



# Australian Government

## Defence Honours and Awards Appeals Tribunal

### **Walsh and the Department of Defence [2023] DHAAT 5 (14 March 2023)**

<b>File Number</b>	2022/002
<b>Re</b>	<b>Lieutenant Colonel Conrad Walsh</b> Applicant
<b>And</b>	<b>The Department of Defence</b> Respondent
<b>Tribunal</b>	Air Commodore Anthony Grady AM (Retd) (Presiding Member) Rear Admiral Allan du Toit AM (Retd) Ms Josephine Lumb
<b>Hearing Date</b>	20 October 2022
<b>Appearances</b>	Lieutenant Colonel Conrad Walsh Applicant  Air Vice-Marshal John Quaipe AM (Retd) Honours Review Officer Directorate of Honours and Awards For the Respondent

### **DECISION**

On 14 March 2023, the Tribunal decided to recommend to the Minister that:

- a) the decision of the Chief of Joint Operations, Lieutenant General Greg Bilton AO CSC to refuse to recommend Lieutenant Colonel Conrad Walsh for the Commendation for Distinguished Service be rejected; and
- b) the Minister should instead recommend to the Governor-General that Lieutenant Colonel Walsh should be awarded the Commendation for Distinguished Service.

## **CATCHWORDS**

*DEFENCE HONOUR – Commendation for Distinguished Service – distinguished performance of duties in warlike operations – Operation HIGHROAD – Afghanistan*

## **LEGISLATION**

*Defence Act 1903 – Part VIIIIC – Sections 110T, 110V(1), 110VB(1), 110VB(6)  
Defence Regulation 2016 Section 35*

### **Commendation for Distinguished Service**

*Commonwealth of Australia Gazette CAG S25 of 4 February 1991 Distinguished Service Decorations Regulations Letters Patent dated 15 January 1991*

*Commonwealth of Australia Gazette CAG S382 of 20 December 1993 Distinguished Service Decorations Regulations Governor-General Determination dated 16 December 1993*

*Commonwealth of Australia Gazette CAG S219 of 17 October 2008 Distinguished Service Decorations Regulations Governor-General Determination dated 1 September 2008*

*Commonwealth of Australia Gazette CAG S18 of 22 February 2012 Distinguished Service Decorations Regulations Amendments dated 13 December 2011*

*Commonwealth of Australia Gazette CAG S125 of 1 August 2012 Distinguished Service Decorations Regulations Governor-General Determination dated 6 July 2012.*

## Introduction

1. The Applicant, Lieutenant Colonel Conrad Walsh, seeks review of a decision of the Chief of Joint Operations, Lieutenant General Greg Bilton AO CSC, that he should not be recognised with the Commendation for Distinguished Service (CDS) for his role as a Military Public Affairs and Information Operations Advisor to the Kabul Garrison, General Command on Operation HIGHROAD in Afghanistan from 11 October 2016 to 15 June 2017.<sup>1</sup>

## Decision under review

2. On 13 September 2021, Lieutenant Colonel Walsh applied to the Tribunal seeking reconsideration of a decision that he not be awarded a CDS for his service in Afghanistan. As his application did not meet all of the legislative requirements for Tribunal review at that time, with Lieutenant Colonel Walsh's consent, his application was forwarded to Defence for consideration.<sup>2</sup>

3. Lieutenant Colonel Walsh's application contained a range of submissions and evidence, including a copy of an apparent draft citation for award of the CDS in the Queen's Birthday 2018 (QB18) honours list.<sup>3</sup>

4. Following consideration of the application, Lieutenant General Bilton stated in a letter dated 13 December 2021, "*I have reviewed the nomination, and the material you have supplied as evidence, and have decided to uphold the original decision to award you a (Chief of Joint Operations) Gold Commendation and not to recommend you for the award of a CDS.*"<sup>4</sup>

5. On 27 January 2022, Lieutenant Colonel Walsh made application to the Tribunal seeking review of Lieutenant General Bilton's decision, and in doing so resubmitted some of the material provided with his earlier application of 13 September 2021.<sup>5</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 honour in response to an application. Regulation 35 of the *Defence Regulation 2016* lists the defence honours

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<sup>1</sup> Tribunal Application for Review, Lieutenant Colonel Walsh dated 27 January 2022.

<sup>2</sup> Email, Tribunal to HQJOC dated 29 September 2021 (delete reference).

<sup>3</sup> Tribunal Application for Review, Lieutenant Colonel Walsh dated 13 September 2021.

<sup>4</sup> Letter, Lieutenant General Bilton to Lieutenant Colonel Walsh dated 11 December 2021.

<sup>5</sup> Tribunal Application for Review, Lieutenant Colonel Walsh dated 27 January 2022 [reasons dated 13 Sep 2021].

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

7. As required by s110VB(6) of the Act, the Tribunal is bound by the eligibility criteria that governed the making of the reviewable decision. In accordance with s110VB(1) of the Act, as the Applicant seeks a defence honour, the Tribunal does not have the power to affirm or set aside the decision, but may make any recommendations to the Minister that it considers appropriate.

### **Conduct of the review**

8. In accordance with its Procedural Rules, on 31 January 2022, the Tribunal wrote to the Secretary of the Department of Defence informing him of Lieutenant Colonel Walsh's application for review.<sup>6</sup> The Tribunal requested a merits-based assessment of Lieutenant Colonel Walsh's actions against the eligibility criteria for the CDS and a report on the material questions of fact and reasons for the decision to refuse the original application. The Tribunal also requested that the Secretary provide copies of documentation relied upon in reaching the decision and any other relevant documents.

9. On 29 April 2022, the Director of Honours and Awards in the Department of Defence, Mr Ian Heldon, provided a report on behalf of Defence.<sup>7</sup> The Defence Report consisted of a report signed by Mr Heldon on behalf of the Reviewing Officer, Air Vice-Marshal John Quaife AM (Retd). Air Vice-Marshal Quaife found that *"no evidence has been provided by LTCOL Walsh that would suggest his performance of duty was distinguished. LTCOL Walsh did provide a 'Certificate of Appreciation' he received from the Commander of the Combined Joint Psychological Operations Task force and details of his Afghanistan award in support of his application."*

10. Air Vice-Marshal Quaife further stated that *"the primary basis of (Lieutenant Colonel Walsh's) application for review is his statement that his nominating and endorsing officers considered his nomination to be strong. A succession of experienced and senior officers within LTCOL Walsh's command chain that considered the matter on the merits, did not agree."*

11. The Defence report was forwarded to Lieutenant Colonel Walsh for comment on 3 May 2022. Lieutenant Colonel Walsh responded on 14 June 2022 setting out his disagreement with a number of points in the Defence Report, and seeking continuation of the Tribunal's review.<sup>8</sup>

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<sup>6</sup> Letter, Tribunal to Secretary, Request for Defence Report dated 31 January 2021.

<sup>7</sup> Letter, Directorate of Honours and Awards to the Tribunal dated 29 April 2022.

<sup>8</sup> Letter, Lieutenant Colonel Walsh to the Tribunal, dated 14 June 2022.

