



Australian Government

Defence Honours and Awards Appeals Tribunal

Hulse and the Department of Defence RE: Dunn [2023] DHAAT 10 (9 June 2023)

File Number(s)	2022/017
Re	Lieutenant Colonel George Hulse OAM (Retd) on behalf of Sapper Michael Earl Dunn Applicant
And	The Department of Defence Respondent
Tribunal	Mr Stephen Skehill (Presiding Member) Rear Admiral Allan du Toit AM, RAN (Retd) Air Commodore Tony Grady AM (Retd) Major Gary Mychael OAM CSM (Retd)
Hearing Date	18 May 2023
Attendances	Lieutenant Colonel George Hulse OAM (Retd) Major General Murray Blake AO MC (Retd) – witness, for the applicant Brigadier Mark Bornholt AM (Retd), Historical Honours and Awards Reviewing Officer, Directorate of Honours and Awards, Department of Defence, for the respondent.

DECISION

On 9 June 2023, the Tribunal decided to recommend to the Minister that he set aside the decision that Sapper Michael Dunn not be recommended for the Conspicuous Service Medal and for that decision to be substituted with a decision that Sapper Dunn be recommended for the Conspicuous Service Medal.

CATCHWORDS

DEFENCE HONOUR – Conspicuous Service Medal – Vietnam - eligibility criteria – outstanding or meritorious achievement – devotion to duty in non-warlike situations – whether applicable on warlike operations - fire fighting.

LEGISLATION

Defence Act 1903 – ss 110T, 110V(1), 110VA and 110VB(1)

Defence Force Regulation 2016 – Regulation 35

Commonwealth of Australia Gazette No. S108 dated 7 May 1990, Letters Patent and Regulations for the Conspicuous Service Decorations.

Australian Conspicuous Service Decorations Regulations Ministerial Determination under Subregulation 5(b) dated 25 September 1997. (Ungazetted)

REASONS FOR DECISION

Introduction

1. The applicant, Lieutenant Colonel George Hulse OAM (Retd), seeks review of a decision dated 20 July 2022 by the Historical Honours and Awards Reviewing Officer, Brigadier M.D. Bornholt AM (Retd), of the Department of Defence, to refuse to recommend the late Sapper Michael Earl Dunn for the Conspicuous Service Medal (CSM).

2. On 30 June 2017, the applicant wrote to the then Chief of Army, Lieutenant General Angus Campbell AO DSC, seeking decorations for nine Army personnel, which included Sapper Dunn, who in his view, ‘contributed service to the Army in a manner which was above and beyond that expected of soldiers in combat’.¹

3. On 22 June 2018, the applicant again wrote to the then new Chief of Army, Lieutenant General Rick Burr AO DSC MVO, advising that as he had received no response to his correspondence, he would take the matter to the Tribunal seeking a review of what he deemed to be an ‘unwritten rejection’ of his application.²

4. An application to the Tribunal regarding Sapper Dunn was then made by Lieutenant Colonel Hulse on 22 June 2018. As the Tribunal has no power to review a matter that has not been the subject of a decision in response to an application for an honour or award, the Tribunal advised Lieutenant Colonel Hulse that the application for Sapper Dunn, along with the other eight Army personnel, would be put on hold until he had received Army’s final decision.³

5. According to the Defence report, on 3 July 2018, the then Director-General of Personnel – Army, Brigadier Leigh Wilton, wrote to Lieutenant Colonel Hulse advising that it was no longer permissible to grant an award under the Imperial System and that he should consider the awards available under the contemporary Honours and Awards System and specify which was sought. Lieutenant Colonel Hulse replied and nominated Sapper Dunn for the CSM.⁴

¹ Email, Lieutenant Colonel Hulse to the Office of the Chief of Army, dated 15 June 2018, attached to application to the Tribunal, 22 June 2018

² Letter, Lieutenant Colonel Hulse to Chief of Army, LTGEN Richard Burr AO DSC MVO, dated 22 June 2018, attached to application to the Tribunal, 22 June 2018

³ Letter. Tribunal to Lieutenant Colonel Hulse, 11 July 2018

⁴ Director General Army People Capability desktop assessment report, included in Defence report, 1 November 2022

6. On 20 July 2022, Brigadier Bornholt wrote to Lieutenant Colonel Hulse advising that the matter regarding Sapper Dunn had been passed to him and that he would not recommend Sapper Dunn for recognition.⁵

Decision under review

7. On 30 June 2017, Lieutenant Colonel Hulse applied to Defence seeking to have Sapper Dunn recognised for his performance fighting a fire at the 1st Australian Task Force (1 ATF) Ammunition Point at Nui Dat Hill on 19 February 1969 during the Vietnam War. On 12 November 2018, Lieutenant Colonel Hulse confirmed that he sought the CSM in recognition of Sapper Dunn's service. In response, Brigadier Bornholt wrote to Lieutenant Colonel Hulse on 20 July 2022 advising that he would not recommend Sapper Dunn for the CSM or any other defence honour.⁶

8. On 5 August 2022, Lieutenant Colonel Hulse made application to the Tribunal seeking review of Brigadier Bornholt's decision.⁷

Tribunal jurisdiction

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

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

11. The Tribunal was satisfied that the Applicant's letter of 5 August 2022 constituted an application as defined in s110V(1)(c) of the Defence Act. The Tribunal is bound by the eligibility criteria that governed the making of the reviewable decision in 2022, as required by s110VB (6) of the Act. 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 recommendations regarding the decision to the Minister.

