



Australian Government

Defence Honours and Awards Appeals Tribunal

Evans and the Department of Defence [2023] DHAAT 3 (9 March 2023)

File Number(s) 2022/016

Re **Mr Christian Evans**
Applicant

And **The Department of Defence**
Respondent

Tribunal Mr Stephen Skehill (Presiding Member)
Major General Mark Kelly AO DSC (Retd)
Air Vice-Marshal Tracy Smart AO (Retd)

Hearing Date 13 February 2023

Appearances Mr Christian Evans
Applicant

Brigadier Mark Bornholt
Honours Review Officer, Directorate of Honours and Awards
Department of Defence

Mr Ian Heldon
Director, Directorate of Honours and Awards
Department of Defence

Mr Craig Joce
Assistant Director, Directorate of Honours and Awards
Department of Defence

DECISION

On 9 March 2023, the Tribunal decided:

- (a) to affirm the decision that Mr Christian Evans not be recommended for the Conspicuous Service Medal; but also
- (b) noting the hierarchy of commendations available outside the Australian honours and awards system and that the actions of Mr Evans were commendable, to recommend to the Minister that the Chief of Joint Operations be asked to consider awarding a Joint Operations Command commendation to Mr Evans in recognition of his excellent performance and devotion to duty as a cleaning site Officer-in-Charge in the Force Extraction Team in the Solomon Islands during Operation ANODE in 2004.

CATCHWORDS

DEFENCE HONOUR – Conspicuous Service Medal – Operation ANODE – Regional Assistance Mission to Solomon Islands - cleaning site Officer-in-Charge - Force Extraction Team – Unit level Commendation – Joint Operations Command Commendation

LEGISLATION

Defence Act 1903 – Part VIII C - Sections 110T, 110V(1), 110V(1)(c), 110VA and 110VB(1)(6)

Defence Force Regulation 2016 – Regulation 35

Conspicuous Service Cross and Conspicuous Service Medal Letters Patent, Australian Conspicuous Service Decorations Regulations, Commonwealth of Australia Gazette No. S108, dated 7 May 1990

Australian Conspicuous Service Decorations Regulations Determination under Subregulation 5, dated 25 September 1997

REASONS FOR DECISION

Introduction

1. The applicant, Mr Christian Evans, seeks review of a decision dated 30 March 2021 by the Director of Personnel Policy – Army, Colonel Bronwyn Johnstone CSM, to refuse to recommend him for the Conspicuous Service Medal (CSM).

Decision under review

2. In May 2018, Mr Evans applied to Defence seeking to have his Commander Combined Task Force 635 (CTF635) Commendation upgraded to a CSM for his performance on Operation ANODE in 2004. In response, Colonel Johnstone wrote to Mr Evans on 30 March 2021 advising that she would not ‘*recommend (him) for recognition through a CSM*’.¹

3. On 3 August 2022, Mr Evans made application to the Tribunal seeking review of Colonel Johnstone’s decision.²

Tribunal Jurisdiction

4. Pursuant to s110VB(1) of the *Defence Act 1903* (the Defence Act) the Tribunal has jurisdiction to review a reviewable decision if an application is properly made to the Tribunal. The term *reviewable decision* is defined in s110V(1) and includes a decision made by a person within the Department of Defence or the Minister to refuse to recommend a person for an honour or award in response to an application.

5. Regulation 35 of the *Defence Regulation 2016* lists the defence honours that may be the subject of a reviewable decision. Included in the defence honours listed in Regulation 35 is the CSM. Therefore, the Tribunal has jurisdiction to review decisions in relation to this defence honour.

6. The Tribunal was satisfied that Mr Evans’ application of 3 August 2022 constituted an application as defined in s110V(1)(c) of the Defence Act.

Mr Evans’ service

7. Mr Evans enlisted as a Private soldier in the Australian Army on 27 March 2000. Mr Evans was promoted to the rank of Corporal on 4 December 2003 and was medically discharged on 3 November 2006.

