



Australian Government

Defence Honours and Awards Appeals Tribunal

Dunn and the Department of Defence RE: Stevens [2023] DHAAT 16 (28 August 2023)

File Number 2022/012

Re **Mr Jason Dunn on behalf of
Chief Petty Officer Gavin Stevens**
Applicant

And **The Department of Defence**
Respondent

Tribunal Rear Admiral Allan du Toit AM, RAN (Retd) (Presiding Member)
Air Commodore Anthony Grady AM (Retd)
Ms Josephine Lumb

Hearing Date 22 March 2023

Appearances Mr Jason Dunn

Mr Gavin Stevens

Captain Scott Craig DSM RAN, witness for the applicant

The Hon. Paul Papalia CSC MLA, witness for the applicant

Air Vice-Marshal John Quaipe AM (Retd), Historical
Honours and Awards Reviewing Officer, Directorate of
Honours and Awards, Department of Defence, for the
respondent

Captain Etienne Mulder RAN, Explosive Ordnance Disposal
subject matter expert, for the respondent

DECISION

On 28 August 2023, the Tribunal decided to recommend to the Minister that he not accept the decision that Chief Petty Officer Gavin Stevens not be recommended for the Medal for Gallantry and that he decide instead that Chief Petty Officer Stevens be recommended for the Medal for Gallantry.

CATCHWORDS

DEFENCE HONOUR – Medal for Gallantry – Iraq 2003 – Operation FALCONER – Royal Australian Navy – bomb and mine clearance – explosive ordnance disposal – previously recognised distinguished service

LEGISLATION

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

Australian Gallantry Decorations

Commonwealth of Australia Gazette No. S25 dated 4 February 1991, *Gallantry Decorations Regulations*

Commonwealth of Australia Gazette No. S420 dated 6 November 1996, *Amendment of the Gallantry Decorations Regulations*

Introduction

1. The Applicant, Mr Jason Dunn, seeks review of a decision dated 18 January 2018 by the then Director Navy Honours and Awards, Commander Paul Fothergill RANR, to refuse to recommend Chief Petty Officer Gavin Stevens for the Medal for Gallantry for his service with the Royal Australian Navy during a mine disposal operation on the Al Faw Peninsula in Iraq during Operation FALCONER in 2003.¹ In particular, the service related to the neutralisation of a dangerous and sophisticated MK 36 DST Destructor mine.

Decision under review

2. On 12 July 2017, Mr Dunn, President of the RAN Clearance Divers Association of Western Australia, wrote to the Directorate of Honours and Awards in the Department of Defence (the Directorate) seeking a review of Defence honours and awards nominations for Chief Petty Officer Stevens, Mr Troy Miles and himself.² Mr Dunn's application stated that Chief Petty Officer Stevens had been nominated for the Medal for Gallantry (MG) and that the award had been downgraded to a Commendation for Distinguished Service. Mr Dunn argued that there had been a failure in due process and maladministration in this nomination process, as the nomination(s) had been downgraded without consultation with the nominating officer. Mr Dunn's application included documents obtained through a freedom of information request which illustrated how the awards had been downgraded and which he felt demonstrated that the nominating officer had not been consulted.³

3. On 18 January 2018, Commander Fothergill wrote to Mr Dunn advising him that the Navy Honours and Awards (NH&A) unit had conducted a review of the available documentation regarding the awards made to Chief Petty Officer Stevens, Mr Miles and Mr Dunn and could not find any failure in due process or maladministration. Commander Fothergill advised Mr Dunn that, as he (Dunn) had advised that he had no more documentation available to support the request, he could not make a recommendation to the Chief of Navy or Defence Honours and Awards to change the original awards.⁴

4. On 8 July 2022, Mr Dunn made application to the Tribunal seeking review of the above decision in respect of Chief Petty Officer Stevens. In doing so, among other submissions, he submitted that the decision to downgrade the level of recognition awarded to Chief Petty Officer Stevens was based on false information.⁵

¹ Application for review, 11 July 2022.

² Letter, Mr Jason Dunn to the Directorate of Honours and Awards, 12 July 2022.

