



## Australian Government

### Defence Honours and Awards Appeals Tribunal

#### **Ball and the Department of Defence [2023] DHAAT 8 (23 May 2023)**

File Number	2022/06
Re	<b>Chief Petty Officer Terence Ball</b> Applicant
And	<b>The Department of Defence</b> Respondent
<b>Tribunal</b>	Ms Anne Trengove (Presiding Member) Rear Admiral Allan du Toit AM RAN (Retd)
<b>Hearing Date</b>	24 November 2022
<b>Attendances</b>	Chief Petty Officer Terence Ball - Applicant  Ms Catherine Morris, Assistant Director – Current Recognition Team, Directorate of Honours and Awards – for the Respondent  Ms Kathleen O’Callaghan, Manager, Current Recognition Team Directorate of Honours and Awards – for the Respondent

#### **DECISION**

On 23 May 2023, the Tribunal decided to set aside the decision that Chief Petty Officer Terence Ball not be recommended for the Australian Operational Service Medal - Border Protection and to substitute it with a new decision that he be recommended for the Australian Operational Service Medal - Border Protection.

## **CATCHWORDS**

*DEFENCE AWARD – Australian Operational Service Medal - Border Protection – eligibility criteria – Australian border protection activities - deployed or force assigned - declared operation – Operation STANHOPE – whether service was an aggregate of 30 days – set aside*

## **LEGISLATION**

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

*Defence Regulation 2016, Regulation 36*

*Australian Operational Service Medal Regulations 2012 Letters Patent, dated 22 May 2012, Commonwealth of Australia Gazette S67, dated 6 June 2012*

*Australian Operational Service Medal Regulations 2012 Amendment to Letters Patent dated 30 April 2015, Commonwealth of Australia Gazette G00827, dated 1 June 2015*

*Australian Operational Service Medal Regulations 2012 Amendment to Letters Patent 2020 dated 13 July 2020, Commonwealth of Australia Gazette G00629, dated 5 August 2020*

*Australian Operational Service Medal Regulations 2012 Border Protection Declaration of 18 July 2012, Commonwealth of Australia Gazette S126, dated 1 August 2012*

*Australian Operational Service Medal Regulations 2012 Instrument of Delegation, dated 23 September 2018*

## Introduction

1. The Applicant, Chief Petty Officer Terence Peter Ball, seeks review of a decision dated 8 May 2019, of Mr Peter Lilley, Acting Assessments Manager in the Directorate of Honours and Awards of the Department of Defence (the Directorate), to refuse to recommend him for the Australian Operational Service Medal – Border Protection (the AOSM-BP).<sup>1</sup>

## Decision under review

2. On 9 November 2018, Chief Petty Officer Ball applied to the Directorate for an assessment of his eligibility for the AOSM-BP. On 8 May 2019, Mr Lilley wrote to Chief Petty Officer Ball stating that as a result of an assessment, it had been determined that he had not completed 30 days on a declared Border Protection operation, and as such he could not be recommended for the award.<sup>2</sup>

3. On 24 March 2022, Chief Petty Officer Ball made application to the Tribunal seeking review of the above decision.<sup>3</sup>

## Tribunal jurisdiction

4. Pursuant to s110VB(2) of the *Defence Act 1903* the Tribunal has jurisdiction to review a reviewable decision if an application is properly made to the Tribunal. The term *reviewable decision* is defined in s110V(1) and includes a decision made by a person within the Department of Defence to refuse to recommend a person for a defence award in response to an application. Regulation 36 of the *Defence Regulation 2016* lists the defence awards that may be the subject of a reviewable decision. Included in the defence awards listed in Regulation 36 is the AOSM. Therefore, the Tribunal has jurisdiction to review decisions in relation to this award.

## Chief Petty Officer Ball's service

5. On 8 January 1988, Chief Petty Officer Ball enlisted in the Royal Australian Navy (RAN) and trained as an Avionics Technician. Relevant to this application, his Australian Defence Organisation (ADO) service record, derived from Defence's personnel management database (PMKeyS) shows that on 14 January 1998, he was temporarily loan-posted from the guided missile frigate HMAS *Melbourne* to its sister ship HMAS *Newcastle* and was then posted back to HMAS *Melbourne* on 2 March 1998.<sup>4</sup>

6. On 16 January 2009, Chief Petty Officer Ball transferred to the Active Reserve Force.

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<sup>1</sup> Letter, Mr Lilley to Chief Petty Officer Ball, 8 May 2019.