¹ Application to the Tribunal by Mr Evans dated 3 August 2022.

² Ibid.

8. Relevant to this application, Mr Evans was deployed to the Solomon Islands on Operation ANODE from 27 May to 28 August 2004. He was employed as the Officer-in-Charge of a cleaning site as part of the Force Extraction Team.

9. Mr Evans was also deployed on Operation SUMATRA ASSIST from 11 January to 8 March 2005. That operation was Australia's contribution to disaster relief in Indonesia following the 2004 Indian Ocean earthquake.

10. Mr Evans was recognised with the CTF635 Commendation on 23 August 2004 for his service on Operation ANODE. Mr Evans' service records indicate that he also received a Chief of the Defence Force Commendation (Group Award) on 8 July 2006 for his service on Operation SUMATRA ASSIST.

11. Mr Evans' service records indicate that he was a well-regarded soldier by his supervisors and, based on his performance, may have been considered for officer training. There is nothing in Mr Evans' service records that indicate he should not be considered for a CSM.

Operation ANODE

12. Operation ANODE was the name of the Australian Defence Force (ADF) contribution to the Australian-led Regional Assistance Mission to the Solomon Islands (RAMSI).³

13. RAMSI's assistance was known as Operation HELPEM FREN (Pidgin English for 'Helping Friend'). RAMSI was a partnership between the Solomon Islands and contributing countries of the Pacific region. It was a long-term exercise to help restore stability and peace to the Solomons, and to encourage the development of its economy. RAMSI was initially deployed on 24 July 2003, with a mandate approved by the Solomon Islands National Parliament to help the Solomon Islands Government restore law and order, strengthen government institutions, reduce corruption and revive the economy. Fifteen countries contributed personnel to the mission, which included police officers, military personnel and civilians.⁴

14. The official 'Cease Order' for Operation ANODE was 30 September 2013, thus ending Australia's military commitment to this operation.⁵

³ Australian War Memorial Collection reference: <https://www.awm.gov.au/collection/C1133675> accessed 15 November 2022.

⁴ Ibid.

⁵ Australian War Memorial Collection, Solomon Islands (RAMSI), 2003-2013 - reference: <https://www.awm.gov.au/collection/CN500101>, accessed 15 November 2022.

Eligibility Criteria - Australian Conspicuous Service Decorations

15. The Australian Conspicuous Service Decorations (the Decorations) were created on 18 October 1989 to provide recognition to members of the Australian Defence Force and certain other persons for outstanding or meritorious achievement or devotion to duty in non-warlike situations.⁶ The Decorations consist of the Conspicuous Service Cross (CSC) and the CSM.

16. The eligibility criteria are set out in the Australian Conspicuous Service Decorations Regulations (the Regulations), as follows:

The CSC shall be awarded only for outstanding devotion to duty or outstanding achievement in the application of exceptional skills, judgement or dedication, in non-warlike situations;

*The CSM shall be awarded for meritorious achievement or devotion to duty in non-warlike situations.*⁷

Mr Evans' application to the Tribunal

17. In his application for review, Mr Evans included a copy of his commendation, a copy of his ADF Performance Appraisal Supplementary Report covering his period of deployment (which largely stated the same information as the commendation) and his own statement of events.⁸

18. Mr Evans stated that he believed he met the eligibility criteria for the CSM and that '*due to maladministration a nomination was not appropriately considered as a result of a failure in due process*'. Mr Evans believed he was overlooked for the CSM as his accomplishments on Operation ANODE would have appeared to be those of an experienced Corporal, rather than of a junior Corporal with six months' experience in rank as Mr Evans was at the time.

19. Mr Evans' statement advised that his initial deployment order stated he would be a logistic operator involving data entry for the Force Extraction Team. However, upon arrival in the Solomon Islands, Mr Evans was informed that he would be operating at a yet-to-be-constructed [cleaning] site under the command of a Sergeant, who had not yet arrived in country. The purpose of the cleaning site was for the decontamination of stores being returned to Australia through the Australian Quarantine and Inspection Service (AQIS).