³ Ibid.

⁴ Letter, Commander Fothergill to Mr Dunn, 18 January 2018.

⁵ Application for Review, 11 July 2022.

Tribunal jurisdiction

5. Pursuant to s110VB(2) of the *Defence Act 1903* the Tribunal has jurisdiction to review a reviewable decision if an application is properly made to the Tribunal. The term *reviewable decision* is defined in s110V(1) and includes a decision made by a person within the Department of Defence to refuse to recommend a person for a defence honour in response to an application.

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

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

Conduct of the review

8. In accordance with its Procedural Rules, on 15 July 2022 the Tribunal wrote to the Secretary of the Department of Defence informing him of Mr Dunn's application for review.⁶ The Tribunal requested a merits-based assessment of Chief Petty Officer Stevens' actions against the eligibility criteria for the MG and a report on the material questions of fact and reasons for the decision to refuse the original application. The Tribunal also requested that the Secretary provide copies of documentation relied upon in reaching the decision and any other relevant documents.

9. On 6 October 2022 the Director of Honours and Awards in the Department of Defence provided a submission on behalf of Defence.⁷ The Defence submission consisted of a report written by a Historical Honours and Awards Reviewing Officer, Air Vice-Marshal John Quaife AM (Retd), apparently made on the basis of material supplied in Mr Dunn's 2017 application to Defence and his more recent application to the Tribunal.

10. The Defence submission was forwarded to Mr Dunn for comment on 7 October 2022. Mr Dunn responded with his comments on 4 November 2022. The matter was heard by the Tribunal on 22 March 2023. At that hearing, the Tribunal

⁶ Letter, Tribunal to Secretary, DHAAT/OUT/2022/453, dated 15 July 2022.

⁷ Directorate of Honours and Awards letter to the Tribunal DH&A OUT/2022/12987 dated 6 October 2022.

requested further information from Defence, which was provided to the Tribunal on 18 May 2023.

Chief Petty Officer Stevens' service

11. Chief Petty Officer Stevens enlisted in the Royal Australian Navy on 1 May 1989 and served until his discharge/transfer to the Navy Active Reserve on 20 August 2007 where he continues to serve in this capacity. For his naval service, he has been awarded:

- a) the Commendation for Distinguished Service;
- b) the Meritorious Unit Citation;
- c) the Australian Active Service Medal with Clasps 'KUWAIT' 'IRAQ 2003' and 'ICAT';
- d) the Australian Service Medal with Clasp 'KUWAIT';
- e) the Iraq Medal;
- f) the Defence Long Service Medal;
- g) the Australian Defence Medal; and
- h) the Saudi Arabian Liberation of Kuwait Medal⁸.

12. As noted above, this review concerns Chief Petty Officer Stevens' service during Operation FALCONER in the Second Gulf War in Iraq in 2003, during which time he held the rank of Petty Officer, for which he was awarded the Commendation for Distinguished Service and his unit, Australian Clearance Diving Team 3 (AUSCDT 3), was awarded the Meritorious Unit Citation.

Operation FALCONER

13. On 19 March 2003 the United States began its second major war with Iraq, Operation IRAQI FREEDOM (OIF). Australia joined this US led coalition to enforce Iraq's compliance with its international obligations to disarm. Although chiefly a ground campaign, many of OIF's key objectives lay within the littorals of Iraq. Coalition naval forces, including those from Australia, played a key role, especially in securing key offshore oil terminals and the Al Faw peninsula and opening up the Khawr Abd Allah (KAA) waterway and vital port of Umm Qasr for humanitarian relief supplies. All of these objectives depended on naval forces providing amphibious, mine clearing, special operations, and naval gunfire support.⁹

14. Australia's contribution to the US led coalition occurred in two parts – a deployment and preparation phase known as Operation BASTILLE designed to add to the pressure on the Iraqi regime to reach a diplomatic solution, and an offensive operations phase known as Operation FALCONER. Both phases included a Special Forces Task Group comprising of troops from the Army's Special Air Services Regiment,

⁸ Service Record, Chief Petty Officer Stevens.