<sup>2</sup> Ibid.

<sup>3</sup> Application to the Tribunal, Chief Petty Officer Ball, 24 March 2022.

<sup>4</sup> ADO Service Record, Ball, Terence Peter, p 4 of 12.

7. Chief Petty Officer Ball has been issued with the following defence awards for his service with the Australian Defence Force:

- a) Australian Service Medal with Clasp 'KUWAIT'
- b) Defence Long Service Medal with First Clasp
- c) Australian Defence Medal

### **The Australian Operational Service Medal**

8. The Australian Operational Service Medal was created by Letters Patent dated 22 May 2012 and published in the *Commonwealth of Australia Gazette S67* of 6 June 2012.<sup>5</sup>

9. The eligibility criteria for awarding the AOSM under paragraph 3 states:

3 (1) *The Governor-General may, declare, in writing, on the recommendation of the Minister, that an operation is a declared operation.*

(2) *In making a recommendation to the Governor-General, the Minister must have regard to the recommendation of the Chief of the Defence Force.*

(3) *The Governor-General must not make a declaration about an operation unless:*

(a) *the operation is, or was, carried out in conditions that are hazardous; and*

(b) *the operation is not an operation for which recognition for an award (other than an award under this regulation) already exists; and*

*The operation meets the conditions (if any) determined, in writing, by the Governor-General.*

(4) *For an operation other than a special operation, the declaration must include the following matters:*

(a) *the name by which the operation is known or a description of the operation; and*

(b) *the area in which the operation occurs or occurred; and*

(c) *either:*

(i) *the dates or period during which the operation occurred or*

(ii) *if the operation is continuing – the date on which the operation commenced.*

10. The Regulations were amended on 30 April 2015, contained in the *Commonwealth of Australia Gazette G00827* dated 1 June 2015 titled *Australian Operational Service Medal Regulation 2012 Amendment 2015*.<sup>6</sup>

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<sup>5</sup> *Australian Operational Service Medal Regulations 2012 Letters Patent Commonwealth of Australia Gazette S67, dated 22 May 2012, 6 June 2012.*

<sup>6</sup> *Australian Operational Service Medal Regulations 2012-Amendment 2015, Commonwealth of Australia Gazette G00827, dated 1 June 2015.*

11. The eligibility criteria for awarding the AOSM-BP is contained in the Governor-General's Declaration dated 18 July 2012, under the *Australian Operational Service Medal Regulation 2012*, published in the *Commonwealth of Australia Gazette S126* dated 1 August 2012.<sup>7</sup> Paragraph A of the declaration states:

*(a) declare under regulation 3 (1) of the Regulations, the following operations in which members of the Australian Defence Force are or were engaged in connection with Australian border protection activities, to be a declared operation for the purposes of the Regulations:*

...

*Operation STANHOPE – that commenced on 3 February 1998 and ended on 6 March 1998;*

...

*in the area defined by the seas and Australian land areas, superjacent airspaces, but not foreign areas encompassed within the coordinates:*

*15°00' North Latitude, 60°00' East Longitude*

*15°00' North Latitude, 180°00' East Longitude*

*60°00' South Latitude, 60°00' East Longitude*

*60°00' South Latitude, 180°00' East Longitude.*

12. Paragraph B of the declaration states:

*(b) declare, under regulation 4 (1) of the Regulations, that the conditions for award of the Australian Operational Service Medal - Border Protection ("the Medal") for that declared operation are that:*

- (i) the Medal may be awarded to a member of the Australian Defence Force who was deployed or force assigned for duty as such a member of the declared operation for a period of not less than an aggregate of 30 days;*
- (ii) the Medal may be awarded to a member of the Australian Defence Force who was deployed or force assigned for duty as such a member of the declared operation and who completed 30 sorties from a unit assigned to the declared operation, provided that those sorties were conducted over a **period on not less than an aggregate of 30 days** at a rate of one sortie per day with the duration of the declared operation;*

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<sup>7</sup> *Australian Operational Service Medal Regulations 2012 Declaration, Commonwealth of Australia Gazette S126, dated 1 August 2012* NB: the AOSM-BP has been further amended in 2015, 2019 and 2020 but these amendments are not relevant to this application.

