



Australian Government

Defence Honours and Awards Appeals Tribunal

Laughlin-Young and the Department of Defence [2023] DHAAT 14 (17 July 2023)

File Number(s) 2022/020

Re **Mr Chad Laughlin-Young**
Applicant

And **The Department of Defence**
Respondent

Tribunal Mr Stephen Skehill (Presiding Member)
Air Vice-Marshal Tracy Smart AO (Retd)
Commodore Vicki McConachie CSC RAN (Retd)

Hearing Dates 16 May and 13 July 2023

Attendance Mr Chad Laughlin-Young (applicant)

For the respondent:

Mrs Catherine Morris, Assistant Director, Current Recognition Team
on 16 May and 13 July 2023

Ms Cassandra Liplyn A/Assistant Director, Current Recognition Team
on 16 May 2023

Mr Anthony Reilly, Office of General Counsel, Defence Legal,
on 13 July 2023

DECISION

On 17 July 2023 the Tribunal decided to set aside the decision that Mr Laughlin-Young not be recommended for the Defence Long Service Medal and to substitute therefor a decision that Mr Laughlin-Young be recommended for the Defence Long Service Medal.

CATCHWORDS

DEFENCE AWARD – Defence Long Service Medal – eligibility criteria - qualifying service - period of at least 15 years – efficient service – requirements of Chief of Defence Force Determinations – definition of days served

LEGISLATION

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

Defence Long Service Medal Regulations 1998, Letters Patent, Commonwealth of Australia Gazette S352, dated 10 July 1998

Defence Long Service Medal Regulations 1998, Amendments of Letters Patent Commonwealth of Australian Gazette S160, dated 30 March 2000

Defence Long Service Medal Regulations, Directions by the Chief of the Defence Force dated 13 April 2000

Defence Long Service Medal Regulations, Letters Patent and Amending Regulations, Commonwealth of Australia Gazette No S2, dated 3 January 2002

Defence Long Service Medal Regulations - Determination by the Chief of the Defence Force dated 6 February 2013

Defence Long Service Medal Determination 2021, dated 16 March 2021

Defence Long Service Medal Regulations CDF Instrument of Delegation dated 23 September 2018

Defence Force Remuneration Tribunal Determination No. 2 2017, dated 30 March 2017

Introduction

1. The Applicant, Mr Chad Laughlin-Young, seeks review of a decision dated 1 April 2016 of Assessing Officer, Mrs Jennifer Roche, from the Directorate of Honours and Awards of the Department of Defence (the Directorate), to refuse to recommend him for the Defence Long Service Medal (DLSM) for his Army Reserve service.

Decision under review

2. On 2 February 2016, Mr Laughlin-Young submitted a paper application to the Directorate for an assessment of his eligibility for the DLSM. Mr Laughlin-Young submitted further applications and corresponded with the Directorate during 2017, 2018, 2020 and 2021 in relation to his eligibility for the DLSM.

3. On 1 April 2016, in response to the 2016 application, Mrs Roche advised Mr Laughlin-Young by email of a number of the eligibility criteria for the DLSM in respect of Army Reserve service. Mrs Roche's email indicated that in the 2014-2015 enlistment year he had not rendered the necessary amount of qualifying service, which would otherwise make him eligible for the award, and invited him to provide documentation in support of his claim for that particular year.¹

4. On 19 December 2016, following further correspondence with Mr Laughlin-Young, the Supervisor, Service Assessments and Awards, in the Directorate, Mr Michael Cannon, wrote to Mr Laughlin-Young advising that he had determined that Mr Laughlin-Young was not eligible for the award at that time but, if further information came to light, he could submit a new application.²

5. On 21 March 2018, in response to further correspondence from Mr Laughlin-Young, the Assessments Manager in the Directorate, Mrs Allison Augustine, wrote to Mr Laughlin-Young confirming previous advice that he had only rendered 14 of the 15 necessary years of qualifying service for the DLSM.³

6. On 15 September 2021, apparently in response to further correspondence with Mr Laughlin-Young, Mrs Augustine again advised Mr Laughlin-Young that he was not eligible for the DLSM, and advised him that he could make application to the Tribunal.⁴

7. On 20 September 2022, Mr Laughlin-Young made application to the Tribunal seeking review of Ms Roche's decision. On 11 and 13 October 2022, Mr Laughlin-Young provided the Tribunal with further information to be included into his application.⁵

Tribunal jurisdiction

8. 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

¹ Email from Mrs Roche to Mr Laughlin-Young dated 1 April 2016, included in Mr Laughlin-Young's Application for Review to the Tribunal dated 20 September 2022

² Letter from Mr Cannon to Mr Laughlin-Young dated 19 December 2016

³ Letter from Mrs Augustine to Mr Laughlin-Young dated 21 March 2018

⁴ Email from Mrs Augustine to Mr Laughlin-Young dated 15 September 2021

⁵ Application to the Tribunal by Mr Laughlin-Young dated 20 September 2022

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 DLSM. Therefore, the Tribunal has jurisdiction to review decisions in relation to this award.