⁹ David B. Crist, *The Formation of a coalition of the willing and Operation Iraqi Freedom*, in Bruce A. Ellerman and S.C.M. Paine (Ed's), *Naval Coalition Warfare*, London: Routledge, 2008, p. 208.

the Commando Regiment and consequence management and helicopter contingents. The RAAF provided an enhanced F/A-18 Hornet squadron, together with maritime surveillance and C130 Hercules transport aircraft. The RAN provided a task group command element, an amphibious command ship and a surface combatant for tasking in the northern Arabian Gulf. This included providing naval gunfire support for coalition forces during the successful amphibious assault on the Al Faw peninsula to seize oil infrastructure and provide land flank protection in order to open the sea route to Umm Qasr. Navy clearance divers from AUSCDT 3 were active in and around Umm Qasr clearing sea mines, booby traps and explosive ordnance in the immediate aftermath of the amphibious assault and on the Al Faw peninsula during the subsequent ground offensive.¹⁰

Australian Clearance Diving Team 3

15. AUSCDT 3, under the command of then Lieutenant Commander Scott Craig RAN, moved north from its base in Kuwait to a staging area south of the Iraqi border on 18 March 2003. On 24 March, the team crossed the border into Iraq and established a base in the port of Umm Qasr where clearance operations began immediately. The port and its vicinity had to be meticulously checked for explosive ordnance and booby traps and a berth cleared ahead of the arrival of allied mine countermeasures vessels conducting clearance operations in the KAA leading up to Umm Qasr to allow humanitarian relief and military supplies to be unloaded. Although the port was by that time considered secure after fierce resistance from Iraqi forces for several days, the nearby town of Umm Qasr was not. Iraqi regular forces remained active, and most nights were punctuated by gunfire. After a successful clearance operation, the Australians moved on to other nearby sites where unpredictable ordnance still endangered the local populace.¹¹

16. With Umm Qasr finally cleared, AUSCDT 3 proceeded north to clear the port of Az Zubayr, staging forward on 11 April. Although the main focus of AUSCDT 3 was mine countermeasures, the Australian clearance divers were concurrently tasked to conduct a constant round of explosive ordnance disposal (EOD) patrols on the Al Faw peninsula. The marshy and sparsely populated Al Faw peninsula had virtually been shut down by Iraq since the end of the bitterly contested Iran-Iraq War in 1988. It was littered with munitions and had been a sensitive military area, with limited civilian access permitted prior to it being occupied by coalition forces. The ongoing threat from Iraqi forces and the threat of landmines and unpredictable ordnance meant that these tasks were completed in a tactical manner.¹²

¹⁰ Website, *Australia's Military Contribution to toward the Reconstruction of Iraq*, Department of Parliamentary Services, [Chapter 2 Australia's Military Contribution toward the Reconstruction of Iraq – Parliament of Australia \(aph.gov.au\)](#), accessed 22 December 2022.

¹¹ Greg Nash and David Stevens, *Australia's Navy in the Gulf*, Silverwater: Topmill, 2006, pp. 71-72.

¹² Ibid.

17. The operations on the Al Faw peninsula were focused on reducing risk to coalition forces and civilians and involved EOD clearance from the recently established main supply route down to the low water mark on the KAA waterway. Because this clearance was undertaken in a declared minefield, AUSCDT 3 personnel were required to crawl out to ordnance, or use metal detectors to avoid hazards.¹³ The Khawr Al Allah floodplain, running the length of the entire southern coastline of the Al Faw peninsula, was cleared by AUSCDT 3 by 28 April 2003. AUSCDT 3 departed Iraq on 12 May 2003.¹⁴

18. The scale of the team's achievements is reflected in some pertinent statistics. The divers covered 213 kilometres in two tactical lodgements, enduring over 30 missile alerts and seven days in chemical protective clothing. Another 2,100 kilometres were covered during 34 tactical ordnance disposal patrols, during which the team cleared unexplored ordnance from 135 square kilometres of Iraqi territory. Over 4,000 items of ordnance were located and destroyed in addition to hundreds of thousands of rounds of small arms ammunition. Mine countermeasures diving resulted in a total searched area of 2,550,000 square metres and AUSCDT 3 was the only unit to locate mines in an Iraqi port. For its efforts, AUSCDT 3 received the Meritorious Unit Citation.¹⁵