*PROVIDED THAT the member is a person:*

- (A) deployed at sea providing direct support to a declared operation;*
- (B) deployed on land or in the air, dedicated to cuing support to a declared operation; or*
- (C) deployed forward to exclusively support a declared operation;*

*AND PROVIDED THAT where a member does not complete the prescribed period or prescribed number of sorties for the award of the Medal required by subparagraphs b(i) or b(ii) owing to his or her death, evacuation due to illness, injury or other disability due to service, the member will be deemed to have completed that prescribed period or prescribed number of sorties;*

### **Chief Petty Officer Ball's application to the Tribunal**

13. In his application to the Tribunal, Chief Petty Officer Ball stated that he had been denied eligibility for the AOSM-BP as:

*“my PMKeyS shows a recorded “End Date” as 02 Mar 1998 and the ships “RTA” date as 02 Mar 1998 along with a recorded “posting date” of 02 Mar 1998 which was before the ship “Returned to Australia” on the 06 Mar 1998 which may have led to an incorrect assessment of my eligibility for an AOSM-BP medal”.*<sup>8</sup>

14. Chief Petty Officer Ball further stated:

- 1. “HMAS Newcastle Returned to Australia (RTA) 06/03/1998 as detailed in Newcastle's ROP's<sup>9</sup> and 2 other members (members' PMKeyS precis has been included) who I was deployed with;*
- 2. I remained on board HMAS Newcastle until it returned to Australia 06/03/1998 (Not as dated 02/03/1998 in my PMKeyS posting record and operational service);*
- 3. The End Date for the operation was 04/03/1998 not as dated 02/03/1998 in my PMKeyS record (see other sailors on same ship/operation) and*
- 4. HMAS Newcastle confirmed ROPs 1998.”*

15. Chief Petty Officer Ball also provided what he considered to be photographic evidence of named sailors posted to the ship and PMKeyS records that verified their service.<sup>10</sup>

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<sup>8</sup> Application to the Tribunal, Chief Petty Officer Ball, 24 March 2022.

<sup>9</sup> Ship's Reports of Proceedings.

<sup>10</sup> Application to the Tribunal, Chief Petty Officer Ball, 24 March 2022.

## The Defence Report

16. The Defence Report confirms that as a result of Chief Petty Officer Ball's initial application to Defence, it conducted an assessment of his eligibility for the AOSM-BP, and subsequently on 8 May 2019, by way of the reviewable decision, it wrote to Chief Petty Officer Ball stating:

*'Accordingly, your application was sent to HQ Maritime Border Command (MBC) for research into your Border Protection operational service. They reviewed the following information sources:*

- *PMKeyS Operational Log, including dates, duration and location of deployments*
- *PMKeyS Posting and job position information at time of deployments*
- *Navy Records*
- *Records of Pay and Allowances*

*As a result of the review, HQ [Maritime Border Command] MBC was able to determine that you were assigned to Operation STANHOPE from **3 February 1998 to 2 March 1998 which is a total of 28 days towards the required 30 days.***

*HQ MBC was unable to identify any further service on Border Protection operations. DH&A was also unable to determine any further qualifying service on a declared Border Protection operation upon review of your PMKeyS Operational Log.'*<sup>11</sup>

17. Following Chief Petty Officer Ball's application to the Tribunal, Defence reassessed its original decision from 2019. Defence stated that *'Defence Maritime Border Command have conducted an audit of information and confirmed his operations log and the Ships Master Copy for HMAS Newcastle, which reflects 28 days of eligible service with Chief Petty Officer Ball concluding border protection operations on 2 March 1998.'*<sup>12</sup>

18. Defence further stated that *'Chief Petty Officer Ball was deployed on Operation STANHOPE from 3 February 1998 to 2 March 1998. This is because:*