Mr Laughlin-Young's service

9. As set out in the Defence report, Mr Laughlin-Young's service can be summarised as follows:

- a. Australian Army Reserve from 16 December 2000 to 24 December 2016 (last Australian Army Reserve parade date 15 March 2016);
- b. Australian Army Inactive Reserve from 24 December 2016 to 3 February 2018; and
- c. Standby Reserve from 13 February 2018 to present.⁶

10. Mr Laughlin-Young has been awarded the Australian Defence Medal for his service.

Eligibility Criteria for the Defence Long Service Medal

Letters Patent and Regulations

11. The DLSM was instituted by Letters Patent issued on 26 May 1998 for the purpose of '*according recognition to persons who render long and efficient service as members of the Defence Force*'⁷ Regulations 3 and 5, as amended, made under the Letters Patent relevantly provide:

'Award of the Medal

Regulation 3 The Medal may be awarded to a member, or former member, of the Defence Force (the member) who:

- (a) *has given:*
 - (i) *qualifying service for a period of at least 15 years or periods that, in total, amount to at least 15 years;*

Qualifying service

Regulation 5 Service in the Defence Force is qualifying service if:

- (a) *where the service was given as a member of the Permanent Forces or the Reserve Forces – the Member:*
 - (i) *fulfilled the requirements specified in directions given by the Chief of the Defence Force; and*

⁶ Letter from Mr Ian Heldon, Director DH&A dated 1 July 2022 to Tribunal

⁷ *Defence Force Long Service Medal Letters Patent and Regulations, Commonwealth of Australia Gazette No S352*, dated 10 July 1998

(ii) gave efficient service; or⁸
[...]

Amendments to the Regulations in 2000 inserted the following definition of efficient service into Regulation 2:

‘efficient service means service determined to be efficient service by the Chief of the Defence Force’⁹

CDF Determinations

12. *2021 CDF Determination* - On 16 March 2021 the Chief of the Defence Force (CDF) issued a Determination relevant to Mr Laughlin-Young’s case which stipulated that in order to qualify for the DLSM, the minimum period of annual qualifying service for all members of the ADF from 20 April 2000 would be 20 days.¹⁰ The 2021 CDF Determination expressly revoked a previous CDF Determination dated 6 February 2013.

13. *2013 CDF Determination* - While the 2021 and 2013 Determinations differ in a number of aspects - none of which are central to Mr Laughlin-Young’s case - both Determinations stipulate that a minimum of 20 days service per year is required for all ADF members such as Mr Laughlin-Young to qualify for the DLSM.¹¹

14. *2000 CDF Determination* - On 13 April 2000 the CDF issued a Determination which provided:

*‘...1b. On and after 20 April 2000 a member will undertake qualifying service for the purpose of the Defence Long Service Medal if the member undertakes a minimum of 20 days service per year **calculated at the anniversary of the enlistment or appointment of the member** [emphasis added].’¹²*

Mr Laughlin-Young’s application to the Tribunal

15. In his application to the Tribunal Mr Laughlin-Young stated that:

‘Enlistment date 16 Dec 2000, Last parade night 15 Mar 2016. I am not aware of the date of my transfer from Active Reserve to Stand-By Reserves but my active service rendered is well over 15 years.

‘DHOAS¹³ has recognized 15 years compliant service. I completed the 8 years qualifying service for a DHOAS home loan subsidy and a further 7 years for 7 years of loan subsidy payments. This is another government agency recognising my 15 years of compliant service (20 days or more within a financial year). DHOAS documents with first and last payment dates provided.