Mr Dunn's application to Defence

19. As noted above, on 12 July 2017 Mr Dunn wrote to Defence seeking a review of Defence honours and awards nominations for Chief Petty Officer Stevens, Mr Miles and himself. In respect of Chief Petty Officer Stevens, Mr Dunn noted that Chief Petty Officer Stevens had been nominated for the MG and that the award had been downgraded to a Commendation for Distinguished Service. Mr Dunn argued that there had been a failure in due process and maladministration in this nomination process as the nomination(s) had been downgraded without consultation with the nominating officer, Lieutenant Commander Craig. Mr Dunn's application included documents obtained through a freedom of information request which illustrated how the awards had been downgraded and which he felt demonstrated that his commanding officer had not been consulted.¹⁶

20. The FOI documents indicated that, on 3 June 2003, Lieutenant Commander Craig submitted a nomination for the MG through then Captain Peter Jones RAN, Commander Task. Group 633.1, who appears to have supported the nomination on 30 June 2003. The documents suggest that, on 10 August 2003, Rear Admiral Mark Bonser RAN,

¹³ Lieutenant Commander Scott Craig, 'Mine Countermeasures and Explosive Ordnance Disposal 1990-2003', in John Mortimer and David Stevens, *Presence, Power Projection and Sea Control: The RAN in the Gulf 1990-2009*, Canberra: Sea Power Centre – Australia, 2009, p.152.

¹⁴ Nash and Stevens, *Australia's Navy in the Gulf*, p. 72.

¹⁵ *Ibid.*

¹⁶ Letter, Mr Jason Dunn to the Directorate of Honours and Awards, 12 July 2022.

Commander Australian Theatre, submitted a final recommendation for the Commendation for Distinguished Service.¹⁷

21. Unfortunately, the FOI documents obtained by Mr Dunn do not provide any original citation supporting the award of the MG. Instead, they contain a redacted extended copy of the citation for the Commendation for Distinguished Service, which reads:

For distinguished performance of duties in warlike operations in neutralising a mine whilst in extremely hazardous circumstances on the Al Faw Peninsula, Iraq, during Operation Falconer.

Petty Officer Stevens distinguished himself in the performance of his duties when commanding a tactical Explosives Ordnance Disposal patrol from Australian Clearance Diving Team Three on 16 April 2003 in a sweep of the southern Al Faw Peninsula.

After clearing through a series of small defensive bunker systems, the patrol came alongside an expanse of more open flood plain. The area was littered with signs suggesting the presence of anti-personnel and anti-tank mines. Noting that the track itself had been recently travelled, the patrol continued forward, remaining in the vehicle tracks. An aerial bomb was detected and (redacted) and his second in Command (redacted) decided to conduct a standard approach and disposal of the bomb. Vehicles and personnel, with the exception of (redacted) were sent clear of the area to a range of over a kilometre (redacted) then occupied an observation post in a nearby bunker system, whilst (redacted) commenced an initial approach and reconnaissance. Due to the land mine threat (redacted) searched ahead of himself with a metal detector.

At a range of approximately 20 to 30 metres (redacted) observed through binoculars that the bomb was fitted with an arming and firing mechanism converting it from a dumb bomb to a sophisticated land and sea mine. The bomb's sensors enabled it to detect approaching targets through small changes to the local ambient magnetic field or through the slightest vibration caused by nearby movement. Any person approaching the bomb unaware of the danger might have detonated it merely through the magnetic signature of a watch, ring or even the metal eyelets of their boots. Similarly, were they to approach close enough to cause adequate seismic vibrations through the ground, they might also have caused the bomb to explode.