*a. **Posting and movement history pre-PMKeyS** reflects Chief Petty Officer Ball was posted to HMAS Melbourne until 14 January 1998. He then posted to HMAS Newcastle as an additional member from 14 January 1998 to 02 March 1998 and subsequently posted back to HMAS Melbourne on 09 March 1998.*

*b. Records indicate he was an additional member to the Ships Company, and **an operations log entry** was not generated for his service on HMAS Newcastle. This error was remediated on 01 April 2019 after a review of confirmed HMAS Newcastle ROP's.*<sup>13</sup>

*'following a secondary audit, Defence was unable to confirm any service on Newcastle for OP STANHOPE after 02 March 1998. The review confirmed Chief Petty Officer Ball rendered 28 days service with Operation STANHOPE*

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<sup>11</sup> Letter, Mr Lilley to Chief Petty Officer Ball, 8 May 2019.

<sup>12</sup> Letter, Mr Ian Heldon to the Tribunal, 13 May 2022.

<sup>13</sup> Ibid.

*and as such, Chief Petty Officer Ball did not complete the minimum requirement of 30 days.*<sup>14</sup>

19. Defence recommended that the decision to not recommend Chief Petty Officer Ball for the AOSM-BP be affirmed.<sup>15</sup>

### **Chief Petty Officer Ball's comments on the Defence report**

20. Chief Petty Officer Ball was provided with the Defence Report on 25 May 2022 and asked to provide his comments. His response dated 5 June 2022 includes the following comments:

*'I dispute the decision to not award me an AOSM-BP for the service exceeding 30 days I rendered on HMAS Newcastle undertaking Operation STANHOPE 03 Feb – 06 Mar 1998 based on the following:*

- *I was as stated an additional member to the ships company (loaned from HMAS Melbourne) however I believe the "Loan" posting date of **02 Mar 1998** dis-embarking off HMAS Newcastle to be incorrect in my PMKeyS record. This date was well before the ship "Returned to Australia -RTA" on the **06 Mar 1998** (as detailed in Attachment D – Ships Log – RTA) transiting from Herd (sic) Island to Western Australia.*
- *I did **NOT** leave the ship whilst underway four days outside of Australia and remained on-board until the **06 Mar 1998 RTA** date.*
- *02 Mar 1998 was my expected "Loan" posting date to dis-embark HMAS Newcastle.*
- *HMAS Newcastle did **NOT RTA until 06 Mar 1998**. "Job data and comment" date are incorrect for the time I actually remained on-board HMAS Newcastle.*
- *Posting and PMKeyS Operational evidence previously supplied of two other members deployed on the ship (one loaned from HMAS Melbourne Flight with me) who have both been awarded the AOSM-BP.*<sup>16</sup>

21. Chief Petty Officer Ball further stated:

*'Based on the above precis, data and evidence provided, I believe the above incorrect recorded data and subsequent transfer to my PMKeyS records (Posting and operational data) has led to an incorrect assessment of my eligibility for the award of an Australian Operational Service Medal-Border Protection (AOSM-BP) for the service exceeding 30 days which I rendered whilst on HMAS Newcastle undertaking Operation STANHOPE 03 Feb – 06 Mar 1998.*<sup>17</sup>

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<sup>14</sup> Ibid.

<sup>15</sup> Ibid.

<sup>16</sup> Email, Chief Petty Officer Ball to the Tribunal, 5 June 2022.

<sup>17</sup> Ibid.



## RAN records of HMAS *Newcastle*'s movements during Operation STANHOPE

22. Additional RAN records, including HMAS *Newcastle*'s ROPs and an excerpt from the ship's Logs were provided by the Tribunal to Chief Petty Officer Ball and Defence.