⁸ Ibid, as amended by *Defence Long Service Medal, Letters Patent and Amending Regulations, Commonwealth of Australia Gazette No S160*, 30 March 2000, and *Defence Long Service Medal Letters Patent and Amending Regulations, Commonwealth of Australia Gazette No S2* dated 3 January 2002

⁹ *Defence Long Service Medal, Letters Patent and Amending Regulations, Commonwealth of Australia Gazette No S160*, 30 March 2000

¹⁰ *Defence Long Service Medal Determination 2021*, dated 16 March 2021

¹¹ *Defence Long Service Medal Regulations, Determination by the Chief of the Defence Force* dated 6 February 2013

¹² *Defence Long Service Medal Regulations, Directions by the Chief of the Defence Force* dated 13 April 2000

¹³ The Defence Home Ownership Assistance Scheme

'Philanthropic duties with RSL NSW. I joined an RSL Sub-Branch in 2008 and have held many Executive positions and volunteered so much time. In the years 2015 and 2016 I was Vice President and Social Officer, these were years I was deemed not to of rendered 20 days service. I have listed the hours I spent on RSL duties for 2015 and 2016, evidence attached with email.'

16. Mr Laughlin-Young further stated:

'Initial application for DLSM. I applied for the DLSM on my last parade night 15 Mar 16, I received a reply on 01 Apr 16 to which I responded with further evidence on 09 Apr 16. After several calls and emails I finally received a posted response in late Dec 16. This delay of 9 months meant that I had no chance of making up any days I might have been short of and was not of a "timely manner" as the DH and A website suggests. Emails provided.

Compassionate grounds. In my 15 years service I lost my only sibling, my brother to suicide and I wasn't there for him as much as I could have been due to my service. We lost our only son Cooper to meningitis and of his 12 months of healthy life I was away on Exercise Tasman Exchange, an RRF course and so many more days with the Army.

Service, Awards and Ops. RCB 2002-2003, Ex Tasman Exchange 2004, responded to Call-Out Vic Fire Assist 3 times (not used), responded to and concentrated for Sydney Fire Assist Call- Out. Company dedication award, Soldier of the Year Award. Op Deluge 2007, Op Wagga Flood Assist 2012.

*Please consider the above and the attached evidence for grounds to deem me eligible to receive the DLSM. I promised my family I would leave after 15 years service to spend more time with them. I enjoyed my time with the Army and I would be straight back there if required.'*¹⁴

17. On 11 October 2022, Mr Laughlin-Young provided by email further details and documents to assist the Tribunal in its deliberations.

'Please find attached further evidence of-

- My positions at my RSL Sub-Branch during the years of 2015-16.*
- My deployment to RCB & on Op Deluge.*
- Our sons short life and the impact that his struggle had on us.*
- My character, with voluntary service with VMRNSW after transfer.'*¹⁵

18. On 13 October 2022, Mr Laughlin-Young provided by email a picture of his *'Service awards (Coy Soldier of the Year 2010, Officer Commanding Award 2002).'*

Defence Report

19. The Defence report confirmed that following Mr Laughlin-Young's application to the Tribunal, the Directorate re-assessed his eligibility for the DLSM. The re-assessment was conducted by a senior assessor and endorsed by the Assistant Director Current Recognition, and supported the original decision to not recommend him for the DLSM.¹⁶

¹⁴ Application to the Tribunal by Mr Laughlin-Young

¹⁵ Email to Tribunal from Mr Laughlin-Young dated 11 October 2022

¹⁶ Letter from Mr Heldon to the Tribunal, dated 1 July 2022

20. Defence stated that it had reviewed Mr Laughlin-Young's service against the DLSM Regulations and Determinations outlined above. Defence confirmed that he enlisted in the Australian Army Reserve in 2000, ceased attendance days in 2016, and transferred to Inactive Reserve as of 2018. Defence also confirmed that Mr Laughlin-Young was still enlisted in the Standby Reserve.

21. Defence stated that it conducted assessments in responses to Mr Laughlin-Young's requests in 2016, 2018 and 2021. Each review resulted in the same outcome, confirming that he was not eligible for the DLSM. This was communicated to Mr Laughlin-Young by email in 2016 and through a Statement of Reasons Letter in 2018 and 2021, and included Defence's assessment that set out his years of eligible service.

22. The most recent assessment (prior to Tribunal review), conducted in 2021, included assessments based on both enlistment year and financial year. This was undertaken as Mr Laughlin-Young had previously disputed the definition of a 'year' based on enlistment year for Defence purposes. Defence concluded that the financial year assessment similarly confirmed that he had not fulfilled the service obligation required for the award of the DLSM.¹⁷

23. Defence provided the Tribunal with the following table showing the relevant periods of Mr Laughlin-Young's service for the DLSM.