## **Lieutenant Colonel Walsh's service**

12. Lieutenant Colonel Walsh enlisted in the Australian Army as a Reserve member on 24 November 2001. Following completion of officer training, Lieutenant Colonel Walsh was commissioned as an officer and following that undertook periods of Continuous Full Time Service (CFTS) for operational service during the following periods:

- a) Operation ASTUTE from 9 October 2007 until 27 December 2007 in East Timor;
- b) Operation ANODE from 12 August 2011 to 2 December 2011 in the Solomon Islands; and
- c) Operations HIGHROAD and ACCORDION from 11 October 2016 to 15 June 2017 in the Middle East and Afghanistan.<sup>9</sup>

13. Lieutenant Colonel Walsh has been awarded the following for his service:

- a) Australian Service Medal with Clasps 'TIMOR-LESTE' and 'SOLOMON IS II'
- b) Australian Operational Service Medal – Greater Middle East Operations
- c) Australian Defence Medal
- d) Defence Long Service Medal
- e) NATO Non Article 5 Medal with Clasp Afghanistan
- f) National Police of Afghanistan Medal of Honor<sup>10</sup>
- g) Chief of Joint Operations Gold Level Commendation
- h) Operational Service Badge – Military

14. At the time of the hearing, Lieutenant Colonel Walsh was serving with the Australian Army Active Reserve as Director of Reserve Officer Career Management at Victoria Barracks in Sydney. Lieutenant Colonel Walsh is now serving as the Commanding Officer of the Sydney University Regiment at Holsworthy Barracks.

15. Relevant to this application is his service at the rank of Major on Operation HIGHROAD in his role as a Military Public Affairs and Information Operations Advisor to the Kabul Garrison, General Command from October 2016 to June 2017, for which he was awarded the Chief of Joint Operations Gold Level Commendation.

## **Lieutenant Colonel Walsh's submissions**

16. In his application, Lieutenant Colonel Walsh stated that his actions met the eligibility criteria for the CDS as it relates to distinguished performance of duties in warlike operations. He referred to a supporting letter from the Commander of the Combined Joint Psychological Operations Task Force and the fact that he was recognised by the Islamic Republic of Afghanistan through the award of their Afghanistan National Defence and Security Forces (ANDSF) Medal of Honor (also referred to as the National Police of Afghanistan Medal of Honor).<sup>11</sup>

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<sup>9</sup> Walsh, Conrad Hayden, Service Record ADO Report.

<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

17. Lieutenant Colonel Walsh provided long and short form citations for the award of the CDS in the **Queen's Birthday 2018** (emphasis added) (QB18) honours list.<sup>12</sup> The long form citation states:

***“For outstanding achievement in the performance of duty as the Public Affairs and Information Operations Advisor to the Kabul Garrison Command.***

*Major Conrad Walsh was deployed on Operation Highroad as the Public Affairs and Information Operations Advisor to the Kabul Garrison Command from October 2016 to June 2017.*

*Major Walsh's exceptional personal drive, vision and influence have been the key factors behind the development and implementation of an Information Operations and Public Affairs capability within the Afghan Security Forces in Kabul. He is personally responsible for the emergence of the Afghan antiterrorism social media narrative and the development of a synchronized campaign of Information Operations in Kabul. Major Walsh established and unified an Information Operations community comprising of multiple coalition and Afghan Security Forces, with a synchronized narrative, a comprehensive crisis response capability and a broad reaching public affairs campaign plan. Major Walsh's dedication and vision are the reason that the Kabul Garrison Command and the Kabul security community now have a comprehensive and effective Information Operations capability.*

*Major Walsh coordinated a series of media engagements for the Afghan Three Star Commanding General that directly and positively impacted on the legitimacy of the fledgling security organisation. Additionally, he aided in increasing the Kabul Garrison Command Facebook followership by more than fourfold and initiated an information operations campaign to counter the insurgents' use of unmanned aerial systems. Critically, Major Walsh established the inaugural Non-lethal Working Group for the 25000 strong Afghan Kabul Garrison Command. This advisory effort directly linked Afghan Information Operations and Public Affairs to the security and policing lines of effort in Kabul for the first time.*

*In addition to his mentoring duties, Major Walsh voluntarily adopted the role of Project Manager, creating a Media Centre and Intelligence Fusion Centre as well as refurbishing and upgrading the Joint Operations Centre in the Kabul Garrison Command Headquarters. This role was extremely complex, requiring Major Walsh to deal simultaneously with North Atlantic Treaty Organisation agencies, the Afghan Security Forces and local and international contractors to enhance Afghan intelligence, operations and media fusion capabilities. Major Walsh's deft navigation of the complex multi-agency coordination requirements resulted in a significant, tangible and enduring capability improvement enabling intelligence led operations and a platform for a decisive counter-insurgency narrative. His concentrated efforts and personal intervention ensured that the facilities were completed on time and to specification to provide the Afghan Security Forces with a significant capability enhancement.”*

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<sup>12</sup> Draft citation, provided with Application for Review.

18. The short form citation states:

***For outstanding achievement in the performance of duty as the Public Affairs and Information Operations Advisor to the Kabul Garrison Command.***

*Major Walsh has made an outstanding contribution to the security of Kabul and the capability of the Afghan Security Forces through the development of a comprehensive Information Operations and Public Affairs plan and by the creation of an Intelligence Fusion Centre, Media Centre and Operations Centre.*

*He led the coalition and Afghans in the development of a counter-insurgency narrative, combined with a positive messaging campaign to increase the legitimacy of the Afghan Security Forces. His achievements are enduring and in keeping with the finest traditions of the Australian Defence Force.*

19. The supporting letter – in the form of a certificate of appreciation<sup>13</sup> – states:

*‘In recognition of (Major Walsh’s) contributions to the success of the Combined Joint Psychological Operations Task Force Mission from 11 October 2016 – 15 June 2017.*

*‘Major Walsh collaborated with the CJPOTF Staff to design and develop messaging and print products in support of the Kabul Garrison General Command mission.*

*‘He collaborated with CJPOTF to provide AIDO training and arranged for KGGC Commander communication to Afghan audiences through Radio Bayan.*

*‘Major Walsh distinguished himself to CJPOTF leadership and staff as a consummate professional with an engaging sense of humour, positive attitude, high ethical standards and strong work ethic.*

*‘CJPOTF is honoured to have served with him.’*

## **Defence’s position**

### *The reviewable decision*

20. Lieutenant General Bilton’s letter of 13 December 2021 sets out the following reasons for refusal of Lieutenant Colonel Walsh’s application, following consideration of the initial nomination and material supplied by Lieutenant Colonel Walsh as evidence:

- a) While Lieutenant Colonel Walsh was originally nominated for consideration for the award of a CDS in the **2019** Australia Day Honours List (emphasis added), the nomination was considered by the Honours and Awards Board at Headquarters Joint Task Force 633 (HJTF 633) and was not supported;

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<sup>13</sup> Certificate of Appreciation, CJPOTF Commander COL S Cirstea, Romanian Air Force,

- b) Instead, the Commander Joint Task Force 633 (CJTF 633), Major General Frewen, recommended that Lieutenant Colonel Walsh be recognised with a Defence Commendation;
- c) The nomination was nonetheless reviewed by the Chief of Joint Operations Honours and Awards Board, which endorsed Major General Frewen’s recommendation, having regard to the eligibility criteria;
- d) The nomination was then considered by the Joint Operations Command Commendation Board, which recommended a Chief of Joint Operations Gold Commendation, which is only awarded for ‘*superior achievement or devotion in the application of skills, judgement or dedication to duty*’;<sup>14</sup> and
- e) While Lieutenant General Bilton was satisfied that Lieutenant Colonel Walsh ‘*performed to a superior level*’ during his deployment, Lieutenant General Bilton referred to the extensive experience of the Boards that undertake consideration of nominations, and stated that Lieutenant Colonel Walsh’s performance did not meet the criteria for the award of the CDS.

### *The Defence Report*

21. The Defence Report was signed by Mr Heldon and was completed by Air Vice-Marshal Quaife in consultation with Brigadier Mark Bornholt AM. Both Air-Vice Marshal Quaife and Brigadier Bornholt are previous members of this Tribunal.

