed operation are:*
  - (i) *the Medal may be awarded to a member of the Australian Defence Force who rendered service as such a member while posted to or serving as a member of the Australian element of the prescribed operation for a period of 30 days, or for periods amounting in the aggregate to 30 days;*

...

...

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<sup>13</sup> Commonwealth of Australia Gazette S21, Australian Service Medal Regulations, Declaration and Determination dated 29 January 2004.

(iv) *the Medal may be awarded to a member of the Australian Defence Force who rendered service as such a member for a period of 30 days, or for periods amounting in the aggregate to 30 days, for official visits, inspections or other occurrences of a temporary nature with the military contribution in the prescribed operation;*

...

...

(v) *the qualifying period of service as described in subparagraphs (c)(i), (c)(ii) c(iii) or c(iv) of this Instrument may be deemed by the Chief of the Defence Force or delegate to have been established notwithstanding that the member has not met the qualifying periods described if service in relation to the prescribed operation was terminated due to the death, evacuation due to illness or injury or other disability due to service.*

### **Ms Webster’s application to the Tribunal**

18. In her application to the Tribunal, Ms Webster states that she believes she has qualifying service for the AASM with Clasp ‘EAST TIMOR’ and the ASM with Clasp ‘SOLOMON IS’ and that Ms Augustine’s decision is incorrect.<sup>14</sup>

### **Defence Report**

19. The Defence Report states that, following Ms Webster’s application to the Tribunal, Defence reviewed the original 2017 decision and assessed afresh her eligibility for the AASM with Clasp ‘EAST TIMOR’ and the ASM with Clasp ‘SOLOMON IS’.<sup>15</sup>

#### *AASM with Clasp ‘EAST TIMOR’*

20. The Defence Report confirms that, as detailed in *Manoora’s* Report of Proceedings for April 2000 dated 7 May 2000, while in Dili the ship offloaded a large quantity of civil aid material, including two passenger vehicles and embarked a quantity of ammunition and general cargo for return to Australia.<sup>16</sup>

21. Defence stated that it does not dispute that Ms Webster was a member of the ship’s company when *Manoora* was within the area of operations for Operation TANAGER; however, it asserts that there is no evidence that either she, the ship’s company, or in fact the ship itself was allotted for service to the operation.<sup>17</sup>

22. In its report Defence discusses the term “allotment” which it states is a technical term relating to a special administrative procedure designed to accurately identify persons or units whose duties are directly related to warlike activities within a defined operational area. Defence went on to state that Instruments of Allotment are required by legislation to determine eligibility

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<sup>14</sup> Ms Webster’s application to the Tribunal dated 8 August 2021.

<sup>15</sup> Letter from Ms Petrina Cole to Tribunal dated 26 August 2021.

<sup>16</sup> HMAS *Manoora*, Report of Proceedings.

<sup>17</sup> Letter from Ms Petrina Cole to Tribunal dated 26 August 2021.

for entitlements under both the *Veterans' Entitlements Act 1986* (the VEA) and the *Income Tax Assessment Act 1936* (the ITAA).<sup>18</sup>

23. Defence stated that Instruments issued for the purpose of the VEA require signature by the Vice Chief of the Defence Force (VCDF) in accordance with subsection 5B (2) of that Act, and in the case of the ITAA, the Chief of the Defence Force (CDF) delegates his or her responsibility to VCDF.

24. Defence further stated that: *'in contemporary times, "Allotment" (although not specifically worded as such) is reflected in an individual's service record within the Operational Service Log, showing the operation name and duration of service rendered on the operation. Neither her Service Record, nor ADO Service Record from (PMKeyS) contain entries of Ms Webster rendering any operational service during her posting on the HMAS Manoora.'*<sup>19</sup>

25. Defence went on to state that: *'Further, lists grouped by ship or land force element, such as a Battalion Group, showing individuals from the respective Service, who rendered qualifying service for the AASM East Timor are held by Defence. The lists were used as the basis for awarding the AASM 'EAST TIMOR'. No such list exists for HMAS Manoora.'*<sup>20</sup>

#### *ASM with Clasp 'SOLOMON IS'*

26. Concerning Ms Webster's claim for the ASM with Clasp 'SOLOMON IS', the Defence Report confirms that *Manoora* was deployed to the vicinity of the Solomon Islands on Operation PLUMBOB, entering the Area of Operations on 11 June 2000, and that from that date the ship was on standby in anticipation of the need to conduct evacuations by sea following a coup in Honiara until the ship departed the area on 21 June 2000. Defence state that service rendered on Operation PLUMBOB did not attract medallic recognition as the duration of the operation from 8-24 June 2000 was less than the generally required 30 days qualifying service for the award of an ASM.<sup>21</sup>

27. The Defence Report confirms that on 8 November 2000, *Manoora* departed Townsville on deployment to the Solomon Islands for Operation TREK in support of the International Peace Monitoring Team. The ship entered the area of the prescribed operation on 12 November 2000, where it remained until 12 December 2000. Defence states that, if the requisite qualifying conditions were met, service rendered on Operation TREK attracted the ASM with Clasp 'SOLOMON IS'.