23. **Report of Proceedings** The February and March 1998 ROPs for HMAS *Newcastle* shed further light on the ship's activities during Operation STANHOPE. The March ROP is particularly illuminating as to the ship's movements during the period in question, and relevantly sets out that:

*'March 1998 was another busy period for NEWCASTLE spending 312 hours underway and steaming 5056 nautical miles. The month began with NEWCASTLE, in company with HMAS WESTRALIA and the apprehended Seychelles registered foreign fishing vessel (FFV) BIG STAR returning from the Southern Ocean, enroute to STIRLING. After 3 days well-earned rest and recreation in STIRLING, NEWCASTLE departed FBW and returned to FBE. NEWCASTLE deployed from FBE on Friday 27 for South East Asian Deployment (SEAD) 1/98 enroute Darwin.*

*On Sunday 1 NEWCASTLE detached from Task Group 627.1 to close the West Australian coast for **helicopter operations** to Stirling. Meanwhile WESTRALIA continued to escort and support the embarked steaming party in BIG STAR enroute to STIRLING. After successful **helicopter operations**, NEWCASTLE rejoined the Task Group on Tuesday 2 and continued the passage to STIRLING.*

*On Wednesday 3 WESTRALIA detached from TG 627.1 and proceeded alongside STIRLING. Much to the joy of the ships company, visual and radar landfall of the Australian coastline was made early on Thursday 4. At 0903 BIG STAR was handed over to the Australian Fisheries Management Authority and a boat transfer recovered the ship's steaming party and their equipment from BIG STAR. Once clear of BIG STAR, NEWCASTLE berthed starboard side to **STIRLING** Ammunition wharf, where Commodore Fleet Bases, CDRE G.P. KABLE, RAN toured the ship while ammunition was embarked. On completion of ammunitioning, NEWCASTLE shifted berth to Diamantina Wharf at STIRLING for a well-earned three days' rest after **30 busy days at sea...**'<sup>18</sup>*

24. In summary, the ROPs confirm that:

- a) HMAS *Newcastle* sailed from Fleet Base East on 2 February 1998 (one day prior to the commencement of OP STANHOPE);
- b) HMAS *Newcastle* conducted helicopter operations to HMAS *Stirling* on 2 March 1998;
- c) HMAS *Newcastle* came alongside at Fleet Base West on 4 March 1998 (not 6 March 1998 as originally submitted by Chief Petty Officer Ball).

25. **The ship's Log.** Consistent with the ROPs, this Log shows that on 2 March 1998 the ship went to flying stations at 0730, 0908, 1305, 1411, 1600 and 1834 hours to launch and recover helicopters. There were two Seahawk helicopters embarked in

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<sup>18</sup> Ship's Report of Proceedings, HMAS *Newcastle*, March 1998.

HMAS *Newcastle* for Operation STANHOPE, one belonging to *Newcastle* (T71) and one detached from HMAS *Melbourne* (T75). Both were involved in flying operations to HMAS *Stirling* on 2 March. On completion of flying operations, *Melbourne*'s helicopter remained ashore to prepare for the two-day overland transit to Brisbane to re-join HMAS *Melbourne*.

26. **Flight Lieutenant Nicholas Chapman's evidence.** Defence made enquires of Flight Lieutenant Nicholas Chapman, noting his role as the listed pilot of T75, HMAS *Melbourne*'s detached Seahawk helicopter. Flight Lieutenant Chapman's Flight Log Book entry set out 'disembarkation' from HMAS *Newcastle* on 2 March 1998.<sup>19</sup> He recalled that HMAS *Melbourne* aircrew disembarked on that date in their helicopter,<sup>20</sup> before HMAS *Newcastle* docked, and subsequently flew overland to re-join HMAS *Melbourne*, which was alongside in Brisbane at the time.<sup>21</sup> Flight Lieutenant Chapman confirmed that he does not have records that would include a passenger manifest for this flight that identifies others on board, apart from his fellow pilot.<sup>22</sup>

27. Although this accords with the activity in the ship's Log it does not assist with identifying the passengers on board.

#### **Chief Petty Officer Ball's submission at hearing**

28. At the outset, Chief Petty Officer Ball accepted that the ship berthed at HMAS *Stirling* on 4 March 1998, and not 6 March 1998 (the Operation STANHOPE end date) as he had earlier submitted.

29. Chief Petty Officer Ball testified that he and Sub Lieutenant David Janszen<sup>23</sup> did not disembark with the other members of the HMAS *Melbourne* Flight who departed HMAS *Newcastle* via helicopter T75 on 2 March 1998. That flight ashore consisted of the pilot, Flight Lieutenant Chapman, the co-pilot, aircrew, and a maintainer from each trade to support the overland transit to re-join HMAS *Melbourne* on the East Coast.