22. In the Report Air Vice-Marshal Quaife stated “*from the AD19 Honours and Awards Board preliminary assessment it is clear that LTCOL Walsh’s nomination was considered on the merits. While some members of that board chose to summarise their conclusion rather than provide their reasoning, most felt that a Gold Commendation was a ‘better fit’ in recognition of LTCOL Walsh’s achievements and more specifically, that evidence did not support a CDS.*”<sup>15</sup>

23. The Report also indicated that the matter had ‘once more been reviewed’, presumably by Air-Vice Marshal Quaife. Having regard to the eligibility criteria for the CDS - ‘*distinguished performance of duties in warlike operations*’, the report indicated that the salient question was whether Lieutenant Colonel Walsh’s performance could be regarded as distinguished. Air-Vice Marshal Quaife then noted that the Tribunal, in *Hulse and the Department of Defence re: Hughes and Anor*,<sup>16</sup> in considering eligibility for the CDS, had regard to whether candidates ‘*discharged their duties that were superior to those normally pertaining to their rank and appointment*’, and whether the ‘*performance of duty was demonstrably superior to others or to the expectations of the role*’.

24. Air-Vice Marshal Quaife stated that as a Major assigned to a general command headquarters as a Public Affairs and Information Operations Advisor, the achievements summarised by the original CDS nomination were reasonable expectations of an experienced middle-ranking officer. The report goes on to state that while it was agreed that all were

<sup>14</sup> Scope & Criteria for Joint Operations Command ADF Commendations, Defence Report Annex B.

<sup>15</sup> Defence Report dated 29 April 2022.

<sup>16</sup> *Hulse and the Department of Defence re: Hughes, Johnson and Walker*, 2021 DHAAT 4.



within the expectations of the role, and that while Lieutenant Colonel Walsh completed his duties with initiative and enthusiasm and achieved commendable results, there was nothing that would suggest his performance was demonstrably superior to others or beyond the expectations of his role.

25. Air-Vice Marshal Quaife also opined that no evidence had been provided by Lieutenant Colonel Walsh that would suggest his performance of duty was distinguished, and that the primary basis of his application for review was his statement that his nominating and endorsing officers considered his nomination to be strong. However, Air-Vice Marshal Quaife pointed to the fact that a succession of experienced and senior officers within Lieutenant Colonel Walsh's chain of command considered the matter on the merits and did not agree.

### **The Chief of Joint Operations (CJOPS) Decision Brief**

26. Attached to the Defence report is the CJOPS Decision Brief BO16626878, dated 13 December 2021, which was compiled after Lieutenant Colonel Walsh submitted his application for review to the Tribunal on 13 September 2021, and was prepared to inform Lieutenant General Bilton's decision (the reviewable decision).

27. The Decision Brief, signed by the Chief of Staff to CJOPS, Commodore Brett Sonter, but apparently drafted by the Staff Officer Honours and Awards HQJOC, Wing Commander Simon Braun, purports to have been made following a submission from the Tribunal, and that the Tribunal had sought Defence review of the decision. This is incorrect, as Lieutenant Colonel Walsh's application of 13 September 2021 was simply forwarded, at his request, to Defence for consideration (see paragraph 2).<sup>17</sup>

28. The Decision Brief states that Lieutenant Colonel Walsh's nomination was raised by Brigadier Michael Pictor and was considered by a JTF 633 Honours and Awards Board for Australia Day 2019. The brief goes on to state that while the outcomes of the HQJTF 633 Board could not be found, the nomination was not supported in theatre, and was instead recommended for consideration as a Commendation. The Brief does not shed any light on why Brigadier Pictor's nomination was not considered for the Queen's Birthday 2018 list.

29. The Decision Brief provided some detail of the proceedings of the subsequent CJOPS Australia Day 2019 Honours Board, including board membership, and identified the three board members who supported the award of a CDS for Lieutenant Colonel Walsh. It also stated that the Deputy Chief of Joint Operations instead recommended a Commendation which was endorsed by the remaining board members. These deliberations were apparently audio recorded however due to an administrative error, the recording did not capture the discussion in respect of Lieutenant Colonel Walsh's nomination. Written records were however made of each board member's view.<sup>18</sup> A recommendation for a Commendation was then forwarded to the CJOPS Commendations Board.

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<sup>17</sup> Email from the Executive Officer of the Tribunal to Commodore Sonter dated 23 September 2021 at ENC 11-1.

<sup>18</sup> Australia Day 2019 Honours and Awards Board Preliminary Assessment Major Walsh Board Enclosure 11-4 to the CJOPS Brief.

30. The Decision Brief stated that the recording of the CJOPS Commendation Board was reviewed, and that while there was some discussion over the level of Commendation to be recommended, the Gold Commendation was recommended as Lieutenant Colonel Walsh's performance was considered to be superior.

31. Following consideration of the Decision Brief, Lieutenant General Bilton approved the recommendation to uphold the decision of the AD19 Board(s) to not award Lieutenant Colonel Walsh the CDS, and signed the letter that constituted the reviewable decision.

32. It should be noted that the Decision Brief raises concern in respect of Lieutenant Colonel Walsh's awareness of his nomination – noting the policy requirement for confidentiality,<sup>19</sup> and that the citation provided by him in his application is different to the one considered by the CJOPS Board, provided at Enclosure 2 to the Decision Brief. To that end, the version apparently considered by the CJOPS Board (below), for the 2019<sup>20</sup> Australia Day Honours list is substantively different from the above version, purportedly for the 2018 Queen's Birthday Honours list provided in the application.<sup>21</sup> No explanation was offered as to why.

*For distinguished performance of duties in warlike operations in Afghanistan as the Public Affairs and Information Operations Advisor to the Kabul Garrison Command on Operation Highroad from 11 October 2016 to 15 June 2017.*

*The Kabul Garrison Command is an Afghan three-star headquarters that combines more than 25,000 personnel from the Afghan Army, Police and National Directorate of Security into a permanent interagency task force providing security for the nearly seven million people of Kabul Province. The Command's Public Information efforts play a central role in its campaign against terrorism. Through his exceptional drive and vision, and his ability to work seamlessly across cultural boundaries, Major Walsh was instrumental in assisting his Afghan counterparts to develop a comprehensive Information Operations and Public Affairs capability for Kabul's security forces.*

*Having identified a serious gap in interagency coordination, Major Walsh reached out to coalition and Afghan security forces to create an Information Operations community with a synchronized narrative, a comprehensive crisis-response capability and a broad-reaching public information campaign. He was personally responsible for generating an Afghan anti-terrorism social media narrative and the development of a Kabul-focussed Information Operations campaign. Through his vision and unrelenting commitment, Major Walsh played a vital role in the creation of a comprehensive Information Operations capability for the Kabul Garrison Command.*

*After noting the lack of community awareness of the Kabul Garrison Command role in the city's security, Major Walsh coordinated a series of media engagements for the Afghan three-star Commanding General that made tremendous inroads into establishing public awareness and legitimacy for the fledgling Garrison Command.*

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<sup>19</sup> CJOPS Decision Brief DHAM Chapter 8 ENC 11-5.

<sup>20</sup> Unhelpfully, the Decision Brief makes reference to it being considered in the Australia Day 2018 Honours list, which is not possible if dated as stated on 15 May 2018.

<sup>21</sup> Queen's Birthday 2018 Honours List Walsh citation.