After consultation with (redacted) appreciating (sic) that for the safety of both Coalition forces and Iraqi civilians who came near the ordnance the mine would

¹⁷ Nomination for the award of the Commendation for Distinguished Service.

have to be destroyed. Petty Officer Stevens removed all metal that might contain magnetic signature from his person, including trousers (which had a metal zipper) and boots. Petty Officer Stevens commenced his final approach in only a shirt and carrying two 4-kilogram plastic explosive counter-mining charges. As he reached the extent of his previous approach, he was forced to commence probing his path by hand for anti-personnel mines as the metal detector he previously used contained metal and may have initiated the bomb.

Movement closer to the bomb had to be made in small steps with a specific wait time between moves to ensure that the movement sensor did not 'wake up' and fire the bomb. Once Petty Officer Stevens had placed the counter mining charges and very close range to the bomb, he retraced his steps. The countermining charges were fired and a large explosion witnessed. Subsequent inspection revealed a crater eight metres in diameter, commensurate with that expected of the type and size of the bomb.

Petty Officer Stevens distinguished himself in the performance of his duties in extremely hazardous conditions. His actions neutralised the threat of a bomb that posed a lethal threat to both Coalition Forces and Iraqi civilians who came near the ordnance. His actions greatly contributed to the success of Australian Clearance Diving Team Three's mission to clear the southern Al Faw of unexploded ordnance.¹⁸

Defence's refusal

22. On 18 January 2018, Commander Fothergill wrote to Mr Dunn advising him that he could not recommend to the Chief of Navy or the Directorate any change to the original awards set out in his application. Commander Fothergill gave the following reasons:

- a) *As with all nominations, the Command Honours and Awards Boards, Final Recommending Officers or Awarding Authorities may refuse, recommend or vary an award based on the citation (write-up) when adjudged against the criteria for each award. The applicable and current instructions at the time of those awards emphasise the need to pay strict attention to the criteria for each award;*
- b) *NH&A¹⁹ has consulted with Defence Honours and Awards and Joint Operations Command Honours and Awards with respect to current and past Honours and Award considerations and processes. NH&A could find no formal reference or statement that a Board, Final Recommending Officer or Awarding Authority was required to consult with the Nominating Officer before refusing, supporting or awarding an Honour or Award at a different level, be it higher or lower, to that*

¹⁸ Citation for the award of the Commendation for Distinguished Service.

¹⁹ Navy Honours and Awards.

recommended by the Nominating Officer. If a nomination is recommended by the higher authority for reconsideration for a subsequent list, the guidelines did require that the originator not only be informed, but that they are also required to be involved in the re-submittal process. The current nomination form or regulations do not mandate that an explanation be given for downgrading, upgrading or refusing an award, however in order to meet the principles of administrative law and procedural fairness, where appropriate, current decisions with respect to consideration outcomes are recorded and the Nominating Officer informed;

- c) *NH&A has conducted a review of the available documentation with respect to the awards made to CPOCD Stevens, LSCD Miles or (sic) LSCD Dunn and cannot identify any failure in due process or maladministration. Additionally at Reference D,²⁰ you advised that you had no more documentation available to support your request.²¹*

Mr Dunn's application to the Tribunal

23. In his application to the Tribunal Mr Dunn claimed that, at the time the nomination for the MG to Chief Petty Officer Stevens was being staffed in Australia, a senior Mine Warfare and Clearance Diving Officer, Captain John Griffith DSC RAN, made it known that he did not believe that the munition Chief Petty Officer Stevens neutralised was in fact a DST Destructor mine. Mr Dunn asserted that Captain Griffith then advised Rear Admiral Bonser that, because the munition could not have been of this type, the award of the MG was not warranted and that an award at a lesser level was ultimately substituted prior to the nomination being finalised for Rear Admiral Bonser's signature. Mr Dunn stated that he sought review in the Tribunal on the basis that the nomination was downgraded on the influence of an officer who incorrectly did not believe the accounts from the field, and with a view to Chief Petty Officer Stevens being awarded the MG.²²

24. Mr Dunn's application was supported by an excerpt from the book *All in the Line of Duty: Honours and Awards to the Royal Australian Navy's Clearance Diving Branch 1951-2018*, which added further detail beyond that set out in the citation for Chief Petty Officer Stevens' Commendation for Distinguished Service, including that the mine was equipped with an acoustic trigger (as well as a magnetic and seismic trigger):

"On April 18th, an eight-man tactical EOD patrol led by Petty Officer Gavin Stevens departed Khawr Az Zubayr in two land rovers, heading south towards the Main Supply Route opposite Umm Qasr. Tagging along with the patrol was AUSCDT3's Executive

²⁰ An email exchange of 10/11 November 2017 between Commander Fothergill and Mr Dunn. Commander Fothergill has since deleted these documents, but may be available through Mr Dunn.