Start 12 Month	End 12 Month	Status	Days Required	Days Served	Qualifying Year	Aggregate Year	Remarks
16/12/2000	15/12/2001	ARES	20	>20	Yes	1	102.83
16/12/2001	15/12/2002	ARES	20	>20	Yes	2	CFTS
16/12/2002	15/12/2003	ARES	20	>20	Yes	3	CFTS
16/12/2003	15/12/2004	ARES	20	>20	Yes	4	36.5
16/12/2004	15/12/2005	ARES	20	>20	Yes	5	33.33
16/12/2005	15/12/2006	ARES	20	>20	Yes	6	28.5
16/12/2006	15/12/2007	ARES	20	>20	Yes	7	37.5
16/12/2007	15/12/2008	ARES	20	>20	Yes	8	33
16/12/2008	15/12/2009	ARES	20	>20	Yes	9	41.33
16/12/2009	15/12/2010	ARES	20	>20	Yes	10	47
16/12/2010	15/12/2011	ARES	20	>20	Yes	11	27.5
16/12/2011	15/12/2012	ARES	20	>20	Yes	12	27
16/12/2012	15/12/2013	ARES	20	>20	Yes	13	28.5
16/12/2013	15/12/2014	ARES	20	>20	Yes	14	35.5
16/12/2014	15/12/2015	ARES	20	13.5	No		13.5
16/12/2015	15/12/2016	ARES	20	2	No		2
16/12/2016	15/12/2017	ARES	20	0	No		SERCAT 2- 0 days
16/12/2017	15/12/2018	ARES	20	0	No		SERCAT 3- 0 days
16/12/2018	15/12/2019	ARES	20	0	No		
16/12/2019	15/12/2020	ARES	20	0	No		
16/12/2020	15/12/2021	ARES	20	0	No		
16/12/2021	15/12/2022	ARES	20	0			Current enlistment year

¹⁷ Ibid

24. In its report Defence provided the following responses, laid out in bold text, to Mr Laughlin-Young's statement of claims:

- 1) *"Enlistment date 16 Dec 2000, Last parade night 15 Mar 2016. I am not aware of the date of my transfer from Active Reserve to Stand-by Reserves but my active service rendered is well over 15 years. Service record with enlistment date attached with email."*

Lance Corporal Laughlin-Young's period of enlistment is acknowledged, however for the period of 16/12/2014 to 15/12/2015 only 13.5 days were rendered making this a non-qualifying year for medal purposes as per the DLSP Regulations.

- 2) *"DHOAS has recognised 15 years compliant service. I completed the 8 years qualifying service for a DHOAS home loan subsidy and a further 7 years for 7 years of loan subsidy payments. This is another government agency recognising my 15 years of compliant service (20 days or more within a financial year). DHOAS documents with first and last payment dates provided."*

The Defence Home Ownership Scheme (DHOAS) provides for current member to be exempt from effective service under 'exceptional circumstances'. DHOAS has a Fact Sheet – Exemption from Effective Service, which states "If you are unable to serve due to exceptional circumstances, the Delegate can consider, and if applicable, deem your service effective for DHOAS purposes". This is allowed under Section 17 of the Defence Home Ownership Assistance Scheme Regulation 2018. Unlike the DHOAS Scheme, the DLSP Regulations do not have a delegate authority to allow exceptional circumstances to be considered under the eligibility criteria. Lance Corporal Laughlin-Young has previously acknowledged that he has used the exceptional circumstances clause for the purposes of DHOAS continuity in the periods where he has not rendered 20 days of service within a financial year as required by DHOAS.

There is no correlation between being accepted for 'exceptional circumstances' for DHOAS and the DLSP Regulations. The DLSP Regulations have no provision for similar consideration to allow the award of the medal under 'exceptional circumstances'.

- 3) *"Philanthropic duties with RSL NSW. I joined an RSL Sub-Branch in 2008 and have held many Executive positions and volunteered so much time. In the years 2015 and 2016 I was Vice President and Social Officer, these were years I was deemed not to have rendered 20 days service. I have listed the hours I spent on RSL duties for 2015 and 2016, evidence attached with email."*

Lance Corporal Laughlin-Young's volunteer contributions to RSL NSW are acknowledged and commended. The Philanthropic Manual, dated 3 December 2013, lists 6 accredited philanthropic organisations and defines them as being characterised by philanthropy, benevolence and demonstrated concern for humankind in providing practical beneficence to members of the ADF. Regarding the Returned and Services League of Australia the only recognised associated philanthropic duty is the Australian Forces Overseas Fund which organise and dispatch care packages to deployed Australian Defence Force members on a biannual basis.