⁵ Letter, Brigadier M.D. Bornholt AM (Retd) to Lieutenant Colonel Hulse, 20 July 2022, included in Lieutenant Colonel Hulse's application to the Tribunal, 5 August 2022

⁶ Letter, Brigadier M.D. Bornholt AM (Retd) Lieutenant Colonel Hulse, 20 July 2022, included in Lieutenant Colonel Hulse's application to the Tribunal, 5 August 2022

⁷ Lieutenant Colonel Hulse's application to the Tribunal, 5 August 2022

Sapper Dunn's service

12. Sapper Dunn's service records, as submitted with the Defence report, indicate that he was drafted to the Australian Military Forces as a National Serviceman from 4 October 1967 to 3 October 1969. Sapper Dunn was in Vietnam from 3 December 1968 to 3 September 1969 and served as a driver and field engineer with the 1st Field Squadron Royal Australian Engineers. Upon discharge from National Service, Sapper Dunn served in the Army Reserve from 4 October 1969 for a period of three years.⁸

13. Relevant to this application, while serving in Vietnam, Sapper Dunn was part of a three-member crew from the 1st Field Squadron that extinguished an ordnance fire at the 1 ATF Ammunition Point on 19 February 1969. According to Lieutenant Colonel Hulse, Sapper Dunn's actions fighting the fire were as follows:

*'On 19 February 1969, The Ammunition Point of the 1st Australian Task Force at Nui Dat in South Vietnam was engulfed in a large fire. Sapper Michael Dunn, as a member of a three-man engineer fire-fighting party, provided exceptional service in pumping water on to the fire despite the dangers associated with a hazardous situation. Sapper Dunn operated the nozzle end of a water pipe connected to a truck mounted water pump. On a number of occasions he had to enter an ammunition bay full of burning explosive ordnance and assisted in extinguishing the flames. He did this in extreme heat, and under circumstances where any of the items of exploding ordnance could have caused serious injury or death to himself or his fellow team members. Sapper Dunn's cool disposition and determination to see the job terminated successfully were a source of trust and confidence in his fellow team members. During the course of the fire-fighting actions, Sapper Dunn was offered a rest away from the danger. He refused to leave the site until the fire was extinguished. Sapper Dunn delivered a significant contribution to the successful extinguishing of the fire in the 1ATF Ammunition Point on 19 February 1969.'*⁹

14. Sapper Dunn's service records, as supplied with the Defence report, indicate that he was an average soldier. While there are no performance records for his time in Vietnam, Sapper Dunn was recorded as being absent without leave for a period of 20 days, one period of three days,¹⁰ and another two one-day periods, all in 1968, prior to his Vietnam service. There is nothing else in Sapper Dunn's service records that indicate he should not be considered for a CSM.

⁸ 3792645 Sapper Michael Earl Dunn Service Record as submitted with the Defence Report, 1 November 2022

⁹ Lieutenant Colonel Hulse's application to the Tribunal, 22 June 2018

¹⁰ This offence was later quashed.

15. Sapper Dunn has been awarded the following for his service:

- a) Australian Active Service Medal 1945-75 with Clasp 'VIETNAM'
- b) Vietnam Medal
- c) Australian Defence Medal
- d) Anniversary of National Service 1951-1972 Medal
- e) Republic of Vietnam Campaign Medal

Eligibility Criteria - the Conspicuous Service Decorations

16. The Australian Conspicuous Service Decorations (the Decorations) were created on 18 October 1989 to provide recognition to members of the Australian Defence Force and certain other persons for outstanding or meritorious achievement or devotion to duty in non-warlike situations.¹¹ The Decorations consist of the Conspicuous Service Cross (CSC) and the Conspicuous Service Medal (CSM).

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

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

*The Conspicuous Service Medal shall be awarded for meritorious achievement or devotion to duty in non-warlike situations.*¹²

The Defence decision

18. Following Lieutenant Colonel Hulse's 2017 application to Defence, an assessment of Sapper Dunn's eligibility for a CSM was conducted and subsequently, on 20 July 2022, Brigadier Bornholt wrote to Lieutenant Colonel Hulse stating that he would not recommend Sapper Dunn for the CSM or any other defence honour.¹³

19. Brigadier Bornholt stated that as the eligibility criteria for the CSM specify the Medal shall be awarded for meritorious achievement or devotion to duty in non-warlike situations, Sapper Dunn's actions fighting the 1 ATF Ammunition Point fire did not satisfy that criterion as it occurred during the Vietnam War which had been declared to be a warlike operation.

¹¹ Commonwealth of Australia Gazette No. S108 dated 7 May 1990 *the Australian Conspicuous Service Decorations, Letters Patent and Regulations*

¹² Ibid

¹³ Correspondence from Brigadier M.D. Bornholt AM (Retd) dated 20 July 2022, included in Lieutenant Colonel Hulse's application to the Tribunal, 5 August 2022

20. Brigadier Bornholt noted that Lieutenant Colonel Hulse had stated that, shortly after the fire, he had written identical draft citations for both Lance Corporal Tresize, who had fought the fire with Sapper Dunn, and Sapper Dunn but that Lance Corporal Tresize received a Mention in Despatches, while Sapper Dunn's equal performance had received no recognition. Brigadier Bornholt advised that contrary to Lieutenant Colonel Hulse's claim, the citations for Lance Corporal Tresize and Sapper Dunn were not the same.

21. Brigadier Bornholt also addressed Lieutenant Colonel Hulse's claims regarding perceived maladministration in the consideration of his citations for Lance Corporal Tresize and Sapper Dunn. He stated:

*'I also do not accept your claim that failure to recognise Sapper Dunn was a case of maladministration. There is no evidence to support this position. Clearly the Squadron Commander, as the nominating officer, made a decision to nominate Lance Corporal Tresize. That he did not nominate Sapper Dunn does not suggest maladministration but an exercise of command authority and judgement. That you as a junior officer at the time, considered that both Lance Corporal Tresize and Sapper Dunn should have been recognised, placed no obligation on the sub unit commander and nominating officer to proceed. Indeed, having reviewed both citations as presented, there is little doubt in my mind that the nomination for Sapper Dunn lacks evidence of 'an act of bravery' as required by the regulations for the Mention in Despatches.'*¹⁴

22. Brigadier Bornholt further stated that he did not believe there was any other defence honour, including distinguished service decorations, that may be applicable to Sapper Dunn's actions and that he had performed his duty as would have been expected. Brigadier Bornholt stated:

*'In my view, Sapper Dunn's performance of his duties as a driver and field engineer fighting a fire on 19 February 1969 cannot be considered to be distinguished.'*¹⁵

23. On 5 August 2022, Lieutenant Colonel Hulse made application to the Tribunal seeking review of Brigadier Bornholt's decision.¹⁶

The Application for Review

24. In his application for review, Lieutenant Colonel Hulse responded to statements in Brigadier Bornholt's reasons for declining recognition of Sapper Dunn. In particular, Lieutenant Colonel Hulse disagreed with the claim that Sapper Dunn did not qualify for

¹⁴ Letter, Brigadier M.D. Bornholt AM (Retd) to Lieutenant Colonel Hulse, 20 July 2022, included in Lieutenant Colonel Hulse's application to the Tribunal, 5 August 2022

¹⁵ Lieutenant Colonel Hulse's application to the Tribunal, 5 August 2022

¹⁶ Ibid

the CSM because the incident occurred during a period of warlike service, and that the lack of recognition was not due to maladministration.