20. Mr Evans stated:

⁶ *Conspicuous Service Cross and Conspicuous Service Medal Letters Patent, Australian Conspicuous Service Decorations Regulations, Commonwealth of Australia Gazette No. S108, dated 7 May 1990.*

⁷ *Ibid.*

⁸ Application to the Tribunal by Mr Evans dated 3 August 2022.

'Under my command I was able to establish the site, for high tempo cleaning. This included running water for high pressure cleaners, a cleanable flooring system allowing the decontamination of stores and parts, storage and packaging of returned items to be returned to Australia. I liaised directly with the AQIS advisors and assessors on the ground to ensure correct procedure was followed allowing expedience of service and maximum output...

'... I was then tasked to command the personnel on the ground which included 3 RAAF CPL's and 3 Army PTES's...I was also allocated fifteen locally employed civilians (LEC's) who were tasked in a manual labour role and under my direction. Tasks included cleaning, packaging and storage. These tasks had to be performed at the level required of the AQIS team to ensure decontamination and return of stores to Australia.... I was also required to provide a roll for payment of the LEC's.

'...My site was established to operate for three months initially and due to my dedication to my duty, ability to organise, prioritise and command as well as the excellent work by all, we were able to close up operations within two months. I was then requested to take my team to the SPOD⁹ (the re-established site) and commence night work...

'...By the end of my tour my team had retuned double the amount of stores in less time than those operating at the SPOD...

'...It can be shown that I did display a "devotion to duty" as well as "meritorious achievement" as a newly promoted corporal, exposed to a large team in an unfamiliar environment with no training or prior preparation...

'...I believe I was overlooked as it would have been assumed that I had been in the Rank of CPL for considerable time, which was not the case. I am sure if a copy of my deployment order was located it would show that my position number was that of a CPL and not of an OIC ...'

21. Mr Evans provided a copy of the CTF635 Commendation he received for his duties as the Officer-in-Charge of the cleaning site. The Commendation, signed by Major Michael Gallegos, stated:

'I commend you for your efforts throughout your deployment. As OIC of the cleaning team at the Transit Area you were initially responsible for establishing the site so that it would support high tempo cleaning operations for two months.

⁹ Sea Point of Departure.

You did this with enthusiasm and inventiveness and were then able to see the benefits throughout the rest of your deployment.

‘Once that site was established you took command of a small group of soldiers and 15 Locally Employed Civilians and produced outstanding results in austere conditions. The task you undertook could well be described as mundane and repetitive, however you never once complained and instead looked upon your duties as a chance to significantly contribute to the overall success of the Force Extraction Team. The speed at which you and your team cleaned, accounted for, and packed a wide range of military equipment is to your credit, and your commanders at all levels were consistently impressed by your attitude, work ethic, and ability to keep track of a constantly challenging workload.

‘Once the cleaning site at the Transit Area was closed you then took your team to commence night shift at the SPOD cleaning site, and you continued your excellent work despite the challenges associated with the new site and the new hours. Of note during this time was your ability to not only conduct constant operations, but to also step back and see the bigger picture and thereby make several adjustments and changes that ultimately proved successful.

‘Your tireless and commendable efforts in carrying out your duties within Combined Task Force 635 on Operation HELPEM FREN has greatly contributed to the success of the mission. Your achievements are of the highest order and are in keeping with the finest traditions of the Australian Army, the Royal Australian Ordnance Corps and the Australian Defence Force.’¹⁰

Defence’s position

22. As set out in the Defence report, following Mr Evans’ application to Defence, it conducted an assessment of his eligibility for a CSM and subsequently Colonel Bronwyn Johnstone wrote to Mr Evans on 30 March 2021 stating that she would not recommend him for recognition through a CSM or any other defence honour for his performance on Operation ANODE.