30. Chief Petty Officer Ball said that he and Sub Lieutenant Janszen remained behind in HMAS *Newcastle* and disembarked from the ship after it came alongside at HMAS *Stirling* on 4 March 1998. They then made their way via civilian air from Perth to Brisbane to re-join HMAS *Melbourne*. Chief Petty Officer Ball said that although it was a long time ago, he had a clear memory of departing the ship at HMAS *Stirling* and was relieved that he did not have to endure the 17 hour helicopter flight to Brisbane, instead he and Sub Lieutenant Janszen had the luxury of flying civilian air. Further, he said he had never flown west to east via helicopter but he had flown east to west, so he knew what the journey was like and he was happy to avoid it.

31. Chief Petty Officer Ball said that looking at the ship's Log the first flight departing at 0810 on 2 March was T71, *Newcastle*'s helicopter, which was likely utilised for mail and stores runs on that and the four subsequent flights that it conducted. T75 disembarked at 0855 and remained ashore after flying operations. He stated that he was not on board any of those helicopter flights.

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<sup>19</sup> Letters, Mr Ian Heldon to the Tribunal, 5 September 2022, October 2022.

<sup>20</sup> Ibid.

<sup>21</sup> Ibid.

<sup>22</sup> Letter, Mr Heldon to the Tribunal, 16 September 2022.

<sup>23</sup> Sub Lieutenant Janszen was an Able Seaman at the time of the relevant service.

32. Chief Petty Officer Ball contended that he did not leave the ship and therefore the operation on 2 March 1998, but that he had served an additional two days up to his departure after the ship came alongside on 4 March 1998. He argued that as a result, he met the qualifying period of 30 days on 4 March 1998 as Sub Lieutenant Janszen had done.

### **Defence provision of further information and submissions after the hearing**

33. Defence provided various records as to Chief Petty Officer Ball's purported departure date. At hearing, Chief Petty Officer Ball submitted that it was unclear if the departing dates were entered contemporaneously or retrospectively. He stated that his departure date in records was incorrectly inputted and that this error was continued in subsequent entries. The Tribunal asked Defence to clarify if the relevant entries were made contemporaneously or retrospectively. The Tribunal also sought records as to Sub Lieutenant Janszen's movements.

34. The pre-PMKeyS data entries provided by Defence show that Sub Lieutenant Janszen was force assigned to Operation STANHOPE from 3 February 1998 to 4 March 1998. He too was on loan to the ship from HMAS *Melbourne* like Chief Petty Officer Ball, but has been awarded the medal.<sup>24</sup> Defence confirmed after the conclusion of the hearing that Sub Lieutenant Janszen's data was entered retrospectively and not contemporaneously.<sup>25</sup>

35. The Master Copy for HMAS *Newcastle* reveals that Chief Petty Officer Ball and five members<sup>26</sup> had onward postings to *Melbourne* on 2 March 1998 with an operational end date of 2 March 1998.

36. Chief Petty Officer Ball's PMKeyS Movement History identifies that his attachment to Operation STANHOPE included an operational end of date of 2 March 1998. Noting that the 1998 date pre-dates PMKeyS, Chief Petty Officer Ball argued that this data was likely as a result of previous incorrect entries as to his departure date from the ship.

37. Defence confirmed after the hearing that the Navy Personnel Employment Management System (the predecessor of PMKeyS) recorded departing date of 2 March 1998 for Chief Petty Officer Ball was retrospectively entered.

38. Post hearing, Defence confirmed that there were no other records including signal traffic, posting records, gaining and losing records in Defence archives, which could confirm the specific date Chief Petty Officer Ball departed the ship. Given that a number of records contained dates which were entered retrospectively and then were likely repeated in subsequent records, the Tribunal could only place limited weight on those records. The Tribunal consequently looked to other evidence of greater accuracy to determine Chief Petty Officer Ball's true departure date and therefore the end date for his participation on Operation STANHOPE.

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<sup>24</sup> Letter, Mr Ian Heldon to the Tribunal, 12 December 2022

<sup>25</sup> Ibid.

<sup>26</sup> Defence advised that none of these members have been awarded the Australian Overseas Service Medal - BP – Letter, Mr Ian Heldon to the Tribunal, 12 December 2022.