25. Lieutenant Colonel Hulse stated:

*'Brigadier M Bornholt describes Sapper Michael Dunn's action in fighting the IATF Ammunition Point fire as being in war-like circumstances. This is far from the reality of the circumstances on the 19 February 1969 when the IATF Ammunition Point caught fire and a crew of fire fighters, commanded by myself, from the 1st Field Squadron RAE based at Nui Dat, engaged the fire. This fire was not started by enemy action. The fire was not fought under enemy threat nor enemy interference. This was purely and simply an enormous fire. Therefore, the Brigadier's assertion that it must be considered as a war-like action is disputed.'*¹⁷

26. Addressing Brigadier Bornholt's comment that failure to recognise Sapper Dunn was not a case of maladministration but rather an exercise of command authority and judgement, Lieutenant Colonel Hulse stated:

'If this is an exercise of command, authority and judgement, then it was a poor one. Both soldiers did exactly the same thing for the full period that they were under my command and they both followed my orders in fighting that fire equally...

*'This was a conscious decision to favour one soldier with an award and discriminate against the other against a proven account that both soldiers performed exactly the same actions, under identical circumstances and at the same time. That is maladministration!'*¹⁸

27. Lieutenant Colonel Hulse further stated:

*'...neither Sapper Dunn nor Lance Corporal Tresize qualified in an Army Fire Service course to enable them to exercise skills in firefighting. They were not qualified fire fighters. They simply followed my every instruction and order to the fullest of their ability and this was sufficient to overcome a large and dangerous fire. I question the Brigadier's assertion that Dunn did what was expected of him. Sapper Dunn (and LCPL Tresize) accepted orders in a situation that was foreign to him and for which he had received no prior training. His attitude and alacrity were critical to the successful outcome of a dangerous circumstance. If LCPL Tresize should be acknowledged for that action, so too should Sapper Dunn.'*¹⁹

28. Lieutenant Colonel Hulse also advised that he was unaware the citation he had written for Lance Corporal Tresize had been changed, commenting that he had *precisely*

¹⁷ Ibid

¹⁸ Lieutenant Colonel Hulse's application to the Tribunal, 5 August 2022

¹⁹ Ibid

and purposefully [used] the same wording and presented them to the Officer Commanding 1st Field Squadron, Major John Morphet.²⁰

Defence's position

29. As set out in the Defence report, following Lieutenant Colonel Hulse's application to the Tribunal, Brigadier Bornholt reviewed his original decision of 20 July 2022.

30. Brigadier Bornholt addressed the delayed handling of the nomination advising that during the five years since Lieutenant Hulse's original 2017 correspondence to the Chief of Army, it had been referred to various areas within Defence before being returned to the Directorate of Honours and Awards for further action.

31. Brigadier Bornholt reiterated that he did not recommend Sapper Dunn for the CSM and again addressed the three points he raised in his initial letter of July 2022 to Lieutenant Colonel Hulse. Brigadier Bornholt stated:

'I note that Lieutenant Colonel Hulse's assertions that the citations for both Sapper Dunn and Lance Corporal Tresize were 'precisely the same' is not correct – Tresize's citation includes a clear notion of gallantry, Dunn's citation, presumably reconstructed in 2018 does not. On the evidence, I am of the opinion that the award of the MID to Lance Corporal Tresize was appropriate given the matters raised and the strength of the citation.'

'In relation to Lieutenant Colonel Hulse's claim that failure to nominate Sapper Dunn was a case of maladministration, I found no evidence to support this position. While there is no evidence regarding the Squadron Commander's assessment of Sapper Dunn's actions, he clearly made a decision to nominate Lance Corporal Tresize. That he did not nominate Sapper Dunn is unlikely to be as a consequence of maladministration but rather an exercise of command authority and judgement. Although Lieutenant Colonel Hulse considered both Tresize and Dunn worthy of recognition there was no compulsion for a commander to proceed on a junior officer's recommendation.'

*'... The incident in question occurred on 19 February 1969 whilst Sapper Dunn was on active service...In my view he cannot satisfy the criteria for the CSM as the incident for which he is being nominated did not occur during 'non-warlike' service. For this reason there is no need to proceed further in relation to the award of the CSM to Sapper Dunn.'*²¹

32. Brigadier Bornholt further advised that he did not believe that Sapper Dunn satisfied the criteria for a gallantry award, for the Distinguished Service Decorations, or for recognition under the Australian Bravery Decoration Regulations.

²⁰ Ibid

²¹ Defence report, 1 November 2022

33. Additionally, Brigadier Bornholt commented that the evidence provided by Lieutenant Colonel Hulse to an investigating officer in 1969 did not mention Sapper Dunn and contradicted the citation he provided in 2018.

‘Lieutenant Hulse made a statement dated 2 March 1969. The statement does not mention Sapper Dunn or Lance Corporal Tresize. It does however corroborate the actions of SSGT Barber and what occurred after Lieutenant Hulse was stopped at the road block:

... I proceeded beyond this point on foot in company with OC D Coy 5 RAR and SSGT Barber and found some burning ammunition boxes in an ammunition bay. SSGT Barber informed me that the bay contained CS gas²² grenades and WP grenades.²³ I then cleared some of the ammunition which I considered to be safe and ordered the water truck to advance to my position. On arrival of the water truck a stream of water was directed onto the burning boxes which put the fire out. SSGT Barber then went into the bay and removed the boxes which had been burning ... I then directed all the water trucks to pump water into the areas which were burning or smoking ...’²⁴