*Through active mentoring efforts, Major Walsh coached his Afghan counterparts to a fourfold expansion of the Kabul Garrison Command's Facebook followership. He leveraged this new-found awareness to initiate a public information campaign against insurgent use of unmanned aerial systems. This heightened level of community engagement allowed him to establish an inaugural Non-lethal Working Group to directly link, for the first time, Afghan Information Operations, Public Affairs and religious affairs to the security and policing effort in Kabul.*

*In addition to his mentoring duties, Major Walsh voluntarily assumed the role of Project Manager for the upgrade of the Command's Joint Operations Centre and the development of a new Media Centre and Intelligence Fusion Centre. This role was extremely complex, requiring Major Walsh to deal simultaneously with NATO agencies, the Afghan Security Forces and local and international contractors. Major Walsh deftly navigated the complex multi-agency coordination requirements to deliver a complete new suite of coalition-funded facilities, thereby enabling intelligence-led operations.*

*As the Public Affairs and Information Operations Advisor to the Kabul Garrison Command, Major Walsh demonstrated distinguished performance of duties and brought great credit upon himself, Task Group Afghanistan, and the Australian Army.*

33. And the short form citation that states:

***For distinguished performance of duties in warlike operations as the Public Affairs and Information Operations Advisor to the Kabul Garrison Command on Operation Highroad from 11 October 2016 to 15 June 2017.***

*Major Walsh made an outstanding contribution Kabul security and Afghan Security Force capability, through the implementation of a comprehensive Information Operations and Public Affairs plan, and by leading a multi-agency project to deliver a new Intelligence Fusion Centre, Media Centre and Operations Centre. He was instrumental in developing, with his Afghan counterparts, a positive messaging campaign to underpin the legitimacy of the Command. His achievements are enduring and in keeping with the finest traditions of the Australian Defence Force.<sup>22</sup>*

34. The Brief also provides a copy of the Commendation certificate presented to Lieutenant Colonel Walsh by the then Chief of Joint Operations, Air Marshal Mel Hupfeld AO DSC.<sup>23</sup> It states:

*I commend you for your superior performance as the Public Affairs and Information Operations Advisor to the Kabul Garrison Command on Operation Highroad from 11 October 2016 to 15 June 2017.*

*Your exceptional drive and vision, and your ability to work seamlessly across cultural boundaries, was instrumental in assisting your Afghan counterparts to develop a comprehensive Information Operations and Public Affairs capability for Kabul's*

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<sup>22</sup> Australia Day 2019 narrative.

<sup>23</sup> CJOPS Brief ENC 11-3.

*security forces. You identified a serious gap in interagency coordination and reached out to coalition and Afghan security forces to create an Information Operations community with a synchronized narrative, a comprehensive crisis response capability and a broad reaching public information campaign. You were personally responsible for generating and Afghan anti-terrorism social media narrative and the development of a Kabul-focussed Information Operations campaign.*

*In addition to your mentoring duties, you voluntarily assumed the role of Project Manager for the upgrade of the Command's Joint Operations Centre and the development of a new Media Centre and Intelligence Fusion Centre. This role was extremely complex, requiring you to deal simultaneously with NATO agencies, the Afghan Security Forces and local and international contractors. You deftly navigated the complex multi-agency coordination requirements to deliver a complete new suite of coalition-funded facilities, thereby enabling intelligence-led operations.*

*Your achievements and commitment to duty are of the highest order and in keeping with the finest traditions of the Australian Army and the Australian Defence Force.*

35. The attachments for the CJOPS Decision Brief were not provided with the Defence report but were located during the Tribunal's research and provided to Lieutenant Colonel Walsh as part of the review process.

### **Lieutenant Colonel Walsh's comments on Defence Report**

36. In his response to the Defence Report, Lieutenant Colonel Walsh stated, in addition to his previous correspondence:

*"I submit that my performance of duties was in-fact distinguished and vastly superior to those normally pertaining to my rank and appointment. Whilst deployed as a Mentor / Advisor to the Kabul Garrison General Command (KGGC) Advisor Team 2 my role was to function as mentor for two (2) not one (1), ANDSF Senior Officer, namely, the Information Operations and Public Affairs Officers. Whilst the other Mentor / Advisors had only one mentoree, this is commensurate with my rank and appointment."*<sup>24</sup>

37. Lieutenant Colonel Walsh added:

*"However, in addition to the two (2) mentorships and that which the Defence submission fails to address, was my undertaking of the additional role as Mentor / Advisor for the Religious and Cultural Affairs (RCA) portfolio. This was undertaken in addition to the two (2) mentored officers already within my role. The success of this mentor / advisor role led to me advising higher headquarters (Resolute Support HQ) to outline my engagement strategies which supported a*

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<sup>24</sup> Lieutenant Colonel Walsh's comments on Defence Report dated 14 June 2022.

*roll-out across the NATO – RS mission with Advisory Teams being directed to advise / mentor the RCA officers within their respective commands. “*

*“Furthermore, I was the Security Officer for the KGGC Advisor Team working daily with Thales and the G6 RS NATO cell to ensure ICT and associated hardware was fit for purpose and maintained at both KGGC offices (HKIA + KGGC). Additionally, I was the Executive Officer for the KGGC Advisor Team 2, ensuring all executive officer functions were performed to meet the needs of our ADF higher headquarters and those of the KGGC team.”*

38. Lieutenant Colonel Walsh also added:

*“As if that was not enough, I was also the Project Manager for two (2) projects during my deployment; the security and facility enhancement of the KGGC Advisor Team HQs and the enhancement of the KGGC headquarters Operations Centre and Intelligence Fusion Centre. Both roles required extensive learning, leading, managing, planning, liaising, negotiating, scheduling, and innovation, with extensive time and commitment to achieve a timely, positive, and successful outcome, while balancing my other six (6) roles.”<sup>25</sup>*

*“I therefore disagree with the opinion outlined in the Defence Submission. I (as does my then Commander and his Commander also) strongly believe the sheer number of my additional roles, together with their successes, not only well-exceeds, but it also clearly illustrates and absolutely demonstrates superior performance. I submit it also vastly exceeds the threshold of meeting the minimal requirements of the Distinguished Service Commendation.”*

*“Whilst my Commander was awarded a Distinguished Service Medal for undertaking his role, I find it upsetting that given the significant strain and effort I dedicated to my many roles, the tasks performed, together with the success of each and the lasting and incredibly positive outcomes attained, that my service was significantly less valued by the ADF. Moreover, my Commander suggested he would forgo his award in recognition of mine, as he thought so highly of my distinguished service, which to me speaks to the nature of this appeal; Significant and distinguished service which made a notable impact.”<sup>26</sup>*

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<sup>25</sup> Lieutenant Colonel Walsh’s comments on Defence Report.

<sup>26</sup> NB Lieutenant Colonel Walsh was nominated for the DSC by Brigadier M D Pricor AM DSM who was awarded the DSM in the Australia Day 2019 honours list ‘for Distinguished Service in warlike operations as the Commander of Task Group Afghanistan on Operation HIGHROAD from November 2016 to November 2017’.

## Eligibility criteria for the Commendation for Distinguished Service

39. The Distinguished Service Decorations, being the Distinguished Service Cross, the Distinguished Service Medal and the Commendation for Distinguished Service were established by Letters Patent on 15 January 1991 in the *Commonwealth of Australia Gazette No S25* dated 4 February 1991<sup>27</sup> for the purpose of:

*‘... according recognition to members of the Defence Force and certain other persons for distinguished command and leadership in action or distinguished leadership in action or distinguished performance of their duties in warlike operations.’*

40. Award of the Decorations is governed by Regulations set out in a Schedule to the Letters Patent.

41. The words ‘in action’, described in the clause quoted above, were removed by the *Commonwealth of Australia Gazette No S18 Amendment of Distinguished Service Decorations*, dated 22 February 2012.<sup>28</sup>

42. Conditions for the award of the Decorations are set out in the amended Regulation 3:

3. (1) *The Distinguished Service Cross shall be awarded only for distinguished command and leadership in warlike operations;*
- (2) *The Distinguished Service Medal shall be awarded only for distinguished leadership in warlike operations;*
- (3) *The Commendation for Distinguished Service may be awarded for distinguished performance of duties in warlike operations.*

## Tribunal consideration

43. That Lieutenant Colonel Walsh had a particularly successful deployment is not in contention, nor is the fact that he was part of a warlike operation. The fact that Lieutenant Colonel Walsh was awarded a CJOPS Gold Commendation speaks to the strength of his strong performance throughout the deployment and, indeed, the very letter from Lieutenant General Bilton, which outlines the reasons why he had been refused the CDS, acknowledges that Lieutenant Colonel Walsh had performed to a ‘superior level’.<sup>29</sup> The only question before the Tribunal, therefore, was whether Lieutenant Colonel Walsh’s superior performance was in fact distinguished.