²¹ Letter, Commander Fothergill to Mr Dunn, 18 January 2018.

²² Statement of Reasons...Application for Review.

Officer, Lieutenant Commander Paul Papalia, who was getting a spell out of headquarters.

After a brief communication check, the team proceeded to sweep the tracks and roads between the Main Supply Route and the ocean. Shortly into the patrol, the team came across a discarded 84mm Manpad (anti-tank weapon) which was destroyed before they headed east along the shore road.

Not far from a sunken dredger, Able Seaman John Jarvis who was riding as a lookout in the back of one of the land rovers tapped on the roof. He had seen something out of the ordinary in the distance. Stevens stopped the patrol and using his binoculars, saw what appeared to be a Mark 82, 500lb (200kg) General Purpose Bomb resting on the mud flat. The patrol set up a defensive perimeter along the road, before the demolition equipment was set up. Lieutenant Commander Papalia then dropped off a sentry team to the west at a safe distance, before setting up a similar team to the east. The patrol's second-in-command, Petty Officer Troy Pudney set up an observation post in a disused defensive bunker a couple of hundred metres away from the bomb.

The position of the bomb was in between two berms, surrounded with low dirt mounds, salt marsh scrub and rusty barbed wire. An added worry was the number of old cardboard boxes full of Valmara 69 anti-personnel landmine parts scattered around the scene (CDT3 had disposed of a number of these landmines in Kuwait during its clearance operations in 1991). This area had been in the middle of the seesawing battles during the Iraq-Iraq War in the 1980's, changing hands numerous times.

It was decided against walking in and out too many times in this environment, so once in and once out was the call. Petty Officer Stevens grabbed a 25-pound demolition charge and the metal detector, however this proved pointless as the ground was so heavily contaminated with fragmentation pieces. Stevens put the detector down and very carefully made his approach. Petty Officer Pudney meantime was watching and recording the events as they unfolded. Whilst recording Stevens' movements, he looked up to see him briskly walking out. This was not planned and Pudney immediately knew something was amiss.

Stevens reported that once closer he could see things about the bomb that were obscured from the Teams position at the road. He asked Pudney what was the worst case scenario for a Mark 82, to which he replied "Easy, it's a DST, but they are not on the ORBAT." (Order of Battle – ie this piece of ordnance should not have been there!!). Once Stevens had gotten close enough, he was able to see the tell-tale indicators of a DST (1) – Alligator Skin, Silver Tape, Mark 32 arming device, Mark 42 firing mechanism and golden cable well plug. The Mark 82 General Purpose Bomb had been turned into a Mark 36 Destructor Sea Mine. Apparently these were not being used by the US Military in Iraq, however Stevens had his camera on him and took a few photos while far enough out as evidence. DST is short for Destructor; an 80 Series

bomb with a mine kit installed. This one had acoustic, magnetic and seismic devices attached, meaning that any noise or vibrations could detonate the bomb. Worse still because of the magnetic device attached, something as small as the eyelet on a boot could trigger the mechanism.

This scenario was ironic for Stevens and Pudney. Whilst on their advanced EOD course, the DST scenario was put into barbed wire for the added level of complexity. So here in Iraq was a DST in the middle of a potential minefield, surrounded with barbed wire. It was almost like the EOD Staff from HMAS Penguin had set up the whole scene.