During the 2018 re-assessment the Assessor Manager had Lance Corporal Laughlin-Young's RSL contributions in this capacity queried through ADF Support Service and responded as below via email.¹⁸

"I have reviewed the reference in relation to the RSL Care Packages. For clarification under PHILOMAN – although the RSL Australian Forces Overseas Fund is a Defence accredited organisation, it does not have any Defence accredited Philanthropic Representatives. ADF Support Services has no record of 82233492 Chad Laughlin-Young ever being a Defence accredited Philanthropic Representative (as defined in PHILOMAN).The period in which you were seeking recognition for the RSL care packages is during 2012 and 2013, these years have been considered qualifying years already for the Defence Long Service Medal (DLSM)."

Whilst Lance Corporal Laughlin-Young has been involved for numerous years with the RSL NSW, these contributions are not considered as eligible service for the DLSM.

- 4) *"Initial application for DLSM. I applied for the DLSM on my last parade night 15 Mar 16, I received a reply on 01 April 16 to which I responded with further evidence on 09 Apr 16. After several calls and emails I finally received a posted response in late Dec 16. This delay of 9 months meant that I had no chance of making up any days I might have been short of and was not a "timely manner" as the DH and A website suggests. Emails provided."*

The time associated with the original DLSM application lodged by Lance Corporal Laughlin-Young has been acknowledged and it is regrettable that the original assessment timeframe was lengthy. The completion of additional reserve service is a matter for the member and the service.

- 5) *"Compassionate grounds. In my 15 years I lost my only sibling, my brother to suicide and I wasn't there for him as much as I could have been due to my service. We lost our only son Cooper to meningitis and of his 12 months of healthy life I was away on Exercise Tasman Exchange, an RRF course and so many more days with the Army."*

Defence acknowledges the circumstances described and that they have significant impact on Lance Corporal Laughlin-Young and his family, however the DLSM regulations do not have a provision for the award to be granted on compassionate grounds nor an exemption clause which would allow Lance Corporal Laughlin-Young to receive the DLSM.

- 6) *"Service, Awards and Ops. RCB 2002-2003, Ex Tasman Exchange 2004, responded to Call-Out Vic Fire Assist 3 times (not used), responded to and concentrated for Sydney Fire Assist Call-Out. Company dedication award, Soldier of the Year Award. Op Deluge 2007, Op Wagga Flood Assist 2012."*

Defence acknowledge that Lance Corporal Laughlin-Young was dedicated and professional soldier during his service with the Australian Army Reserves, however job efficiency or performance is not a criteria (sic) for the award of the DLSM.

¹⁸ Ibid

Mr Laughlin-Young's comments on the Defence report

25. On 16 November 2022, Mr Laughlin-Young was provided with a copy of the Defence Report and asked to provide his comments on that report. On 29 November 2022, Mr Laughlin-Young provided his comments, including:

"- I have never challenged the 13.5 days in 2015 as I have never been able to acquire my service record for that period of time. I have previously stated that AIRN Compliance was the main annual focus.

- The 9 month delay in response from DH & A has been acknowledged and is regrettable but still not explained and possibly not corrected so it doesn't happen again.

I would also like to add -

- The last approx 3 years of my service was based out of Sutherland Depot 13 Rawsons Ave Loftus. It was advised and recommended by my superiors to move to other units within the battalion once I was a LCPL. I transferred to Signals Platoon at Sutherland, a 50 minute each way commute effectively turning a 3hr parade night to a 5hr parade night. If this time can be taken into account as I would have been in uniform traveling to my place of work.

*I appreciate the opportunity to respond and the time all have spent on this matter."*¹⁹

26. On 30 January 2023, Mr Laughlin-Young was provided with copies of his member attendance and pay records, which had been omitted from the documents accompanying the Defence Report. On 7 February 2023, Mr Laughlin-Young provided his comments.

"The only comments I have to make are

There are no Start Time or End Time on several of the dates of 2015 which could affect hours and therefore days served, and on the 24/07/2015 Start Time 19:00 End Time is only a 3 hour (1/2 day) not a 5 hour (full day).