23. Colonel Johnstone said that the CSM was ‘*for meritorious achievement or dedication (sic) to duty in non-warlike situations*’ and that she could not be reasonably satisfied that Mr Evans had ‘*performed a meritorious achievement or dedication to duty*’.

24. On 3 August 2022, Mr Evans made application to the Tribunal seeking review of Colonel Johnstone’s decision.¹¹

¹⁰ Application to the Tribunal by Mr Evans dated 03 August 2022.

¹¹ Ibid.

25. Following Mr Evans' application to the Tribunal, Defence reviewed the original decision of 30 March 2021. Following this review by Brigadier Mark Bornholt AM (Retd), Defence stated that the decision to not recommend Mr Evans for the CSM should be affirmed.¹²

26. Defence confirmed that the work undertaken by Mr Evans as the Officer-in-Charge of the cleaning station including the management of a small team and coordination of locally employed civilians, and subsequent similar night duties at the Sea Point of Departure.

27. Defence further noted that the commendation provided to Mr Evans reflected the accepted practice of the time to acknowledge individual or small team achievements by unit commanders through the presentation of a printed certificate or similar acknowledgement.

28. While Defence conceded that there was no evidence that Mr Evans was not considered for further recognition, it quoted Major Gallegos who on 31 August 2020 stated via email in relation to retrospective recognition for Corporal Evans that:

*'... during my tenure I awarded several Commander CTF 635 Certificates of Commendation. These were made upon the recommendation of relevant subordinate commanders and staff and recognised CTF 635 members who by their conduct and performance of their duties were deserving of recognition but did not meet the requirements for higher honours.'*¹³

29. Defence asserted that the significant part of Major Gallegos' statement was that the Commander commended individuals like Corporal Evans who were deserving of recognition *'but did not meet the requirements for higher honours'*.

30. Defence further stated that the tasks of a formal extraction team are labour intensive, menial and dirty by nature, involving stripping equipment to component parts and washing or cleaning each of these parts before reassembly and inspection to ensure biosecurity protocols were met on return of equipment to Australia. Defence stated that these tasks were ideally suited to locally employed civilians supervised by a junior non-commissioned officer.

31. In determining whether Mr Evans met the eligibility criteria for a CSM, Defence noted that the criteria of demonstrating meritorious achievement and devotion to duty were not defined; and that the decision regarding eligibility is subjective. Defence stated

¹² Defence report to the Tribunal from Brigadier M.D. Bornholt (Retd), Army Historical Honours and Awards Reviewing Officer, not dated.

¹³ Ibid.

that the Commander of the Task Force had indicated that Mr Evans' performance did not meet the requirements for higher honours.

32. Defence stated that there was nothing in Mr Evans' commendation that would suggest his performance was demonstrably superior to others or beyond the expectations of his role.

33. Further, Defence stated that no evidence had been provided by Mr Evans that would suggest his performance of duty was meritorious in comparison to others with similar tasks, and that no mention of meritorious performance was contained in the commendation or appraisal report.

Mr Evans' comments on the Defence report

34. Mr Evans was provided with a copy of the Defence Report on 25 October 2022 and asked to provide his comments on the report. Mr Evans responded on 5 December 2022 pointing out what he believed were discrepancies in Defence's findings.¹⁴

35. In particular, Mr Evans submitted that he initiated the establishment of the second cleaning site to have it operational in time for the incumbent Sergeant's arrival, who was to then lead the team but following a short period of the Sergeant being in charge, Mr Evans was tasked to take over management of the site.

'It was in fact me who approached Capt Smyth and suggested that I could get the site up and running in time for the incumbent Sgt's arrival who would lead the team...

'In fact, once the site was established of my own initiative, I approached Capt Smyth in regards to the task at hand, I then said that I could get it up and running. I was never formally tasked as the OIC of the site, but the merely the soldier on the ground man on the ground willing to get started. It is to be noted that the six Defence personnel that I was in command of were made up of the following, three RAAF Corporals and three Army Privates. The Team also included 15 Locally employed civilians...