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<sup>27</sup> *Commonwealth of Australia Gazette No S25* dated 4 February 1991.

<sup>28</sup> *Commonwealth of Australia Gazette No S18* dated 22 February 2012.

<sup>29</sup> The criteria for CJOPS Gold Commendations are laid out in **Annex A**.

## The definition of ‘distinguished’ and its application

44. As part of its response to a post-hearing request for further information, Defence confirmed that it does not define what constitutes distinguished performance for the purpose of the Distinguished Service Decorations. Nor did Defence offer a view as to what might practically constitute distinguished performance. It follows then that Defence does not provide any guidance, formal or otherwise, as to what constitutes distinguished service to the members of various honours and awards boards, instead relying upon the collective experience of the board members and their *‘proven ability to employ professional judgement.’*<sup>30</sup> In the absence of a formal definition within Defence, this arrangement seemed rather arbitrary and begs the question as to how members of these boards could, in the absence of a reasonable definition, confidently determine that performance fell short of being distinguished.

45. As part of the review process, Defence also confirmed that it does not apply a higher threshold than the view set out in recent Tribunal decisions. This stance was reinforced throughout the Defence Report, in which Defence referenced previous Tribunal definitions of ‘distinguished’ which question whether candidates *‘discharged their duties that were superior’* (emphasis added) *to those normally pertaining to their rank and appointment’*, and whether the *‘performance of duty was demonstrably superior’* (emphasis added) *to others or to the expectations of the role’.*<sup>31</sup>

### Superior vs distinguished

46. Most dictionaries and thesauruses consider the terms ‘superior’ and ‘distinguished’ to be interchangeable; each being a synonym for the other. This is not particularly helpful because it means that—other criteria momentarily set aside—a CJOPS Gold Commendation could be awarded on the basis of superior performance, just as a CDS requires superior or demonstrably superior performance. Under this arrangement, the only logical conclusion was that (assuming that the requirement for warlike service can be temporarily removed from consideration) any individual who might qualify for one, is technically able to be considered for the other.

47. The Tribunal also considered that the term ‘demonstrably superior’ was not sufficiently granular to provide any real differentiation. The word ‘demonstrably’ was typically taken to mean ‘clearly’ and the Tribunal saw as self-evident that when assessing whether an individual was *‘demonstrably superior to others’*, any assessor who awards a ‘superior’ rating does so without reservation. In its view, the assessed member *clearly* deserves the rating, otherwise a lesser rating would have been awarded. In other words, the act of rating an individual as superior arguably just means that the assessor sees that individual as being demonstrably superior.

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<sup>30</sup> CJOPS Honours and Awards Board - Terms of Reference, dated 16 Feb 2017.

<sup>31</sup> *Hulse and the Department of Defence re: Hughes, Johnson and Walker, 2021 DHAAT 4.*

48. The observation that from a performance standpoint, a CDS and a CJOPS Gold Commendation might appear to be identical was in stark contrast to the way in which the CDS and the CJOPS Gold Commendation were viewed within Defence. Defence considers that there is no basis to compare the CDS, which is enshrined in regulations and awarded by the Governor-General, with the Defence internal commendation scheme.<sup>32</sup> It also seemed clear that various honours and awards board members saw a CJOPS Commendation as a lesser award. Comments such as *'Not compelling narrative to support CDS - high level of performance that warrants recognition but not yet at CDS level'* appear to illustrate this.<sup>33</sup> Notwithstanding the current definitions, the Tribunal was sympathetic to this stance.

49. In seeking to provide a sensible way forward, the Tribunal turned, somewhat reluctantly, to basic statistical theory. The Tribunal noted that in accordance with the principles of Normal (or Gaussian) distribution theory, the act of rating any given pool of individuals would typically generate 'cohorts' of performance that are typically pictorially presented as a distribution or bell curve.<sup>34</sup> With this in mind, the Tribunal was prepared to accept that the term 'distinguished' might reasonably be applied to only the strongest performer/s within any given 'superior pool.'

50. Although the Tribunal was not bound by any previous definition of 'distinguished', it saw that this approach had the advantage of being consistent with the previous definition (*demonstrably superior*), whilst simultaneously providing necessary differentiation with the dilemmas presented by the CJOPS Gold Commendation criterion. The Tribunal took the view that limiting the application of 'distinguished' to the 'upper echelons' of the superior cohort provided an amplification of the term 'clearly', describing how clearly one must be superior to be assessed as distinguished.

### **Defence's assessment of Lieutenant Colonel Walsh's performance**

51. As part of its review, Defence found that *'no evidence has been provided by Lieutenant Colonel Walsh that would suggest his performance of duty was distinguished.'*

52. The Defence Submission listed Lieutenant Colonel Walsh's achievements as:

- a) *'being pro-active in establishing inter-agency coordination (Coalition and Afghan security forces);*
- b) *mentoring Afghan counterparts to achieve a fourfold expansion of Facebook followers;*
- c) *project management of the upgrade of the Command Joint Operations Centre including the development of a new Media Centre and Intelligence Fusion Centre; and;*

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<sup>32</sup> DH&A/OUT/2022/1478 of 16 November 22

<sup>33</sup> Comments from CJOPS Honours and Awards Board member.

<sup>34</sup> Typically labelled Well Below Average, Below Average, Average, Above Average and Superior.



- d) *the establishment of an inaugural 'non-lethal working group' linking Afghan Information Operations, Public Affairs, and religious affairs with the policing effort in Kabul.'*

53. There was no mention of the operating environment or the challenges implicit in that environment and, given the evidence provided by Lieutenant Colonel Walsh at the hearing in relation to those challenges, the Defence description of his achievements appeared to significantly understate the achievements. On the basis of this evidence, which detailed at length the required interaction with, and ongoing support to, contractors, government agencies and a large number of international militaries in a complex security environment, the Tribunal was prepared to accept that the majority of Lieutenant Colonel Walsh's deployed roles were particularly difficult, likely made even more difficult by the fact that he had not completed project management training.

54. At the hearing, Defence acknowledged that in the absence of staff who had worked in Afghanistan or similar coalition environments in the Middle East, it was difficult for staff in its Directorate of Honours and Awards to accurately form a view about the relative merit of those achievements, but also added that this did not alter the Defence view that the merits assessment had been thorough.

55. In seeking to exercise its statutory duty to form a view as to whether Lieutenant Colonel Walsh's deployed performance was distinguished, and in keeping with the requirement to consider all relevant material before it, the Tribunal considered that the End of Tour Report, the awarding of the Afghanistan National Defence and Security Forces Medal of Honor and the CJPOTF Certificate of Appreciation were all relevant, since those artefacts spoke either directly or indirectly to the member's performance throughout his tour. Given that those artefacts were generated within different chains of command, their inclusion also provided independent perspectives in relation to the extent to which Lieutenant Colonel Walsh's performance might be seen to be distinguished. The Tribunal was also mindful of the fact that the Honours and Awards decision-making processes are limited to the nomination narrative.

### **End of Tour Report**

56. Lieutenant Colonel Walsh's End of Tour Report covers the period 4 September 2016 to 12 June 2017, and was finalised on 19 May 2017. The report was completed roughly six months prior to the deadline for the Australia Day 2019 (AD19) nominations at HQJTF 633. The Assessing Officer for the End of Tour report was the Headquarters Chief of Staff, Lieutenant Colonel McGowan; the Senior Assessor was, the Commander of Kabul Garrison Command Attachment 2, Colonel Michael Murdoch. Colonel Murdoch was also responsible for the drafting of the CDS nomination sometime after the End of Tour Report was completed. Relevant excerpts from the Report are attached at Annex B; comments from the Assessing Officer and the Senior Assessing Officer are embedded below.