*I myself didn't keep records for this period so I accept the records provided. I appreciate the opportunity to respond and the time all have spent on this matter."*²⁰

Tribunal Consideration

27. The Tribunal held an initial hearing on 16 May 2023. On that occasion discussion between the Tribunal, Mr Laughlin-Young and Defence focussed on a number of detailed issues concerning the start and end dates for service years, the interpretation of Mr Laughlin-Young's attendance and pay records, and the nature of the philanthropic service that he asked to have taken into consideration.

¹⁹ Email from Mr Laughlin-Young providing comments on Defence report dated 29 November 2022

²⁰ Mr Laughlin-Young's comments on further Defence documents dated 7 February 2023

28. At the conclusion of that hearing, the Tribunal asked Defence to provide a further submission in relation to various issues, and asked Mr Laughlin-Young to provide whatever further detail he could find in relation to his claimed philanthropic service. At Defence's request, the Tribunal subsequently provided it with a written list of the issues on which it sought a further submission and copied that correspondence to Mr Laughlin-Young for his information.

29. Mr Laughlin-Young wrote to the Tribunal on 21 May 2023 providing additional detail as to his claimed philanthropic service.

30. Defence provided a further submission in response to the questions asked of it on 20 June 2023. However, the Tribunal was of the opinion that that submission failed to address its questions in so far as they related to how days of service were to be identified and calculated under the 2021 CDF Determination. It thus wrote to both Defence and Mr Laughlin-Young indicating that it wished to reconvene the hearing to more specifically consider that matter.

31. In advance of the reconvened hearing on 13 July 2023 Defence provided a further submission on 4 July 2023 that did more specifically address the Tribunal's questions on that matter, and the Tribunal copied that submission to Mr Laughlin-Young. The Tribunal records its appreciation of this further submission by Defence as it served to expedite and better focus discussion at the reconvened hearing.

32. In the following passages the Tribunal addresses the various issues raised in the course of the two hearings.

Definition of 'year'

33. The DLSM Regulations require that service be provided over a period of 15 years but do not define the dates on which each such year commences and ends. The Regulations do however empower the CDF to give *directions* that must be fulfilled by a member seeking award of the DLSM and also to *determine* what service is to be efficient service for the purposes of the Regulations.

34. It appears to be in reliance on these powers that the 2000 CDF Determination (which it seems has not since been expressly revoked) stated that the requirement of 20 days service per year was to be *calculated at the anniversary of the enlistment or appointment of the member*.

35. Notwithstanding that, in its correspondence with Mr Laughlin-Young Defence did provide an assessment of his service on a financial year basis in addition to the enlistment year basis it had used in reaching its decision. And, at the request of the Tribunal, Defence also provided an assessment on a calendar year basis.

36. No matter which basis was used, Defence's assessment was that Mr Laughlin-Young had still failed to complete 15 years of qualifying service during each of which he had undertaken 20 days of service.

37. In the net result it has not been necessary for the Tribunal to reach a final concluded view on whether or not calculation on an enlistment year basis is the only available option in assessing eligibility for the DLSM.

Philanthropic service

38. The DLSM Regulations provide that *service given as a member of a philanthropic organisation who provides philanthropic service to the Defence Force* counts as qualifying service towards DLSM eligibility. However, the Regulations also provide that a philanthropic organisation is defined as *an organisation determined to be a philanthropic organisation by the Chief of the Defence Force or a delegate of the Chief of the Defence Force*.

39. In an endeavour to make up the deficit of 6.5 days claimed by Defence in respect of his 15th enlistment year, Mr Laughlin-Young provided some detail of the time he spent as a member of the executive of his local branch of the Returned and Services League of Australia (RSL). However, it appeared that this time was generally provided for the benefit of members of the RSL and thus was not service *to the Defence Force* and thereby not able to be counted as qualifying service.

40. Mr Laughlin-Young did however state that a part of his RSL duties involved procuring and processing ‘care packages’ for serving members of the Defence Force. As that could arguably be viewed as *philanthropic service to the Defence Force*, the Tribunal asked him to provide whatever detail he could as to the time involved. In the net result, the only detail Mr Laughlin-Young was able to provide did not provide sufficient evidence that he would have spent 6.5 days or more on this activity.

41. Moreover, to count as qualifying service for the DLSM, such philanthropic service needed to be as a member of an organisation determined by the CDF to be a *philanthropic organisation* and neither the RSL itself nor Mr Laughlin-Young’s sub-branch of it has been so determined.