After a quick discussion it was decided that the original plan was still the best one. Without hesitation, Stevens stripped down to his jocks and Desert Cam shirt and picked up the demolition pack. He slowly inched his way forward passing by a live “Jumping Jack” anti-personnel mine and climbing over a barbed wire barrier. He finally made it to the mine and carefully placed the two packs of explosive charge alongside the DST. Slowly he unrolled the detonating cord out to the safe distance (about 30 metres) where an electrical detonator circuit was pre-set up. All of his training was now coming into play – noise and movement discipline, take your time as there is no need to rush and step in your old foot prints.

After about 30 minutes, everything was ready and Stevens and Pudney climbed into the remaining land rover and headed off to the eastern sentry position. Once there Stevens handed the Mini-RABS (radio-controlled firing system) to Able Seaman Ken Walker who put an end to the menace. This was the first time that this variety of mine had been successfully destroyed in operational conditions. After clearing the site, the team headed off to finish sweeping their area of operations. The majority of the details of this patrol was supplied by POCD Troy Pudney.

...

Petty Officer Gavin Stevens had originally been recommended for the Medal for Gallantry. This would have been the first to the Royal Australian Navy, but for some reason the recommendation was downgraded to a Commendation for Distinguished Service...It is interesting to note from a historical point of view, that the Render Mine Safe Officers of the Second World War were awarded the George Medal for similar actions.”²³

25. Helpfully, the book includes photos of the DST mine surrounded by barbed wire, and of Chief Petty Officer Stevens walking to the mine with the explosive pack used to detonate the device.

²³ Application for Review.

26. Mr Dunn's application to the Tribunal included an account from Mr Pudney which was broadly consistent with that set out above, together with correspondence from Mr Papalia and Chief Petty Officer Stevens regarding the handling of the nomination, again to the effect that Captain Griffith had advised Rear Admiral Bonser to downgrade the nomination on the basis that the munition neutralised by Chief Petty Officer Stevens could not have been a DST mine. Mr Dunn also included an email from Mr Wayne Shoer, a retired Australian Army Warrant Officer Class One Explosive Ordnance Technician. Mr Schoer's email provided further information about the description, purpose and use of DST mines and based on the evidence, including specific US Navy DST colour coding and features, offered the opinion that the mine in the photographs was in fact a DST mine.²⁴

Destructor mines

27. Destructor mines were developed by the US Navy during the Vietnam War. These were unguided, low-drag Mark 80-series general purpose aircraft bombs converted to sophisticated influence mines by the addition of mine-type arming, detection and filling systems. They differed from conventional sea mines in that they could be used against both land and sea targets. The Mark 36, 40 and 41 Destructors were respectively converted Mark 82 (500 lbs), Mark 83 (1,000 lbs) and Mark 84 (2,000 lbs) bombs. Arming, detection and firing were common to all three types.²⁵

28. The modular modification kit contained an arming device, an explosive booster, acoustic/magnetic/seismic-influence fuse and firing mechanisms and associated hardware. Once laid, the fuse was automatically 'tuned' to the local magnetic and seismic background. Any changes in that background could cause the weapon to fire. When dropped on land, they buried themselves in the ground on impact, ready to be actuated by military equipment, motor vehicles, personnel and low flying helicopters. When dropped in rivers, canals, channels or harbours, in up to 91 metres water depth, they would lie on the bottom ready to be actuated by a variety of vessels including warships, freighters, coastal ships and small craft.²⁶ At the end of the Vietnam War DST's were stockpiled and were used on one subsequent mission in Iraq during Operation DESERT STORM in 1991, before being progressively withdrawn from service and replaced by the current Quickstrike series of US shallow-water, aircraft-laid mines.²⁷

Employment of Destructor Mines in Iraq

29. According to the Pentagon's official report on its Conduct of the Persian Gulf War, an aerial mining operation was conducted on 18 January 1991, the second day of

²⁴ Application for Review.

²⁵ Website, United States of America - Mines, http://www.navweaps.com/Weapons/WAMUS_Mines.php, accessed 12 August 2023.

²⁶ Website, MK36 DST Destructor Mine, [MK 36 DST Destructor Mine - Dumb Bombs \(globalsecurity.org\)](http://globalsecurity.org), accessed 20 December 2022.