Lieutenant Colonel Hulse’s comments on the Defence report

34. In his response to the Defence report, Lieutenant Colonel Hulse sought to refute Brigadier Bornholt’s findings, particularly the level of involvement by Staff Sergeant Barber, who was awarded the George Medal for his service during the incident. Lieutenant Colonel Hulse commented that Staff Sergeant Barber’s efforts were minimal and that he was in fact removed from the firefighting efforts as he was ‘getting in the way’.²⁵

35. Lieutenant Colonel Hulse also queried the accuracy of the citation for Lance Corporal Tresize, particularly in regard to conducting a search for three personnel thought to possibly be in a burning tent, claiming that Tresize was with him for the duration of the firefighting efforts and did not go into a tent to rescue three personnel. Lieutenant Colonel Hulse stated:

‘It is questioned how the Officer Commanding 1 FD SQN, Major John Morphett, came to accept the words written into Sapper Tresize’s citation. Hulse did not write those words. As Major Morphett did not arrive at the scene until after the fire had been put out, I doubt that the words originated from him. I question the authenticity of the person who wrote those words. The description is hardly complete and not a true reflection of what actually happened. If this is the only action for which the MID was awarded to Tresize, it is a thin one. I believe it demonstrates the lack of knowledge about the fire

²² Tear gas

²³ White phosphorus

²⁴ Defence report, 1 November 2022

²⁵ Applicant’s response to Defence Report, 20 November 2022

*that surrounds the whole event. Sapper Tresize did deserve an MID, but not for just one action. I believe that he deserves recognition for his entire contribution to the whole of the fire and not just one small segment of it. In any case, Sapper Dunn was on the water truck enabling the water to be pumped to Sapper Tresize's hose branch. Without Dunn, Tresize would not have had the ability to approach the burning tent. It was a team effort by the three of us, not an individual stroke of gallantry by one person.'*²⁶

36. In respect of the claim that there was no citation for Sapper Dunn and that the citation for Lance Corporal Tresize was different to what was originally drafted, Lieutenant Colonel Hulse stated:

'Page 5 Paragraph 17. The conclusion drawn in this paragraph does not address what happened to my two citations. I suspect that they were never filed. I suspect that they were discarded – never to be seen again. This a reprehensible way to treat any officer who puts soldiers up for an award. My recommendations for a decoration for each soldier should have been filed at least. If they were to be rejected and then discarded, I should have been consulted and allowed an opinion.'

*'... I understand why Brigadier Bornholdt (sic) found no evidence supporting Sapper Dunn for an award. It was destroyed. It no longer exists. I am certain that Major Morphett was aware of both citations. I would have felt more comforted if Major Morphett had taken me into his confidence and at least offered an explanation as to why he did not support Sapper Dunn for an award. He did not. Somebody on HQ 1 FD SQN GP RAE 'dumped' my citation for Sapper Dunn without leaving explanatory notes or informing me of such a decision. That is clearly 'maladministration'.'*²⁷

37. Lieutenant Colonel Hulse also queried the CSM definition of non-warlike situations and requested a definitive description. In addition he pointed out that in relation to the George Medal awarded to Staff Sergeant Barber, Brigadier Bornholt stated that an award of the George Medal specifically recognises an act of gallantry 'not in the face of the enemy'. Lieutenant Colonel Hulse stated:

*'SSGT Barber was on the same active service as was Sapper Dunn. Why is it that SSGT Barber's George Medal can be treated differently to that of other personnel who were more actively engaged in precisely the same fire event as was he?'*²⁸

²⁶ Ibid

²⁷ Applicant's response to Defence Report, dated 20 November 2022

²⁸ Ibid

Events of 1 ATF Ammunition Point fire on 19 February 1969

38. The detailed accounts of the events and involvement of personnel in extinguishing the 1 ATF Ammunition Point fire on 19 February 1969, as supplied to the Tribunal, have varied.

Official History

39. There is no mention of the event in the relevant chapter of Australia's official history of its involvement in the Vietnam War.²⁹

Official history of the Royal Australian Corps of Engineers Royal, Australian Engineers, 1945 to 1972

40. As supplied with the Defence report, a Royal Australian Corps of Engineers 2002 publication states the following in relation to the event:

'On 19 February 1969, a fire started in 1ATF ammunition point on Nui Dat hill. It started in the UXB bay and spread rapidly after an UXB exploded and scattered burning pieces across the hill. Capt G Hulse commanding the plant troop of 1 Field Squadron at the time relates his experiences:

'The squadron second in command, Captain Bob Fisher sent me to the hill to take charge of firefighting and also to carry out a reconnaissance to find areas for bulldozers to construct fire breaks. With me were L/Cpl M Tresize and Sapper M. Dunn. On our arrival it was obvious that the fire was out of control and ammunition in the bays was exploding.

'On approaching the ammunition point we were stopped by a road block formed by Maj M.P Blake who was accompanied by an RAAOC ammunition technician. We were refused entry but I argued that the fire could be contained in the ammunition point itself and insisted that firefighting was our (RAE) responsibility. Major Blake agreed that my group could pass through.

'After putting the fire out in the first bay, we continued from bay to bay fighting that fire. We were supported by every water tanker in the task force and a large squad of sappers from 1 Field Squadron. The Deputy Commander of the Task Force, Col. K. S. Mackenzie congratulated the sappers on extinguishing the fire.

²⁹ McNeill I and Ekins A. (2003), *Official History of Australia's Involvement in South East Asian Conflicts 1948 – 1975: On the Offensive, the Australian Army in the Vietnam War 1967-1968*, (First edition) Crows Nest, NSW, Allen and Unwin in association with the Australian War Memorial.

*'LCpl M. Tresize was awarded an MID but Spr Dunn who had been equally deserving was not rewarded for his bravery, nor was Hulse whose initiative and leadership were big factors in putting out this dangerous fire.'*³⁰

Australian War Memorial records

41. The Australian War Memorial has a copy of the Department of the Army file and record of the fire. Included in the file is the *Investigating Officer's Report into Explosions at 1ATF Ammunition Point on 19 Feb 69*, prepared by Captain B.A. Young.³¹ The report, which was also supplied in the Defence report,³² notes that (then) Lieutenant Hulse commanded a team that was despatched to extinguish the fire, and includes a copy of his statement to the investigating officer. The report does not mention either Lance Corporal Tresize or Sapper Dunn. Additionally, the investigating officer did not interview Lance Corporal Tresize or Sapper Dunn, and Sapper Dunn's name does not appear anywhere in the file.³³

42. Captain Young described the events as follows:

'At approximately 1545 hours on 19 Feb 69 a series of minor explosions occurred from 1 ATF ammunition point located on the side of Nui Dat hill...this was followed by further explosions, which resulted in ammunition debris (i.e., shrapnel, unexploded grenades and artillery shells) being thrown over a wide area. In conjunction with the explosions a grass fire started in the immediate vicinity of the ammunition point, with other isolated fires being started by ammunition debris... The alarm was not raised from the ammunition point as the exposed line was cut by the initial explosions.'