28. However, Defence relies on evidence within Ms Webster's Service Record and ADO Service Record from PMKeyS which indicates that she was medevaced to hospital on 5 November 2000 and therefore not serving in *Manoora* during Operation TREK.<sup>22</sup>

29. Defence relies on its conclusion that, by virtue of being physically in a hospital at the time of the ship being deployed on Operation TREK, Ms Webster did not enter the area of operations or physically render any service on the HMAS *Manoora* while it was deployed on Operation TREK.

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<sup>18</sup> Ibid.

<sup>19</sup> Letter from Ms Petrina Cole to Tribunal dated 26 August 2021.

<sup>20</sup> Ibid.

<sup>21</sup> Ibid.

<sup>22</sup> Ibid.



## Ms Webster's comments on the Defence report

30. On 31 August 2021, Ms Webster was provided with a copy of the Defence Report and asked to provide her comments on that report. Ms Webster's response dated 22 September 2021 includes the following comments:

### *Concerning her service in East Timor*

31. Ms Webster stated that *'HMAS Manoora left Townsville on 10<sup>th</sup> April 2000 and arrived in Dili, East Timor during the forenoon of 17<sup>th</sup> April 2000. The crew offloaded civilian aid materials to East Timor and embarked cargo for return to Australia on the forenoon of 18<sup>th</sup> April 2000. During this 24-hour period, HMAS Manoora also conducted several stern door marriages with HMAS Bentano (sic)<sup>23</sup> whilst at anchor. This operation is classified as "OPERATION TANAGER"'. This is confirmed by Manoora's movement records.'*

32. She further stated that *'the activities of the Defence Cooperation Program (DCP) service in East Timor during this period had been reclassified as warlike, meaning that those who were involved in the Army Training Support Team – East Timor and other DCP tasks are now eligible to be awarded the Australian Active Service Medal with clasp East Timor and Returned form Active Service Badge.'*<sup>24</sup>

33. Ms Webster also provided some images of charts of the ship's passage to Dili and thence to Darwin and emphasised the importance of the ship being present in Dili during Operation TANAGER for over 24 hours, and its contribution to the mission.<sup>25</sup>

### *Concerning her service in the Solomon Islands*

34. In relation to her medical records Ms Webster states that:

*'The Defence Report, Solomon Islands heading, paragraph 24, this statement is incorrect. My service and medical records read: I was transferred from HMAS Manoora on Sunday 5<sup>th</sup> November 2000 and admitted to Lavarack Barracks Health Centre (hospital), Townsville ARMY Base. I was evacuated approximately on Tuesday 21st November 2000 by an Airforce flight from Townsville to Sydney via Canberra with a medic on board and other ADF personal. I went home after that trip; I did not attend Balmoral Hospital.'*

Ms Webster's final comment on the Defence Report states *'Please consider it was my duty and position to serve my country in both of these "Warlike Operations". I wish for this formal email to be passed onto the Minister of Defence.'*<sup>26</sup>

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<sup>23</sup> HMAS Betano.

<sup>24</sup> Ms Webster's comments on Defence Report.

<sup>25</sup> Ibid.

<sup>26</sup> Ms Webster's comments on Defence Report.

## Tribunal Analysis

35. This review, and three other applications relating to *Manoora*'s service in 2000, was brought about following an unsuccessful application to the Department of Veterans' Affairs for recognition of qualifying service by a former member of *Manoora*'s ships' company who had been awarded the AASM with Clasp 'EAST TIMOR' for his service in April 2000. That former member then made enquiries of Defence and was given written advice by Defence that the issue of the above award was made in error. However, in so doing, Defence did not seek return of the award, or advise that it would be cancelled.

36. The former member later contacted other former members of *Manoora*'s ship's company via Facebook and invited anyone who had made application for the award and been refused to submit an application for review in the Tribunal, with '*the main claim of having the whole crew sorted out*'.