42. In these circumstances, even if Mr Laughlin-Young had spent 6.5 days on the care package activity, this would not have been counted towards his qualifying service (although the Tribunal could have possibly recommended that his sub-branch should be determined by the CDF to be a philanthropic organisation).

43. Thus, while Mr Laughlin-Young’s service to the RSL and indirectly through it to the Defence Force is indeed commendable, it does not assist in his quest to secure award of the DLSM.

Compassionate issues

44. It is apparent that Mr Laughlin-Young curtailed his Reserve service because of the distressing and tragic circumstances surrounding the passing of his brother and infant son, and the need for him to devote more time in support of his family. That he did so is completely understandable.

45. However, section 110VB(6) of the Act very specifically provides that *In reviewing a reviewable decision, the Tribunal is bound by the eligibility criteria that governed the making of the reviewable decision*.

46. In contrast to the Regulations governing award of the Australian Defence Medal, the DLSM Regulations do not make any provision allowing relaxation of eligibility criteria in cases where service is curtailed for unforeseen or unavoidable reasons.

47. Accordingly, notwithstanding the sympathy it feels for those tragic circumstances, the Tribunal is unable to recommend the award of the DLSM to Mr Laughlin-Young if he does not meet the requirement of 20 days service in each of 15 years.

Definition of ‘day’

48. Mr Laughlin-Young clearly meets the requirement for 15 years’ service in the Reserve. Defence accepts that he met the requirement of 20 days qualifying service in 14 of those years. But it says that, in the 15th year, he provided service for only 13.5 days.

49. In accordance with its long-standing methodology, Defence arrived at this figure by reference to Mr Laughlin-Young’s pay records. Where he was paid the full daily rate of Defence salary in respect of any day, that was counted as one day towards the required total of 20. But, where he was paid at less than the full amount, that was treated as only a part of a day. Under that methodology, part-days were then aggregated and converted to full-day equivalents.

50. In the year in question (the enlistment year from 16 December 2014 to 15 December 2015), Mr Laughlin-Young was paid in respect of service on 23 days. Some of these were paid at the full daily rate; some were paid at half the daily rate. Defence aggregated these full-day and half-day figures to arrive at the figure of 13.5.

51. The question squarely raised for the Tribunal in those circumstances is whether or not that methodology was correct.

52. The 2021 CDF Determination relevantly states that the required 20 days of service is to comprise *Days remunerated at Defence rates of salary or sessional fees*. Accordingly, the Tribunal sought a submission from Defence on the question of whether this meant any day in respect of which any Defence salary was paid, regardless of its amount or proportion compared to the full daily rate.

53. Defence’s initial submission after the hearing of 16 May 2023 provided a great deal of information about how Reserve members are paid, and other issues raised by the Tribunal. In summary, a determination of the Defence Force Remuneration Tribunal (DFRT) provides that:

- the full daily rate of salary is paid for service of six hours or more on a day;
- half the daily rate is payable for service of three or more hours but less than six hours on a day;
- one third of the daily rate is payable for service of two or more hours but less than three hours on a day;
- for designated ‘specialist’ members, one sixth of the daily rate is payable for service of one hour but less than two hours on a day; and
- no remuneration is payable for lesser periods of service.

54. When the Tribunal indicated that it did not regard that submission as answering the question of whether a *day* was any day in respect of which any Defence salary was paid, regardless of its amount or proportion compared to the full daily rate, Defence provided an additional written submission which far more directly addressed

the Tribunal's question and it was that very helpful submission that was the focus of the reconvened hearing on 13 July 2023.

55. Paragraph eight of that submission stated that:

'Defence understands that the interpretation of 'days remunerated' is not an argument put forward by the applicant. Defence contends that the difference between a day (as opposed to a part day, or 'half-day'), of reserve service is widely understood.'

56. At the reconvened hearing Mr Reilly, correctly in the Tribunal's view, conceded that these points were irrelevant. The Tribunal's role was to ascertain what it considered to be the correct or preferable decision, and in so doing it is not confined by the arguments put forward by any party. And Australian jurisprudence abounds with decisions finding that widely understood matters have been misunderstood.