'Capt Fisher, 1ATF Fire Officer was contacted by phone at approximately 1545 hrs and he immediately despatched a fire team under the command of Lt Hulse who had gone ahead. Water trucks were at the scene of the fire by 1555 hrs thereby making available an adequate supply of water.'

'The team under command of Lt Hulse found it necessary to clear the roadway of unexploded ammunition before any major effort could be made to fighting the fire.'

'Additional danger threatened for a period when several ammunition boxes in bay 'B' (containing serviceable WP ammunition) started to burn. The ammunition point NCO IC, Ssgt Barber, recognised the danger and had the bay flooded with water, whereupon he removed three smouldering boxes from

³⁰ Extract from the official history of the Royal Australian Corps of Engineers. Brigadier P.J. Greville GBE BE. (2002) *the Royal Australian Engineers, 1945-1972, Paving the Way; the fourth volume of the history of the Royal Australian Engineer*, as supplied with Defence report dated 1 November 2022

³¹ Australian War Memorial file, AWM103 R371/69/51 - [Headquarters, 1st Australian Task Force (HQ 1 ATF):] Fire - General - ATF Ammo Point, 19 February 1969, accessed 6 February 2023, Folio 199

³² Investigating Officer's Report into Explosions at 1 ATF Ammunition Point on 19 Feb 69, prepared by Captain B. A. Young, accessed 6 February 2023

³³ Ibid

*the bay. This commendable action undoubtedly brought under control a situation from which there could have been serious consequences.*³⁴

43. The file contains 11 witness statements, none of which reference Sapper Dunn. Lieutenant Hulse was interviewed by Captain Young and his statement includes the following:

'At approximately 1545 hrs 19 Feb 69, I was instructed by Capt. R. Fisher the 2IC of 1 Fd Sqn Gp RAE and 1 ATF Fire Officer, to supervise the use of a water truck and report on whether or not to use earthmoving equipment at a fire which had started at the 1 ATF ammunition point.

'...the RAASC officer informed me that three members of the 26 Coy RAASC who worked at the ammunition point were unaccounted for, and the tent where they normally worked was on fire some 150 metres along the road towards the ammunition bays. I left my vehicle and took a member of the water truck crew on foot to the tent which was on fire in a effort to help anybody should they be trapped in the tent. We could not see into the tent because of exploding ammunition, smoke and flame, so I ordered the water truck to advance and sprayed water into the tent. The occupants had escaped as was later confirmed by RAASC officer.

'...I proceeded beyond this point on foot in company with OC D Coy 5 RAR and Ssgt Barber and found some burning ammunition boxes in an ammunition bay. Ssgt Barber informed me that the bay contained CS gas grenades and WP grenades. I then cleared some of the ammunition which I considered to be safe and ordered the water truck to advance to my position.

'On arrival of the water truck a stream of water was directed onto the burning boxes which put the fire out. Ssgt Barber then went into the bay and removed the boxes which had been burning and put them into a safe area. These boxes contained pressure type booby trap switches which are reasonable (sic) safe even in a fire.

*'I then directed all the water trucks to pump water into areas which were burning or smoking. The unserviceable ammunition bay was flooded with water and all ammunition which lay in and around the remains of that bay were wetted in an attempt to cool them off to facilitate ease of handling where possible.'*³⁵

³⁴ Investigating Officer's Report into Explosions at 1 ATF Ammunition Point on 19 Feb 69, prepared by Captain B. A. Young, accessed 6 February 2023

³⁵ Australian War Memorial file, AWM103 R371/69/51 - [Headquarters, 1st Australian Task Force (HQ 1 ATF):] Fire - General - ATF Ammo Point, 19 February 1969, accessed 6 February 2023

Lieutenant Colonel Hulse's contemporary statement of events.

44. As per the Defence report, Lieutenant Colonel Hulse's application to Defence included a statement of the events that took place on 19 February 1969 at the Ammunition Point of the 1 ATF at Nui Dat in South Vietnam. Lieutenant Colonel Hulse supplied the same statement to the Tribunal as part of his 2018 application.

'The explosions in the 1ATF Ammunition Point shook every quarter of the Task Force area. A huge pall of smoke rose high above Nui Dat Hill where the ammunition point was located. It became apparent very quickly that a big fire was raging in the Ammunition Point, close to where the SAS Squadron was housed.

'...Captain Fisher sent for the Troop Commander of the 1FD SQN GP Plant Troop, Lieutenant George Hulse, briefed him on the requirement and asked for a quick reconnaissance of the fire. Hulse rounded up two drivers from Sqn HQ and two vehicles. One was his own command vehicle fitted with radio, and the other a water truck fitted with pump. The drivers were Sapper Michael Dunn and Sapper David Tresize.

'...at the crossroads where one road branched to the SAS lines and the other continued downhill to the Ammunition Point, Hulse came upon a roadblock. It was manned by soldiers of D Company 5RAR commanded by Major Murray Blake. Major Blake had by his side, the 1ATF Ammunition Technical Officer, Staff Sergeant Barber who had decided that the fire was too dangerous to control and that the area be abandoned. SSgt Barker had condemned the entire ammunition point as the fire had now spread to Bays B and C and heat was affecting the ammunition in Bay D. The smoke, noise and heat were intense and it was a dangerous place to be. Major Blake stopped Hulse from entering the area...

'Hulse then politely remonstrated with Major Blake that it was one of the roles of the army engineer to deal with fires...Major Blake agreed and lifted the roadblock.