37. It is clear that, to be awarded the ASM with Clasp 'SOLOMON IS' arising from Operation TREK in 2000, a member of the crew of *Manoora* relevantly had to have "rendered service" for 30 days or more. Service rendered in *Manoora* during the preceding Operation PLUMBOB from 8-24 June 2000 was substantially less than 30 days, and did not attract medallic recognition.

38. As Ms Webster's service records indicate that she was not on board *Manoora* at the relevant time during its subsequent operation to the Solomon Islands in support of Operation TREK (which she did not dispute at hearing, although she challenged the detail of her medical records in relation to this period as claimed in the Defence Report and which Defence conceded had been misinterpreted in that Report), she cannot satisfy that 30 day eligibility criterion even though that operation did exceed the 30 day requirement.

39. Ms Webster said that she had only recently heard that a member could still be awarded the AASM with clasp "SOLOMON IS" if they had been medically evacuated and claimed that, if this was correct, she should qualify for the award she sought as she had been medically evacuated from *Manoora*. However, the relevant eligibility criterion in this regard, paragraph (c)(vi) specifically states that it is *service in relation to the prescribed operation that must be terminated due to the death, evacuation due to illness or injury or other disability due to service*. As she was medically evacuated before *Manoora* departed Townsville and some days before it entered the territorial seas of the Solomon Islands, she had not commenced service in relation to the prescribed operation. Accordingly, she is not able to meet this eligibility criterion.

40. Thus, the decision to not recommend her for award of the ASM with Clasp 'SOLOMON IS' was correct and must be affirmed by the Tribunal.

41. However, it is clear that Ms Webster did render service in *Manoora* when it visited Dili, East Timor on 17-18 April 2000 and was within the prescribed area of operations for Operation TANAGER. Because that visit was for 1-2 days but no longer, whether Ms Webster is eligible for award of the AASM with Clasp 'EAST TIMOR' turns on whether or not her service at that time was "allotted service".

42. While the Defence Report provided some explanation of the meaning of that term and contended that the eligibility criteria had not been met, the Tribunal sought a better understanding of related issues. Accordingly, the Tribunal requested that Defence provide a supplementary submission to address the following questions:

- Is there a statutory definition of the term “allotted service” or “allotment”?
- If not, is there an authoritative administrative definition?
- In either case, what are the criteria by which decisions are made to allot or not allot?
- Was there an express decision not to allot *Manoora* to Operation TANAGER or was it simply not allotted?
- What are the criteria by which decisions are made to retrospectively allot?

43. Defence provided that supplementary submission on 4 April 2022 and it was then forwarded to Ms Webster for her consideration. Ms Webster did not make any written submission in response and at the hearing did not raise any argument against what Defence had said in that supplementary submission.

44. The term “allotted service” is not defined in the AASM Regulations or in other Defence legislation. However, section 5B of the VEA provides as follows:

(1) *In this Act, unless the contrary intention appears:*

***allotted for duty*** in an operational area has the meaning given by subsection (2).

...

*Allotted for duty*

(2) *A reference in this Act to a person, or a unit of the Defence Force, that was **allotted for duty** in an operational area is a reference:*

- (a) in the case of duty that was carried out in an operational area described in item 1, 2, 3, 4, 5, 6, 7 or 8 of Schedule 2 (in column 1)—to a person, or unit of the Defence Force, that is allotted for duty in the area (whether retrospectively or otherwise) by written instrument issued by the Defence Force for use by the Commission in determining a person’s eligibility for entitlements under this Act; or*
- (b) in the case of duty that was carried out in an operational area described in item 3A, 3B, 9, 10, 11, 12, 13, 14 or 15 of Schedule 2 (in column 1)—to a person, or unit of the Defence Force, that is allotted for duty in the area (whether retrospectively or otherwise) by written instrument signed by the Vice Chief of the Defence Force for use by the Commission in determining a person’s eligibility for entitlements under this Act; or*
- (c) to a person, or unit of the Defence Force, that is, by written instrument signed by the Defence Minister, taken to have been allotted for duty in an operational area described in item 4 or 8 in Schedule 2 (in column 1).*

45. East Timor during the relevant period in 2000 is not listed in any of the items in Schedule 2 referenced in this definition.

46. Ms Webster argued that service in East Timor on the Defence Cooperation Program had since been reclassified as “warlike” and that this should now qualify her for allotment and eligibility for the AASM with Clasp ‘EAST TIMOR’. However, the service covered by that reclassification commenced in 2001, and did not include service provided on *Manoora* in 2000.