'It is to be noted that both sites were to be commanded by a SGT. Sgt Pillay was the Sea Point Team Leader, whilst my team was to be commanded by a SGT due in country 2 weeks after my arrival. This Sgt did arrive and commended the site for approximately 2 weeks, at which point I took my place with the existing Corporals. After the two days I was approached and advised that I would be running the site. This could be the time it could be taken that I was tasked as the OIC...

¹⁴ Mr Evans' comments on the Defence Report, dated 5 December 2022, p1.

*'It is due to this re-tasking that I believe I was not awarded any higher duty pay for the role I was re-tasked in. The SGT that was to command the site did remain in country, his role I am still not sure of. As a Corporal in the Australian Army for a number of years I have never seen a Corporal formally in command of his/her peers. This is not the normal process...'*¹⁵

36. Mr Evans stated that he believes senior staff were not aware that he was a junior corporal operating in a sergeant's position and that, due to his rank, it was significant that he was in charge of three RAAF corporals and three Army privates.¹⁶

37. Further, Mr Evans disputed the claim by Defence that the Force Extraction Team for Operation ANODE had several other junior ranks.

*'The tasks that these 'other Corporals was not the same as mine, there were only two sites, both to be commanded by SGT's with Corporals embedded in the teams. My case was made different once allocated to the OIC role. If the statement in this paragraph is correct then all Corporals in the FET were in the same position as me and should have all received a piece of paper commendation'*¹⁷

38. Finally, Mr Evans disputed Brigadier Bornholt's claim that meritorious achievement and devotion to duty were not defined.

'...In fact, they are defined by the words used in the Commanders commendation and Performance Appraisal report. Statements such as achievement of 'outstanding, consistence results, Cpl Evans has produced and outstanding performance as a young NCO', His resilience and work ethic in extremely harsh conditions were first class" and "Produced Outstanding results in austere conditions"

*'Statement such as those described above are the basis of both the Conspicuous Service Medal and the Conspicuous Service Cross'*¹⁸

¹⁵ Mr Evans' comments on the Defence Report, dated 5 December 2022.

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ Ibid.

Awards arising from Operation ANODE

39. Five Conspicuous Service Decorations were awarded for achievement and service during Operation ANODE as follows:

- a) The Conspicuous Service Cross was awarded to two commanding officers who served on Operation ANODE.¹⁹
- b) The Conspicuous Service Medal was awarded to three Defence personnel who served on Operation ANODE - one for service as a Field Intelligence Officer; one for achievement as a Logistics Officer; and one for achievement as the Regimental Sergeant Major.²⁰

Analysis

40. In its written report and at hearing, Defence did not challenge the factual assertions made by Mr Evans about the service for which he sought the CSM and, indeed, many of those assertions were confirmed by the Defence records of that service.

41. While Brigadier Bornholt made much of the fact that the question of whether or not Mr Evans had demonstrated *meritorious achievement or devotion to duty* called for subjective judgment, and that Major Gallegos as the Task Force Commander was of the opinion that he had not, that is in no way determinative of the issue before the Tribunal. The very nature of the statutory role of the Tribunal in this case is to “stand in the shoes” of the decision maker and exercise its own subjective judgement. Moreover, without casting any adverse inference, the Tribunal notes that Major Gallegos’ view that Mr Evans’ performance was not of a level deserving a higher honour was only expressed many years later, when his decision not to recommend such recognition had been challenged, and does not appear in the contemporaneous record.

42. It is notable that the Regulations are scant in setting out the eligibility criteria for the CSM. This is in contrast with the eligibility criteria for the CSC, where the Regulations provide rather more guidance as to the matters for consideration.

43. Accordingly, the Tribunal agrees with Defence that it is incumbent on it to exercise a subjective judgement in this matter, albeit that this must be done in the context of not only the Regulations but also having regard to the broader honours and awards system.