'Hulse, Dunn and Tresize drove in to Bay D, reversed the water truck against the blast protecting bund between the two ammunition bays and started pumping water at the blazing boxes in Bay C...Hulse's counter-fire strategy was to start in Bay C, then when that was just a heap of steaming smoke, go on to Bay B, and then on to Bay A where bombs were still exploding. Bay A took most of the water and there was a time when three water trucks at a time were being used to fight the fire in that Bay.

*'Sappers Dunn and Tresize stayed with Hulse for the entire time. They were both given the opportunity to return to the safety of the unit area when more Sappers arrived, but they both refused to leave even after they were redeyed, weary, and sweating profusely.'*³⁶

³⁶ Lieutenant Colonel Hulse statement of events, 1 ATF Ammunition Point Fire 19 February 1969, as supplied with Defence Report, 1 November 2022

45. The Defence Report included a letter of support for Sapper Dunn's nomination from Major General Murray Blake AO MC (Retd) who was the OC D Company 5 RAR at the time of the fire. The then Major Blake was not interviewed by the Investigating Officer for the report on the fire. Major General Blake stated:

'Soon after setting up the road block the then Lt Hulse arrived and explained he had been tasked to fight the fire. SSgt Barber and I briefed him on the situation and why we had evacuated the dump. Lt Hulse was insistent that he at least view the situation in person so he could assess whether a firefighting operation was viable. I reluctantly agreed and was subsequently surprised when he opined he thought there was a chance of being able to extinguish the fire. He then set about organising water trucks tasking the two soldiers with him (Sappers Trezise (sic) and Dunn) and was ultimately successful in dousing the fire and preventing a disaster.

*'The actions of Lt Hulse, Sapper Trezise (sic) and Sapper Dunn were certainly above and beyond the normal expectation of being exposed to danger in an operational environment. The risk of death or serious injury was highly probable – testimony to the courage and disregard for their own safety that was necessary to function in such a dangerous environment.'*³⁷

Awards arising from the 1 ATF Ammunition Point fire on 19 February 1969

46. As per the Defence report, following the 1 ATF Ammunition Point fire on 19 February 1969, two Army personnel received awards.

47. Staff Sergeant Barber received the George Medal, as recommended by the Task Force Commander, Brigadier Pearson, for his actions during the incident. His citation reads:

Staff Sergeant James Robert Barber enlisted in the Australian Regular Army on 9th April 1951 and was allotted to the Royal Australian Army Ordnance Corps. He arrived in South Vietnam on 10th September 1968 as an Ammunition Technician and was responsible for the operation of the 1st Australian Task Force Ammunition Point at Nui Dat.

On 19th February 1969 Staff Sergeant Barber was driving to the Ammunition Point when a bay of ammunition caught fire and exploded. A series of explosions followed which resulted in ammunition being scattered over a wide area and numerous fires being started. Staff Sergeant Barber despatched his driver and vehicle to raise the alarm while he proceeded on foot to ensure that all personnel at the Ammunition Point were safe. Having established this, he then surveyed the area to determine whether any other bays of ammunition were threatened. Although both high explosive and white phosphorous

³⁷ Letter of Support from MAJGEN Murray Blake AO MC Retd, 19 November 2018, as supplied with Defence report

ammunition were still exploding and debris and unexploded ammunition falling around him he completed this hazardous task.

He then realised that the ammunition bay adjacent to the one burning was in danger of being ignited. This bay contained predominantly white phosphorous ammunition and if caught fire the remaining bays of ammunition would have been set off. With complete disregard for his own personal safety, Staff Sergeant Barber moved up to the threatened ammunition bay as soon as the immediate fire had been subdued. He then calmly and efficiently inspected its content and dragged clear a number of smouldering cases of ammunition. Throughout the entire operation he was in grave danger of ammunition in this and the adjacent bay exploding from the heat it had absorbed in the initial fire.

By his cool and courageous actions Staff Sergeant Barber prevented the fire spreading to the remaining twenty tons of ammunition stored in the Ammunition Point and so averted a major disaster. He was subsequently injured while destroying ammunition which had been damaged during the fire and explosions.³⁸

48. Lance Corporal Tresize received the MID, as nominated by Major Morphett for his actions during the incident. His citation reads:

Lance Corporal David Tresize commenced his National Service obligation on 12th July 1967. On completion of his recruit and corps training he was posted to 21st Engineer Support Troop, Royal Australian Engineers and arrived in South Vietnam on 14th May 1968.

At approximately 1545 hours on 19th February 1969 a bay of defective ammunition in the task force ammunition point exploded, scattering ammunition and causing fires over a wide areas. Lance Corporal Tresize attended the fire as a member of the two man crew of a water truck.

When told that three members of the ammunition point staff were thought to be trapped in a burning tent, Lance Corporal Tresize moved forward and searched the tent. After ensuring nobody was inside he resumed fighting the fire. At about 1615 hours the fire fighting team was able to approach the ammunition bay. Lance Corporal Tresize then directed water onto a stack of burning grenade boxes and fought the fire from close range until it was extinguished.

Lance Corporal Tresize carried out his duties in a calm and efficient manner, disregarding the hazards he was exposed to. His actions reflect great credit on himself and his corps.³⁹

³⁸ Recommendation for Honours and Awards, Staff Sergeant James Robert Barber, 12 March 1969, as included in the Defence Report dated 1 November 2022

³⁹ Recommendation for Honours and Awards, Lance Corporal David Lloyd Tresize, 13 March 1969, as included in the Defence Report dated 1 November 2022

Tribunal Analysis

49. The question of whether or not there was ‘maladministration’ in the process by which Staff Sergeant Barber and Lance Corporal Tresize were awarded medals and Sapper Dunn was not was essentially irrelevant to the issue before the Tribunal. That issue was simply whether or not, on the merits and having regard to all relevant evidence, Sapper Dunn met the eligibility criteria for the CSM and, if so, whether there was any countervailing reason why he should not now be recommended to posthumously receive the same.

50. Resolution of that issue essentially turned on the facts of what occurred on the day in question. While the late Sapper Dunn could not provide evidence in that regard, Lieutenant Colonel Hulse and Major General Blake were present at that time and each was able to do so, and did so under affirmation.