47. While Defence advised that it had found no express decision not to allot HMAS *Manoora* to Operation TANAGER, it drew the Tribunal’s attention to a Minute dated 30 March 2001 from the then Head Strategic Command, Air Vice Marshal Angus Houston, which evidences that the possibility of retrospective force assignment (or allotment) of units to Operation TANAGER had been considered but that the Chief of the Defence Force had decided that “*units based in Australia employed on national tasking in limited support of Australian, and on occasions, other force elements are not an integral part of the [Peace Keeping Force], and that there is no intention to force assign such units or their sub-elements to Operation TANAGER.*”

48. The Tribunal does not have jurisdiction to review decisions to issue allotment instruments under section 5B of the VEA.

49. While it does have power under section 110VB(3) of the *Defence Act 1903* to make any recommendation to the Minister that it considers appropriate arising out of a review that is within its jurisdiction, the Tribunal is not satisfied that it should recommend any further consideration of retrospective allotment of *Manoora* by the CDF as the evidence shows that this has previously been considered at the most senior levels of the ADF and there is nothing in the record of that consideration that suggests its conclusion was unwarranted.

50. Therefore, because HMAS *Manoora* and its ship’s company were not allotted for service on Operation TANAGER, Ms Webster is not eligible to receive the AASM with Clasp ‘EAST TIMOR’ and the decision under review must be affirmed by the Tribunal.

51. Nevertheless, the Tribunal should not let the issues raised by Ms Webster (and other applicants seeking the same award) rest there.

52. She and others have asserted that several members of the crew who rendered the same service have been awarded the AASM with Clasp ‘EAST TIMOR’. Names of at least some persons said to be in this category have been mentioned orally or in writing in the course of the Tribunal’s review process and, while it is inappropriate for them to be mentioned here, they are known to Defence.

53. While “two wrongs don’t make a right” and Ms Webster should not be similarly awarded just for the sake of consistency if others have been wrongly awarded, she is justifiably aggrieved by the injustice and inequity she perceives. She is not alone in this, as is apparent from other applications for review currently before the Tribunal.

54. Defence has stated that any such awards to crew members with only the same service would have been made in error. At the same time Defence has not challenged the assertion that it advised one such recipient that he had been awarded in error but did not seek return of the award, or advise that it would be cancelled.

55. The Tribunal accepts that it is simply inevitable that, on occasions, an award may be made in error and, in the absence of evidence of wilful negligence or deliberate corruption or similar, it does not believe that those responsible for such errors should be castigated.

56. But it does consider that, to allow identified errors to stand without remediation or to fail to investigate reasonably alleged or suspected errors, calls into question the very integrity of the defence honours and awards system and of the Department's administration of it and that this would be a cause for criticism.

57. Ms Callaghan advised that the Directorate has the capacity to identify any crew members of *Manoora* on 17 and 18 April 2000 who have been awarded the AASM with Clasp 'EAST TIMOR'. She noted that it is possible that any such persons might properly have been awarded the AASM if they met an alternative eligibility criterion during another period in East Timor. And she noted that Defence may not have current contact details for any such person if they had no ongoing relationship with Defence.

58. In the Tribunal's view, there is sufficient doubt about past grants that Defence should investigate by identifying all members of the ship's company of *Manoora* who have been awarded the AASM with Clasp 'EAST TIMOR', by reviewing their eligibility for that award, and by deciding to cancel or withdraw any awards made in error and require their surrender unless the recipient can show cause why they were in fact entitled. While Defence may not have current contact details for such a person, that does not mean that those details cannot be obtained – for example, through electoral rolls. And, if other Government bodies cannot pass on to Defence contact details for individuals with whom they have a current relationship, they may be able to pass on to such individuals correspondence from Defence advising them of the proposed decision, the opportunity to show cause, and the request for surrender if eligibility is not confirmed.

### **Tribunal Decision**

59. In light of the above analysis, the Tribunal has decided:

1. pursuant to section 110VB(2)(a) of the *Defence Act 1903*, to affirm the decision that Ms Webster is not eligible to receive the Australian Service Medal with Clasp 'SOLOMON IS'; and
2. pursuant to section 110VB(2)(a) of that Act, to affirm the decision that Ms Webster is not eligible to receive the Australian Active Service Medal with Clasp 'EAST TIMOR'; but
3. pursuant to section 110VB(3) of the Act, to recommend to the Minister that, to protect the integrity of the defence honours and awards system, the Department of Defence be directed to review the eligibility of any member of the ship's company of HMAS *Manoora* who had been awarded the Australian Active Service Medal with Clasp 'EAST TIMOR' for service between 17 and 18 April 2000 and, if any such person was found not to be eligible to have received that award, to take all reasonable steps to withdraw that award and require return of the relevant medal and/or clasp.