57. The Tribunal believed however that paragraphs six and seven of the Defence submission were far more salient. They stated:

'6. The Defence Force Remuneration Tribunal (DFRT) Determination No 2 of 2017 authorises the payment of salary to ADF members. It specifically notes at Part A.1.5 (Salary for Reserve Service) that 'Salary is payable to a member for each day or part day of Reserve service for which the member meets both of the following conditions.' This statement clearly differentiates between the terms 'day' and 'part day'. The CDF Determination is deliberately linked to the DFRT Determination through the use of the terms 'remunerated' and 'salary'.

7. Defence contends that if it were intended that part days of Reserve service were to be equivalent to days for the purpose of qualifying service for the Defence Long Service Medal, the CDF Determination would instead state 'days or part days remunerated at Defence rate of salary or sessional fees.'

58. The Tribunal considered that the argument that the omission of the words 'part day' from the CDF Determination meant that a day in respect of which less than the full daily rate is paid is not to be counted as a day is not correct. The argument seemed to be an application of the Latin maxim *expressio unius est exclusio alterius*, which is an accepted aid to the interpretation of statutory instruments. But it is only a guide and not necessarily determinative. Its application in the present circumstances would mean that part-days were to be disregarded in counting days for the purposes of the CDF Determination. That would mean that the established Defence methodology of aggregating part-days to arrive at a number of full-day equivalents would be unsustainable. Such an outcome would be completely inconsistent with the clearly stated purpose of the DLSP Letters Patent of *according recognition to persons who render long and efficient service* as it would afford recognition only to full-days of service and ignore part-days of service.

59. Moreover, the argument as stated by Defence referred only to the words 'remunerated' and 'salary' as linking the CDF Determination to the DFRT Determination. But this formulation ignores the words 'Defence rates' in the phrase used in the CDF Determination - *Days remunerated at Defence rates of salary or*

sessional fees. Clearly the CDF Determination mandates that inquiry must be made to ascertain Reserve remuneration in order to be able to apply the 20 day test, and that clearly leads to the DFRT Determination. But that Determination clearly sets out multiple *Defence rates of salary* – the full daily rate, the half-day rate, the one-third day rate, the one-sixth day rate – and each of these is applicable to time spent providing service on a day. Accordingly, it seemed to be an inescapable conclusion that any day in respect of which any one of these rates is paid is a *day remunerated at a Defence rate of salary*.

60. It was suggested by Defence that this conclusion would lead to inequitable outcomes. Certainly, for example, it could mean that a member who provided 60 hours of service over 20 days paid at the half-day rate would have a year of qualifying service, while a member who provided 114 hours of service over 19 days paid at the full daily rate would not.

61. But equally, using the DFRT Determination and aggregation as the metric for determining *days* of service produces apparently inequitable outcomes. For example, a (non-specialist) member who provided less than two hours of service on every day of the year would have none of their service recognised; and a member who served for exactly three hours per day would get the same recognition as a member who served for 5 hours and 59 minutes, despite the latter member providing almost double the service.

62. Neither the CDF Determination nor the DFRT Determination provide any requirement or authority for aggregation. The aggregation methodology long applied by Defence (and, it must be acknowledged, not previously challenged by the Tribunal), aggregates proportional rates of pay – it does not aggregate periods of service. And it is long periods of service, not amounts of remuneration, that are to be recognised by the DLSM.

63. The Tribunal understands that Defence does not hold historical attendance records for all Reserve service. If such existed, aggregation of time actually served to derive full day equivalents might be an equitable basis for implementing the DLSM Regulations through an amended CDF Determination. In the absence of such attendance records, it may be pragmatically necessary to rely on pay records even though they may potentially be a crude, imprecise and unsatisfactory metric of time actually spent, particularly insofar as ‘historic’ reserve service is concerned. That is a matter for consideration by the CDF in contemplating whether or not the present CDF Determination should now be amended.

64. But as things stand today, the Tribunal is bound to apply the eligibility criteria as currently in force. Those criteria do not mandate aggregation and they clearly reference multiple rates of Defence salary that are payable in respect of separate periods of 24 hours.

65. In these circumstances, the Tribunal has concluded that it has no legally available option but to conclude that during the 2014/2015 enlistment year Mr Laughlin-Young served for 23 days that were remunerated at Defence rates of salary and thereby completed a 15th year of qualifying service, thus meeting the eligibility criteria for the DLSM.

Tribunal Decision

66. In light of the above, the Tribunal has decided to set aside the decision that Mr Laughlin-Young not be recommended for the Defence Long Service Medal and to substitute therefor a decision that Mr Laughlin-Young be recommended for the Defence Long Service Medal.