51. Major General Blake gave sworn evidence that he and Staff Sergeant Barber attended the scene of the fire soon after it broke out and that during that time, Staff Sergeant Barber took steps to remove various materials from the ammunition bays. However, recognising the inherent danger in the situation, Major General Blake said he decided that he and Staff Sergeant Barber should vacate the area, which they did. Major General Blake also confirmed Lieutenant Colonel Hulse’s statements that he and Staff Sergeant Barber had blocked the road to the ammunition dump to prevent other personnel from going there, but that he had acceded to Lieutenant Colonel Hulse’s request that he, Lance Corporal Tresize and Sapper Dunn be allowed access in an endeavour to extinguish the fire due to their role as engineers. Major General Blake said that having done so, he left the scene and did not observe what later occurred. In particular, he did not see whatever was done by Lance Corporal Tresize and Sapper Dunn.

52. Lieutenant Colonel Hulse gave sworn evidence about the actions of Lance Corporal Tresize and Sapper Dunn that was in all respects consistent with what he had stated in his submissions accompanying his applications to Defence and the Tribunal. In essence his evidence was that:

- a. The fire was extremely severe and the potential consequences were dire if it was not controlled.
- b. Lance Corporal Tresize and Sapper Dunn were not members of the unit he commanded but were assigned to him for the specific purpose of addressing the fire.
- c. While each was trained and experienced in driving a water truck and operating its pump, neither had been trained as a fire-fighter.
- d. In an optimal situation, he would have taken trained fire-fighters with him to the fire but none were available so he considered that he had no option but to direct Lance Corporal Tresize and Sapper Dunn as to how they should seek to extinguish the fire, despite their lack of training.

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- e. After allowance for the factual errors that he said were contained in the MID citation for Lance Corporal Tresize, Lance Corporal Tresize and Sapper Dunn performed their fire-fighting roles in accordance with his directions in an identical manner in circumstances of great danger.
 - f. Other water trucks attended the scene and supplied water for Lance Corporal Tresize and Sapper Dunn but the crews of those trucks did not participate in the fire-fighting and were thus in less danger than Lance Corporal Tresize and Sapper Dunn.
 - g. Both Lance Corporal Tresize and Sapper Dunn directed fire hoses from behind the bund of the ammunition bays, carefully raising their heads above the bund from time to time to check that water was directed to the seat of the blaze.
 - h. As the fire gradually came under control, Lance Corporal Tresize and Sapper Dunn then began to enter the various affected bays to better extinguish the fire.
 - i. The work undertaken by Lance Corporal Tresize and Sapper Dunn was extremely dangerous and tiring so, as the fire came under control, he offered Sapper Dunn the opportunity to leave the scene but he declined to do so and stated that he wanted to stay to see the job finished
 - j. Staff Sergeant Barber had accompanied Lieutenant Colonel Hulse, Lance Corporal Tresize and Sapper Dunn back to the scene of the fire but was not part of the fire-fighting directed by Lieutenant Colonel Hulse and he believed that he was simply 'in the way' and so directed him to leave.

53. Lieutenant Colonel Hulse said that shortly after the events of the day, he prepared identical citations for each of Lance Corporal Tresize and Sapper Dunn and submitted them to his superior officer. He said that he was never consulted about the further processing of his recommendations for recognition and was unaware until many years later that Lance Corporal Tresize had been awarded the MID but that Sapper Dunn had received no recognition. He also said that the citation for Lance Corporal Tresize's MID was factually inaccurate and clearly written by someone other than an eye witness to the events in question.

54. Major General Blake said that he did not make a recommendation for recognition of Staff Sergeant Barber as he was not in his chain of command but that had he done so, he would have written the George Medal citation differently.

55. Lieutenant Colonel Hulse advised the Tribunal that his contemporaneous report of the fire, to which Brigadier Bornholt had referred, made no mention of Lance Corporal Tresize and Sapper Dunn for the simple reason that he had been tasked to prepare a report on what had caused the fire and whether there was any need to change standard operating procedures to minimise the risk of repetition. Having separately prepared recommendations for the recognition of Lance Corporal Tresize and Sapper Dunn, he

did not consider that matter to be within the required scope of his report.

56. A threshold question is whether or not the CSM can be issued in the circumstances described above. The eligibility criteria specify that it is only available for service in ‘non-warlike situations’. As noted above, Brigadier Bornholt had based his decision to refuse to recommend on the grounds that Sapper Dunn was on warlike service, as the Vietnam War was declared to be a ‘warlike operation’.

57. The Tribunal noted however that the Regulations refer to ‘non-warlike situations’ and not to ‘non-warlike operations’, ‘non-warlike service’ or any other similar descriptor. It thus asked Brigadier Bornholt whether it was not possible that within the broader context of a ‘warlike’ operation, there might be individual situations that were ‘non-warlike’. Brigadier Bornholt agreed that this could be the case.

58. The Tribunal then considered whether or not the time and place of the fire could properly be considered to be a ‘non-warlike situation’. Lieutenant Colonel Hulse’s uncontested evidence was that the fire *was not started by enemy action. The fire was not fought under enemy threat nor enemy interference. This was purely and simply an enormous fire.* The Tribunal was thus satisfied that the ‘situation’ in which the fire was fought was ‘non-warlike’, albeit that it occurred within the broader context of a ‘warlike’ operation.

59. The question thus arose as to whether or not Sapper Dunn’s actions constituted *meritorious achievement or devotion to duty*. Although these aspects had not been specifically addressed in detail in the Defence submission, Brigadier Bornholt argued that Sapper Dunn was simply doing what was expected of him.

60. The Tribunal has considered these issues in various previous cases.

61. In *Shingles and Manders and the Department of Defence (2021)*, DHAAT 12 (22 July 2022), the Tribunal reviewed the decision of Vice Admiral Michael Noonan AO RAN, of 20 July 2021 to refuse to recommend Lieutenant Commander Brett Manders RANR and Mr Nathan Shingles for the Conspicuous Service Cross or Conspicuous Service Medal for their actions during the HMAS *Westralia* fire on 5 May 1998.

62. In the *Singles and Manders* case, the Tribunal recommended to the Minister that the decision be affirmed, and this recommendation was accepted. In reaching its decision, the Tribunal commented:

‘We consider that Mr Shingles and Lieutenant Commander Manders were trained in firefighting operations which included boundary cooling. They were dedicated in so far as they conscientiously did what was asked of them and ‘stayed on task’ until they were relieved an hour or so later. They did their best to achieve boundary cooling in an ad hoc manner with a limited number of portable fire extinguishers. Their roles were not without risk.