¹⁹ Department of the Prime Minister and Cabinet, Australian Honours Search Facility, Awards from Operation ANODE, accessed 30 November 2022.

²⁰ Ibid.

44. This means that the Tribunal must form a view as to the significance of Mr Evans' performance of his relevant duties. There is no question that however his performance was rated, it was *in [a] non-warlike situation* as Operation ANODE has been recognised as such for the purpose of the Australian Service Medal.

45. Given that Defence did not challenge the facts asserted by Mr Evans, the Tribunal is satisfied that Mr Evans completed his assigned tasks in a highly creditable manner. He was asked to perform, as a recently promoted Corporal, a job that was otherwise intended to be undertaken by a sergeant; he had no prior training or experience in the substantive nature of those tasks; he received no substantive supervision or direction; he was required to direct a number of personnel at the same rank as himself, and did so in a manner that was apparently harmonious and avoided the resentment that might otherwise have arisen from his leadership and direction of peers; he had to lead and direct a number of locally engaged staff who had little or no English language competency; his management of the team meant that its assigned task was achieved in a significantly shorter period than expected, and that much greater quantities of stores were recovered for later use than anticipated; and the biodiversity risk to Australian health and industry was extreme if AQIS standards were not met by the team and contaminated materials were returned undetected by AQIS.

46. At the same time, the tasks in question were ancillary to, and in support of, the primary purpose of Operation ANODE. While important in their own right, they did not contribute directly to restoring peace and stability to the Solomons and encouraging the development of its economy. Mr Evans accepted at hearing that if the results he achieved had been achieved by the Sergeant who was initially intended to lead the team, they would properly have been regarded as the Sergeant simply doing what was expected of them, albeit at a high order.

47. The Tribunal noted that Mr Evans' commendation, awarded by Major Gallegos, stated that:

'Your achievements are of the highest order and are in keeping with the finest traditions of the Australian Army, the Royal Australian Ordnance Corps and the Australian Defence Force.'

48. The Tribunal thus asked Brigadier Bornholt why those very words did not inherently mean that Mr Evans' performance demonstrated *meritorious achievement or devotion to duty*. Brigadier Bornholt said that those words or their equivalent were, in his experience, included in the closing passage of almost all commander commendations and more formal ADF commendations.

49. In this regard the Tribunal notes that the documents (dated 18 January 2002) governing the formal commendation scheme at the time of Mr Evans' service (and also in a later iteration dated 8 December 2004) did include a suggested form of commendation wording which contained the closing words:

*'Your achievements are of the highest order and are in keeping with the finest traditions of the Royal Australian Navy and the Australian Defence Force'*²¹

50. In contrast, the suggested form of words in the current iteration of those documents simply says:

*'Your achievements are in keeping with the finest traditions of the Royal Australian Navy and the Australian Defence Force.'*²²

and thus does not suggest the use of superlative phraseology such as *Your achievements are of the highest order*. It appears that, at some time between 2004 and 2012, Defence may have realised that the use of such superlatives in a graduated scheme of recognition was problematical.

51. It is at the very least unfortunate that the wording of commendations issued in accordance with those earlier suggested forms of wording may not be able to be read literally as a sincere and honest assessment of the performance to which they attest.

52. It appears from his later statement that Major Gallegos would not have intended the words *Your achievements are of the highest order* to be read literally. Of course, given that he may have been following the suggestion contained in the formal commendation scheme documentation, he may not have given conscious thought to the significance of the words he used and thus the Tribunal is not necessarily critical of him.

53. In light of the above, the Tribunal believes that it cannot regard the words used by Major Gallegos as sufficient to justify it recommending that Mr Evans be awarded the CSM. Instead, the Tribunal considers that it must consider the question from first principles.

54. When viewed in the broader context of the Australian honours and awards system, it is apparent that the Regulations are intended to recognise the most significant of performance in non-warlike operations. They do so at two levels – the higher warranting the CSC and the lower the CSM. But, it is also apparent that there can be many grades of creditable performance below these two levels.