57. In reviewing the End of Tour Report, the Tribunal was struck by the fact that Lieutenant Colonel Walsh was a reservist, operating ‘out of category’ in the sense that he was trained as a Royal Australian Armoured Corps (RAAC) officer and that, despite much of his deployed role being in project management, had not completed project management training.

58. The Tribunal considered that Lieutenant Colonel Walsh’s End of Tour report was exceptionally strong. All but three assessments were ‘Above Worn Rank’, or ‘Highly Effective’, and the report was notable for its consistent use of superlatives, particularly in relation to performance, work ethic, personal drive and tenacity. The report talks of establishing ‘inconceivably broad networks’, developing roles ‘well beyond expectations’, his willingness to take on significant responsibility (including work that rightly belonged to others), and his refusal to accept failure.

59. **Performance rating by Assessing Officer:** *‘Walsh’s performance has been exemplary. His dilligence (sic) and committment (sic) have been unparalleled within the team and he has enjoyed considerable success as a result. He has proven to be adaptable, displays a significant capacity for work and is tenacious in his focus to get things done.’*

60. **Senior Assessing Officers comments:** *‘MAJ Walsh has voluntarily taken on an enormous workload far beyond that expected of his rank or position. He has worked tirelessly to manage two major contracts that contributed to the team’s force protection and the improved command, control and situational awareness of an Afghan joint corps level headquarters. In his advisory role he has excelled, establishing the first ever non-lethal working groups, successfully raising the public profile of the newly formed Afghan Headquarters and creating sustainable public affairs procedures that undermine insurgent action in Kabul. MAJ Walsh has demonstrated a capacity for work that I have rarely witnessed. I rate this officer very highly and would fight to have him work with me again. He is highly suitable for Staff College and should compete strongly for unit command in the future.’*

61. Lieutenant Colonel Walsh received three ratings that were not Above Worn Rank, or Highly Effective. These ratings consisted of two assessments of At Worn Rank (Oral and written communication, and Judgement) and one of Effective (Teamwork).

62. The Tribunal was particularly drawn to references in the Report of attributes that specifically identified performance well beyond the expectations of similar officers’ rank and experience.

### **Commander Joint Psychological Operations Task Force (CJPOTF) Certificate of Appreciation**

63. The text from a Certificate of Appreciation from the Commander of the Joint Psychological Operations (PSYOPS) Task Force, a Romanian Air Force Colonel, and provided in full at paragraph 19, was clearly aligned with the thrust of the End of Tour

Report, stating in part that *‘Major Walsh distinguished himself to CJPOTF leadership and staff as a consummate professional with an engaging sense of humour, positive attitude, high ethical standards and strong work ethic.’*

64. The Tribunal was struck by the similarity of the identified attributes with those documented in the End of Tour Report, however it was not clear to the Tribunal whether ADF support was sought to frame the certificate text. Used in isolation, the Tribunal was not prepared to assign as much weight to this document as might otherwise be the case since the Tribunal considered that it was likely that every member of the PSYOPS Task Force received a similar certificate, albeit likely tailored to reflect their own efforts. Further, the Certificate did not provide any supporting evidence of why Lieutenant Colonel Walsh’s performance was distinguished nor was it clear that the word ‘distinguished’ within the Romanian armed forces had the same (admittedly undefined) meaning as within the ADF.

### **Medal of Honor National Police of Afghanistan**

65. Lieutenant Colonel Walsh’s service records indicated that he was approved to wear the Medal of Honor for the National Police of Afghanistan in early December 2017, almost six months after his tour. The Tribunal noted that the title of the award on his service documentation differed from the way it was described in his application, this being the Afghanistan National Defence and Security Forces Medal of Honor. In either case, the Tribunal’s research had not been able to determine the precise eligibility criteria for either award, or to source any relevant documents that might show the extent to which these decorations were awarded to foreign forces. This was perhaps unsurprising, given that Afghan administrative procedures in these years were unlikely to meet contemporary Western standards.

66. However the Tribunal heard credible evidence that just one other medal of this stature had been awarded by the Afghan Government in recent years. This was to the Deputy Commander of the Australian Special Forces Command, Brigadier Mark Smedhurst, who commanded NATO Special Forces in Afghanistan.<sup>35</sup> The Tribunal has not conducted any research to establish the extent to which the Medal of Honor may have been awarded to other Australians, since it took the view that the number of recipients was somewhat academic. The Tribunal was prepared to accept that a Medal of Honor’s status grants it a degree of relative exclusivity. The Tribunal was also prepared to accept that the award of a Medal of Honor to a Major did more to support a view of distinguished performance, than it did to erode it. Further, the Tribunal was prepared to assign greater weight to the award of that medal than the PSYOPS Certificate of Appreciation as part of its consideration.

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<sup>35</sup> <https://www.klasgroup.com/government/leadership/mark-smedhurst> accessed 23 November 2022

## The Defence honours and awards process

67. Lieutenant Colonel Walsh completed his tour in the Middle East in mid-2017 and his CDS nomination was considered by the HQJTF633 Honours and Awards Board in mid-November of that year. It was not supported and the nomination was subsequently forwarded for consideration by the CJOPS Honours and Awards Board, where it was agreed that the nomination did not meet the threshold for the award of a CDS. Consequently, the nomination was forwarded to the Commendation Board for a decision as to which Commendation was to be awarded. Notwithstanding the fact that the nomination was presented to three boards, the Tribunal limited its review to the two honours and awards boards, since the decision under review had its genesis in those two boards and not the Commendation Board.

### HQJTF 633 Honours and Awards Board

68. A summary of the HQJTF 633 Honours and Awards Board outcomes is provided at paragraph 28, the key points being that Defence was unable to locate any documents in relation to the Board, that the nomination for a CDS was not supported in theatre, and that CJTF633 recommended that the nomination be instead considered for a CJOPS Gold Commendation.

### Chief of Joint Operations (CJOPS) Honours and Awards Board

69. The CJOPS Honours and Awards Board Terms of Reference, current when Lieutenant Colonel Walsh's nomination was considered, required its 12 Board Members to *'undertake a detailed and independent review of each nomination.....prior to each Board and be prepared to provide objective, considered and transparent input into the deliberative process.'* The Terms of Reference also articulated the required end state, this being that *'nominations have been comprehensively and objectively considered resulting in transparent, robust, merit-based decisions that can withstand rigorous external review and scrutiny.'* (emphasis added by the Tribunal)<sup>36</sup>

70. Defence has acknowledged as part of its submission that *'While some members of that board (the CJOPS Board) chose to summarise their conclusion rather than provide their reasoning, most felt that a Gold Commendation was a 'better fit' in recognition of LTCOL Walsh's achievements and more specifically, that evidence did not support a CDS.'* The Tribunal noted that, of the nine members who did not support a CDS, two members simply concurred with the CJTF 633 recommendation that Lieutenant Colonel Walsh be considered for a Gold Commendation,<sup>37</sup> whilst two others offered nothing more than *'Gold Commendation'* and *'Recommend Gold Commendation'*. One other member stated: *'Public affairs role not a good fit for CDS. Support at Gold or silver commendation'* whilst another

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<sup>36</sup> CJOPS Honours and Awards Board Terms of Reference dated 16 February 2017.