However, we do not find that their respective roles were performed significantly over and above their duty. Their actions did not involve the application of exceptional skills or exceptional judgment or exceptional dedication as required by the criteria.

'We therefore did not find that the criteria for the CSC was met by either Mr Shingles or Lieutenant Commander Manders.

'Noting that the CSM falls within the conspicuous service decorations and we did not find in favour of the CSC, we went on to consider the CSM for ...meritorious achievement or devotion to duty. 'meritorious' is defined in the Macquarie Dictionary as meaning 'deserving of reward or commendation; possessing merit'.

'Ultimately we did not find that the evidence supported an alternate finding that their respective service was sufficiently meritorious or devoted so as to meet the eligibility criteria for the CSM.

'Both men achieved what they could find the challenging circumstances. It was grim and daunting, but we essentially find that they fulfilled their duties as trained, as expected, and as a consequence of being detailed to do so. They persevered for an hour or so, as opposed to being 'devoted to duty. We therefore do not find that either of their respective actions reached the threshold for meritorious achievement or devotion to duty for a CSM.'

63. In *Cain and the Department of Defence (2017) DHAAT 21 (16 November 2017)*, the Tribunal reviewed the decision of the Department of Defence to not award the CSC or the CSM to Mr James Cain, the Leader of Hose Team 3 during the *Westralia* fire. The Tribunal recommended Mr Cain be awarded the CSC for his actions, and this recommendation was accepted.

'The Tribunal then turned to consider the actions of Mr Cain against the eligibility criteria for the Decorations, in particular if there was, in a non-warlike situation, 'outstanding devotion to duty or outstanding achievement in the application of exceptional skills, judgement or dedication' (for the CSC) or 'meritorious achievement or devotion to duty' (for the CSM).

'The Defence Honours and Awards Manual defines 'non-warlike situation' as 'a situation in which ADF service involves all service that has not been declared to be warlike, including declared non-warlike and hazardous and peacetime service.'

'The Tribunal had no hesitation in finding that Mr Cain displayed meritorious achievement or devotion to duty in the course of fighting the fire, thus satisfying the criteria for the CSM.'

64. The Tribunal also recommended that Defence review the eligibility for honours for other members of the ship's company involved in firefighting operations on *Westralia* on 5 May 1998, in particular, the leaders of Hose Teams 1 and 2. In May 2018,

the Minister for Defence Personnel recommended to the Governor-General that the other Hose Team leaders be awarded the CSC, and this recommendation was also accepted.

65. The Tribunal was not prepared, as was Brigadier Bornholt, to dismiss Sapper Dunn's actions as simply doing what was expected of him. He was directed to fight an extremely dangerous fire. Fire-fighting was a specialist skill recognised by specific Army training which he had not undertaken. While he was expected to obey lawful commands, it would also have been expected that he would not ordinarily be ordered to undertake perilous, specialist tasks requiring expertise that had not been provided to him by the Army. His position was thus distinguishable from that of the fire-fighters in Shingles and Manders.

66. Moreover, Sapper Dunn's rejection of the offer to retire from the scene and his determination to stay until the fire was completely extinguished appears to the Tribunal to meet the criterion of devotion to duty.

67. Lance Corporal Tresize was recognised by the MID for performance in what the evidence shows to have been an identical role. The MID was awarded for an act of bravery. While the MID cannot now be awarded to Sapper Dunn, his actions can similarly be viewed as an act of bravery and, as such, that is clearly relevant to the assessment of whether or not his actions constituted meritorious achievement.

68. Staff Sergeant Barber was recognised by the George Medal. The 1941 Royal Warrant for that award specified that it was for 'acts of great bravery'.⁴⁰ A subsequent UK War Office pamphlet stated that it was for 'an act of great heroism or gallantry in circumstances of special danger not in the face of the enemy'.⁴¹ While Staff Sergeant Barber's role on the day was different from that of Lance Corporal Tresize and Sapper Dunn, we do not accept Brigadier Bornholt's assertion that it was irrelevant. While making that assertion, Brigadier Bornholt would not give any reasons in support of his position. In the Tribunal's view, however, the fact that Staff Sergeant Barber was judged to meet the high eligibility criteria for the George Medal for actions that appear to be no more praiseworthy than those of Lance Corporal Tresize and Sapper Dunn adds support to the view that Sapper Dunn's actions can reasonably be viewed as reflecting meritorious achievement and devotion to duty.

69. Awarding of the CSM requires an exercise of discretion by the Governor-General on the recommendation of the Minister. The Regulations do not confer an entitlement to the award where the eligibility criteria are met. There may be countervailing reasons why other conduct of a person is so despicable that the integrity of the Defence honours and awards regime would be impugned by the grant of an honour or award.

⁴⁰ *The London Gazette*, No 35060, 31 January 1941.

⁴¹ War Office (MS3), *Pamphlet on Military Honours and Awards*, HMSO, London, July 1960.

70. As noted above, Sapper Dunn's service record discloses that he had been AWOL for various periods. He had been penalised for some of these absences; but the conviction for one of the more significant absences was quashed during the case review because of a technical oversight during the process. Critically, the conviction was quashed just nine days before the fire, and whether those circumstances provided any motivation for the chain of command at the time to withhold Sapper Dunn's nomination cannot be ascertained from the file, and the Tribunal makes no conjecture in that regard.

71. The Tribunal asked Brigadier Bornholt whether he considered that those absences were so serious as to constitute a countervailing reason why Sapper Dunn should not now be recognised by grant of the CSM. He said that in his view they should have no bearing on the matter. The Tribunal noted that they clearly were not seen as a reason for withholding the awards already made to Sapper Dunn, and sees no reason why they should now preclude the posthumous award of the CSM.

Tribunal Decision

72. In light of all of the above, the Tribunal has decided to recommend to the Minister to set aside the decision that Sapper Michael Dunn not be recommended for the Conspicuous Service Medal and for that decision to be substituted with a decision that Sapper Dunn be recommended for the Conspicuous Service Medal.