## **Evidence of Sub Lieutenant David Janszen**

39. Noting the evidence of Chief Petty Officer Ball, post hearing the Tribunal made enquiries of Sub Lieutenant Janszen, who was awarded the AOSM-BP for his service on Operation STANHOPE from 3 February 1998 to 4 March 1998, as to his relevant movements from HMAS *Newcastle*.<sup>27</sup> Sub Lieutenant Janszen confirmed via Statutory Declaration<sup>28</sup> that he and Chief Petty Officer Ball did not disembark HMAS *Newcastle* via Seahawk helicopter on 2 March 1998 with the rest of the HMAS *Melbourne* Flight. Instead, both he and Chief Petty Officer Ball disembarked together after HMAS *Newcastle* came alongside on 4 March 1998 and travelled back to the East Coast to re-join HMAS *Melbourne* on the same commercial flight.

40. Sub Lieutenant Janszen's version of events therefore directly supported the account given by Chief Petty Officer Ball at hearing.

## **Defence's concluding submission**

41. Defence concluded that based on the available records it could not verify that Chief Petty Officer Ball departed HMAS *Newcastle* after 2 March 1998. For this reason, Defence did not concede Chief Petty Officer Ball's application. But Defence did not challenge the statutory declaration provided by Sub Lieutenant Janszen.

## **TRIBUNAL CONSIDERATION**

42. For Chief Petty Officer Ball to be eligible for the AOSM-BP, he would need to have been deployed at sea for a period of 30 days during the declared operation, noting that he had no other relevant service from which to aggregate a total of 30 days. As the declared period commenced on 3 February 1998, he needed to have been deployed at sea in HMAS *Newcastle* until such time as when the ship came alongside on 4 March 1998.

43. We accept the evidence given by Chief Petty Officer Ball that he departed by civilian aircraft after the ship came alongside on 4 March 1998. He clearly remembered being pleased that he was able to travel in this way and not via the more arduous overland helicopter flight. Although he was giving evidence about events a long time ago, we accept that avoiding helicopter travel of this duration was something which he would have remembered clearly. Importantly, Chief Petty Officer Ball's evidence is corroborated by the evidence of Sub Lieutenant Janszen. We find that neither of them departed the ship by helicopter on 2 March 1998 but that they departed the ship together on 4 March 1998 after HMAS *Newcastle* came alongside at HMAS *Stirling* and then proceeded onwards via civilian air to re-join HMAS *Melbourne* in Brisbane.

44. The Tribunal accepted the accounts of Chief Petty Officer Ball and Sub Lieutenant Janszen as being reliable and accurate. The Tribunal was reasonably satisfied as to their evidence, which was given under oath or by way of statutory declaration. The Tribunal was not reasonably satisfied as to the accuracy of the purported departure dates inserted retrospectively and then repeated in various Defence records. In short, we do not find the records which have a departure date of '2 March 1998' for

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<sup>27</sup> Research undertaken pursuant to Rule 25 of the *Defence Honours and Awards Appeals Tribunal Procedural Rules 2021*.

<sup>28</sup> Statutory Declaration, David Lloyd Janszen, 25 January 2023.

Chief Petty Officer Ball to be accurate and we further find that those dates have been incorrectly entered in various Defence records.

45. Defence stated that Chief Petty Officer Ball's departure after 2 March 1998 could not be verified via the records. But Defence did not challenge the evidence of Sub Lieutenant Janszen provided by Statutory Declaration or Chief Petty Officer Ball's evidence at hearing which was that they both left after HMAS *Newcastle* came alongside on 4 March 1998.

46. We are reasonably satisfied that Chief Petty Officer Ball served from 3 February 1998 to 4 March 1998 on Operation STANHOPE and as such he completed the minimum requirement of 30 days as required by the eligibility criteria for the Australian Operational Service Medal - Border Protection.

47. For the reasons given above, the Tribunal has thus concluded that the decision under review should be set aside.

## **DECISION**

48. The Tribunal decided to set aside the decision that Chief Petty Officer Terence Ball not be recommended for the Australian Operational Service Medal - Border Protection and to substitute it with a new decision that he be recommended for the Australian Operational Service Medal - Border Protection.