<sup>37</sup> Member X: *'Agree may better align with Commendation'*; Member Y: *'Concur with CJTF 633 comments and recognition through a commendation.'*

member offered the view that the narrative was deficient because it did not explain *‘personal attributes and qualities (the how?)’*

### **The Board processes**

71. The Defence submission relied heavily on the fact that a succession of experienced and senior officers within Lieutenant Colonel Walsh’s chain of command considered the matter on the merits, and determined that his performance did not warrant the awarding of a CDS. Defence also indicated at the hearing that *‘the strength of that succession of robust merits based consideration leaves little scope for an alternative view.’* The Tribunal acknowledges both the extensive experience of the personnel who comprise those boards and the strength of the Honours and Awards Board processes. The Tribunal was very firmly of the view that those boards continue to do great work, and that their judgement should not be lightly dismissed. However, no one—or more correctly in this case, no Board—is infallible and the Tribunal has a statutory duty to exercise independent judgement to form a view as to the correct or preferable decision.<sup>38</sup>

72. Despite the Tribunal’s general confidence in Defence honours and awards processes, the Tribunal was not as confident as Defence that in this case merits assessments were conducted by either board. This unease was not the result of any one issue but resulted from a combination of factors. The first of these was the administrative errors that resulted in key elements of evidence being unavailable, which the Tribunal would typically have used to generate a similar degree of confidence. This included the absence of any documentation from HQJTF 633 (apart from the Commander’s recommendation), and the failure to record the relevant discussion at the CJOPS Board. Secondly, the Tribunal considered that the lack of insight or justification from the majority of the CJOPS Board members ran counter to CJOPS’ requirement to provide a transparent and merits-based approach. In addition, comments from one of the CJOPS Board that the *‘Public affairs role (is) not a good fit for CDS’* raises the possibility that this member may have dismissed the application on the basis of role or function, rather than having proper regard to merit.<sup>39</sup> Finally, comments from another Board member suggests that as a minimum, other members might have applied a review stance that was more onerous than Defence policy.

#### ***‘Public affairs role not a good fit for CDS’***

73. At the hearing Defence was asked whether there was a prevailing view within Defence that CDSs ought to be limited to role, rank or function and, more particularly, whether there was any reason why a Public Affairs Officer (PAO) could not be awarded a CDS. Although Defence categorically ruled out any deliberate intent in this regard, they also stated *‘that does not mean that every individual involved in the process is free of bias (and*

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<sup>38</sup> Although the Tribunal does accept that the breadth of experience and the size and composition of the Honours and Awards Boards significantly reduces the likelihood of serious errors.

<sup>39</sup> In the Tribunal’s opinion, these comments infer that some categories might not be eligible for a CDS, and raises some concerns that some members of the HQJOC Board might be using other criteria to determine recommended outcomes.

that Defence) *was quite accepting of the proposition that there might be bias within individuals, indeed even within the assessment of the process that was done here.*'

74. The Tribunal saw the extent to which other members of the CJOPS Board might also have held similar views that the '*Public affairs role (is) not a good fit for CDS*' as being relevant to its consideration of this case. As a consequence, the Tribunal sought access to the narratives of successful CDS submissions over a significant period of time, the intent being to determine whether there were any identifiable trends in relation to the awarding of CDSs that might have, inadvertently or otherwise, fatally impacted Lieutenant Colonel Walsh's CDS nomination.<sup>40</sup>

### **Analysis of CDS awards 2014-2019**

75. In response to the Tribunal's request, Defence provided the nomination narratives and the citations for the 73 personnel who had been awarded the CDS over the period 2014 to 2019 inclusive.<sup>41</sup> This period brackets the period of Lieutenant Colonel Walsh's 2016-2017 deployment and was intended to identify relevant trends in the six years prior to what was to have been the award date.

76. Analysis of the Defence data shows that *all* of the 44 CDSs awarded to Lieutenant Colonel (equivalents) or higher ranks were awarded on the basis of strong performance in command or leadership roles in warlike operations.<sup>42</sup> Of the 18 CDSs awarded to Major (equivalents), 11 appeared to have been on the basis of leadership; the remaining seven being principally on the basis of *distinguished performance of duties*, in other words the 'core' CDS criterion. Just three CDSs were awarded to Army Captain (equivalents); these were exclusively for distinguished performance of duties. Eight CDSs were awarded to other ranks and/or senior non-commissioned Officers, six of those being principally for performance in a leadership role. Thus, of the 73 CDS narratives provided, 61 appeared to have been principally awarded on the basis of strong performance in command and/or leadership roles in warlike operations. To the Tribunal, this seemed extraordinary.

77. No PAOs appeared to have been awarded a CDS and, although it was difficult to accurately determine beyond any reasonable doubt the recipient's category or mustering, the overwhelming majority of CDS recipients appeared to be 'operators'.

78. Of the seven CDSs awarded to Major (equivalents) in non-command or leadership roles, four were awarded to Army and three to Air Force. By virtue of their primary operating environment, none of the Air Force roles were sufficiently similar to Lieutenant Colonel Walsh's to warrant further analysis, although the Tribunal was drawn to the fact that a CDS

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<sup>40</sup> In relation to the comments at para 70, it is important to point out that the Tribunal reviews the decision, and not the reasons for the decision.

<sup>41</sup> A number of documents were withheld for security, operational or other reasons.

<sup>42</sup> The Tribunal accepts that all Defence personnel, regardless of their rank or function, are expected to demonstrate leadership. However, in conducting this analysis, the Tribunal differentiates between the *requirement* for leadership, typically implicit within a posted position, and the broader *expectation* of leadership. In other words, this analysis reflects those positions where leadership is an integral part of the job.

was awarded to an Air Force member largely on the basis of having completed six deployments to the Middle East.

79. The number of CDSs awarded by calendar year also varied significantly; the lowest being eight in both 2016 and 2017 and the highest being 14 in 2019. Of the 2019 awards, 11 were awarded as part of the Australia Day 2019 list, the list in which Lieutenant Colonel Walsh's nomination was initially included. Although none of the four Army recipients were in direct 'competition' with Lieutenant Colonel Walsh, in the sense that they were nominated for the CDS at the same time (AD 19) and would therefore have been considered at the same time, the fact that AD 19 was the largest list of CDS contenders may have placed some pressure on the system.

80. It would be possible, on the basis of the above observations, to conclude that the CDS may be seen within Defence as a *de facto*, or perhaps 'second tier', Distinguished Service Cross or Distinguished Service Medal. Despite the preponderance of command and leadership roles within the CDS apportionment, the Tribunal did not take issue *per se* with this observation, since it considered that '*distinguished performance of duties*' (the regulatory CDS descriptor) must necessarily include scenarios where those duties were principally associated with command and/or leadership. However, the relative lack of non-command or leadership CDSs was intriguing.

81. Although the Tribunal was prepared to accept at face value the Defence proposition that there was no organisational reason why a PAO could not be awarded a CDS, the fact that CDSs were so heavily weighted towards command and/or leadership roles makes it difficult for the Tribunal to reach any other conclusion than that there was a degree of organisational bias, potentially unconscious, away from non-command or leadership roles. The Tribunal considers that this attitudinal stance may also be the basis of the view that the '*Public affairs role (is) not a good fit for CDS.*' Further, given that this trend was evident at the time that Lieutenant Colonel Walsh's nomination was being considered, the Tribunal was prepared to accept that this view may have been more widespread than the one member who went so far as to document it. The Tribunal saw the CDS analysis outcomes as being further evidence that the honours and awards process may not be as firmly focussed around merits assessments as Defence might like.

82. Regardless, close examination of the four successful Major (equivalent) CDS narratives showed strong similarities across key themes between those narratives and Lieutenant Colonel Walsh's and, perhaps more to the point, failed to identify any other obvious reason why he ought to have been discounted from consideration for this award.

### **Narrative standards for the Distinguished Service Decorations**

83. As indicated previously, there was also some evidence that, in assessing Lieutenant Colonel Walsh's nomination, CJOPS Board members might have applied different or higher standards than was required by Defence policy. This was evidenced by a written comment

that *‘Performance not reflected through explaining personal attributes and qualities (‘the how’)*).