²¹ Defence Instruction General (Personnel) 31-2, *Commendations for Service*, 18 January 2002.

²² Defence Honours and Awards Manual, Volume 1, Chapter 39, *The Defence Commendation Scheme*, 8 December 2004.

55. Recognising that it is a matter of subjective judgement, for the reasons set out in paragraph 46 above, the Tribunal is nevertheless not satisfied that Mr Evans' performance was such as to warrant recognition by the CSM as *meritorious achievement or devotion to duty*. Without wishing to detract in any way from the quality of Mr Evans' service, the Tribunal does not believe that on a scale of relativities it was of such a high order as to warrant the CSM. Nevertheless, what Mr Evans did was very impressive and creditable and the Tribunal considers that he was entitled to believe that it had not been adequately recognised.

56. Recognition of Mr Evans' performance did not involve a simple binary choice between the Commander's Commendation and the CSM. There was at the time, and there is now, a formal scheme within the ADF for additional commendations at various levels that may be awarded by ranks above a commander, who can unilaterally issue only an informal commendation such as that issued by Major Gallegos.

57. The commendation award scheme that existed at the time of Mr Evans' service, as well as the extant system in place today, is hierarchically based and allows for commendations at various levels to be awarded based on the assessed merit of the service or the act. All individual commendations can be awarded at three levels, these being Gold, Silver and Bronze.

58. While Brigadier Bornholt told the Tribunal at the hearing that he had considered whether or not Mr Evans should be recognised in this formal scheme but had rejected that option, the Tribunal was not at all convinced by the analysis that he offered. In this regard, we understood Brigadier Bornholt to be referring to the following paragraph in the current scheme documentation:

39. 30 The Defence Commendation Scheme is a formal system that extends the existing Service commendation system to all Defence personnel (as defined in subparagraph 39. 7b. above). In the past, and in the absence of a suitable Defence award, some groups implemented informal internal award schemes. In addition, some officers issued their own forms of commendation. There is no provision in the Defence Commendation Scheme for retrospective conversion of former awards to a Defence Commendation. A request may be made for such informal recognition to be recorded on PMKeyS Recognised Achievement screen. If a suitable code does not exist on the Recognised Achievement panel, a request for the creation of a new code may be submitted using Form AD 840—PMKeyS Achievement Table Update Request

59. However, it seems to the Tribunal that this paragraph is confined to informal awards issued at a time when there was not available a "suitable Defence award". Of course, at the time of Mr Evans' service, there was available the option of a formal rather than an informal commendation and that would, the Tribunal believes, have been a "suitable Defence award".

60. Accordingly, the Tribunal considers that this paragraph does not act to prevent Mr Evans' from now being considered for a retrospective commendation under the formal scheme. The Tribunal notes also that, in not-dissimilar circumstances in the matter of *Curran and the Department of Defence*,²³ a Tribunal recommendation for the award of a retrospective commendation was accepted despite the presence of paragraph 39.30.

61. As a result, while the Tribunal does not consider that Mr Evans' performance warranted the grant of the CSM, it does believe that further and favourable consideration is appropriate to recognise the very creditable nature of that performance.

Tribunal Decision

62. In light of all of the above, the Tribunal has decided under section 110VB(2)(a) to affirm the decision that Mr Evans not be recommended for the CSM.

63. However, noting the hierarchy of commendations available outside the Australian honours and awards system and that the actions of Mr Evans were commendable, the Tribunal has also decided under section 110VB(3) to recommend to the Minister that the Chief of Joint Operations be asked to consider awarding a Joint Operations Command commendation to Mr Evans in recognition of his excellent performance and devotion to duty as a cleaning site Officer-in-Charge in the Force Extraction Team in the Solomon Islands during Operation ANODE in 2004.

²³ *Curran and the Department of Defence* [2016] DHAAT 37 (25 October 2016).