84. Defence requirements for nomination and processing of Distinguished Service Decorations are contained in the Defence Honours and Awards Manual (DHAM), Volume 1, Annex A to Chapter 8. This text states: *‘The narrative justifies the award for which the nominee is being considered....and include the following information:*

- a) the Service to which the nominee belongs (in the heading);*
- b) the award for which the nominee is being considered;*
- c) the nominee’s PMKeyS number, rank and full name (in the heading);*
- d) a one to three line citation describing the **actions** applicable to the award and the **activities** (emphasis added) undertaken; and*
- e) justification for the award, which must be a clear description of the **action** (emphasis added) to be recognised.*

85. Appendix 1 to the Annex expands on the narrative requirements and states that *‘Subsequent paragraphs describe the member’s **achievements and dedication** and demonstrate how these have affected and benefited the Australian Defence Force.’* The Tribunal could not find reference to any policy requirement to articulate personal attributes and qualities (other than dedication, which *was* addressed in Lieutenant Colonel Walsh’s narrative) as detailed by one of the Board members. Importantly, in the absence of any evidence to the contrary, the Tribunal was unable to determine the extent to which other members of the CJOPS Board might also hold similar views that personal attributes and qualities were a necessary part of the narrative, and that a failure to provide these arguably internally-generated requirements might inappropriately remove the member from consideration for a CDS.

### **Final comments on the honours and awards process**

86. Based on the evidence before the Tribunal—principally the notes from the CJOPS Board, which called into question whether all members of the Board, in practice, conducted a merits-based assessment and/or whether Board members had applied ‘requirements’ that were more onerous than mandated DHAM specifications when considering applicant’s nominations—it was difficult to conclude that the CJOPS Board could have met the declared end state of *‘transparent, robust, **merit-based** decisions that can withstand rigorous external review and scrutiny.’*

### **Was Lieutenant Colonel Walsh’s deployed performance ‘demonstrably superior’?**

87. In the Tribunal’s view, Lieutenant Colonel Walsh’s End of Tour Performance Report is exceptionally strong. But, as discussed at paragraph 50, to be demonstrably superior Lieutenant Colonel Walsh’s performance needed to be one of the strongest in the superior cohort.



88. The Defence Report states: *'As a MAJ assigned to a general command headquarters as a Public Affairs and Information Operations advisor, the achievements summarised by the original CDS nomination are reasonable expectations of an experienced middle-ranking officer. All are within the expectations of the role. That MAJ Walsh completed his duties with initiative and enthusiasm and achieved commendable results is agreed, however, there is nothing that would suggest his performance was demonstrably superior to others or beyond the expectations of his role. On that basis, LTGEN Bilton's decision is affirmed.'*

89. The Tribunal considered that Lieutenant Colonel Walsh's performance, as documented in his the End of Tour Report, and supported in-principle by the award of the Afghan Medal of Honor, was clearly superior to others **and** well beyond the expectations of his rank and appointment. This view was based upon the consistent use of superlatives that consistently spoke to the unprecedented or actions/attributes beyond the prescribed; this included comments such as his *unparalleled diligence and commitment*, voluntarily taking on *'an enormous workload far beyond that expected of his rank or position'*, and demonstrating a capacity for work that the senior assessor had *'rarely witnessed'*. Further, his chain of command highlighted his refusal to accept failure in an environment where the Tribunal considered that failure was a frequent outcome (particularly in the short-term), his tenacity and ability to get things done in an exceptionally challenging environment, and personal achievements that allowed him to turn an under-developed role into *'the standout role in terms of tangible achievement and success'*. In the Tribunal's view, this clearly positioned Lieutenant Colonel Walsh in the upper echelons of superior performance, and characterises his deployed performance as distinguished.

## **Findings**

90. The Tribunal was of the view that there was sufficient evidence that Lieutenant Colonel Walsh's deployed performance was distinguished, so as to be able to recommend that the Defence decision to refuse to recommend him for the Commendation for Distinguished Service be set aside.

## **Other issues**

91. This review has been quite unusual in that the Defence position has, in the Tribunal's view, been undermined by administrative errors and/or oversights detailed at paragraph 72, some of which were concerning. Defence has been unable to locate a number of original or signed documents, and the meeting was not recorded in its entirety. Defence has acknowledged these shortfalls and has suggested that fixes have been put in place to prevent future recurrence. Nevertheless, in light of the real potential for an increase in the number of similar cases, the Tribunal encourages Defence to implement without delay whatever actions are necessary to safeguard the ability to access relevant documents and supporting evidence that would allow Defence to generate *robust, merit-based decisions that can withstand rigorous external review and scrutiny.*

**Criteria for the CJOPS Gold Commendation**

*Awarded for **superior** achievement or devotion in the application of skills, judgement or dedication to duty*

***Performance level***

***Superior*** leadership resulting in extraordinarily effective operational or strategic outcomes (No rank or appointment discriminator); or

***Superior*** improvement of a battlefield operating / mission system that resulted in significant long term and sustainable enhancement of mission execution; or

***Superior*** development of an operational capability that delivers significant long term and sustainable enhancement for ADF operations

***Observable Effect / Environment***

*Usually broader, enduring, and sustainable impact to Tactical, Operational or Strategic environments with Joint Task Force level effect (particularly those that impact more than a single mission).*

Relevant extracts from LTCOL Walsh's End of Tour Report

*(All emphasis added by the Tribunal)*

- Leadership: *'MAJ Walsh has led a **disparate** (sic) group of coalition and Afghan officers on a successful journey towards IO and PAO competence, although he has no formal command relationship with them. He is influential and recognised as the natural leader in this arena.'*

Assessment: ***Above worn rank***

- Job competence: *'For an RAAC officer, MAJ Walsh has **displayed superior competence** in information operations and public affairs. He has embraced this role and developed it **well beyond expectations**.'*

Assessment: ***Above worn rank***

- Interpersonal style: *'This is a key strength with MAJ Walsh. He has developed an almost **inconcievably** (sic) broad network amongst the coalition and the ANDSF in order to achieve the mission and further the IO and PAO network. His personal interaction with contractors is the principal reason for contract success.'*

Assessment: ***Highly Effective***

- Work Ethic: *'This is a considerable strength. MAJ Walsh constantly seeks additional responsibilities, **takes on work that rightly** (sic) **belongs to others** and self-appointed as the point of contact for a broad range of agencies. He is **pivotal** in the daily running of the team.'*

Assessment: ***Above worn rank***

- Intellect: *'MAJ Walsh thinks outside the box. He has demonstrated **exceptional creativity, insight and imagination** and applied it to the problems faced by a restricted ANDSF and a lethargic coalition element and reinvigorated the IO process in Kabul.'*

Assessment: ***Above worn rank***

- Adaptability: *'MAJ Walsh gets things done. **Rarely, if ever, is there an excuse as to why something cannot be achieved**. This behaviour is a hallmark of his deployment, and extends from IO development to IT solutions to contract management.'*

Assessment: ***Above worn rank***

- Resource management and accountability: *'MAJ Walsh has been the project manager for projects in excess of AUD0.5M and has delivered on time, and on budget, **despite significant challenges** with local providers and the **uncertain security environment.**'*

Assessment: *Above worn rank*

- Strengths: *'MAJ Walsh's strengths are; **his willingness to take on significant responsibility; his refusal to accept failure; his creative thinking; his personal drive and his personal and professional networking.** He has taken a role which was under developed and made **it the standout role in terms of tangible achievement and success.** I am confident that he could apply the same drive, enthusaim (sic) and intellect to a broad and diverse range of tasks.'*
- Aspects of performance that differentiates this officer from their peers: *'MAJ Walsh's desire to seek additional responsibility is **superior** to that of his peers. He self appoints, undertakes tasks without any direction and goes about getting things done with no desire for recognition or reward. He seeks and finds creative ways to attack problems and as a result produces tangible and enduring results.'*