²⁷ Website, Mk 36 Destructor Aircraft Bomb, <https://cat-uxo.com/explosive-hazards/aircraft-bombs/mk-36-destructor-aircraft-bomb>, accessed 12 August 2023.

Operation DESERT STORM, at the mouth of the Khawr Az-Zubayr river. This mining operation was intended to isolate Iraqi naval combatants in the northern Persian Gulf from the port facilities and naval bases at Basrah, Az-Zubayr and Umm Qasr and to prevent more Iraqi vessels from leaving these bases and harassing allied forces in the northern Persian Gulf. The entrance to this river, at the head of the Khawr Abd Allah waterway on the Iraqi-Kuwaiti border northwest of Bubiyan Island and Warbah Island, is adjacent to the Al Faw peninsula. The mission involved 18 aircraft from the aircraft carrier USS *Ranger*, including four A-6 Intruders carrying Mark 36 Destructor mines. Forty-two of the 48 mines were successfully dropped on four separate locations. Six mines on one aircraft failed to release and the aircraft diverted to Bahrain to download the ordnance before returning to USS *Ranger*. One A-6 was shot down during the mission after laying its mines. Because no battle damage assessment was available at the time, it was not possible to determine the effectiveness and lay positions of that mining operation.²⁸ This mission in Iraq was the only mining mission carried out by the US since it mined the North Vietnamese harbour of Haiphong during the Vietnam War. No further mining missions were mounted during Operation DESERT STORM or during the subsequent 2003 war with Iraq.²⁹

Eligibility Criteria - The Australian Gallantry Decorations

30. Australian service personnel received honours and awards under the Imperial system until February 1975 when the Government introduced the Australian system. The two systems – the Imperial and the Australian - then operated in parallel until October 1992 when the Government announced that Australia would no longer make recommendations for Imperial awards.³⁰ This means that only Australian decorations may be considered. The eligibility criteria for gallantry awards in the Australian system are governed by Gallantry Decorations Regulations.³¹

31. Letters Patent, published in the *Commonwealth of Australia Gazette* (CAG) No S25 dated 4 February 1991, created the awards of the Star of Gallantry, the Medal for Gallantry and the Commendation for Gallantry to provide recognition for members of the Defence Force and certain other persons who perform acts of gallantry in action. The eligibility criteria for these awards are set out in the *Gallantry Decorations Regulations 1991* (the Regulations). The Regulations were amended as notified in *CAG No. S420*, dated 6 November 1996, to add Regulation 3(3A).

32. The Regulations as amended, set out the following eligibility criteria for the decorations at Regulation 3:

²⁸ Department of Defence, *Conduct of the Persian Gulf War: final report to Congress*, Washington, DC, Department of Defence, 1992, p. 245.

²⁹ Iain Ballantine, *Strike from the Sea*, Annapolis: Naval Institute Press, 2004, p. 100.

³⁰ Prime Minister of Australia Media Release 111/92 dated 5 October 1992.

³¹ *Commonwealth of Australia Gazette No. S25 – Gallantry Decorations Regulations* - dated 4 February 1991.

(1) The Star of Gallantry (SG) shall be awarded only for acts of great heroism or conspicuous gallantry in action in circumstances of great peril.

(2) The Medal for Gallantry (MG) shall be awarded only for acts of gallantry in action in hazardous circumstances.

(3) The Commendation for Gallantry (CG) may be awarded for other acts of gallantry in action which are considered worthy of recognition.

*(3A) A decoration referred to in regulation 3 may be awarded for an act of a kind mentioned in relation to the particular decoration, although the act did not occur in action, if it occurred in circumstances similar to armed combat or actual operations and those concerned were deployed under military command.*³²

The Defence report

33. The Defence report, primarily written by Air Vice-Marshal Quaipe, includes a merits-based assessment of Chief Petty Officer Stevens' actions against the eligibility criteria for the MG. The report states that, in assessing the merits of the matter, Defence formed no judgement on the veracity of Mr Dunn's claims regarding Captain Griffith's reported advice to Rear Admiral Bonser, but nonetheless it searched for and found no record that would support Mr Dunn's contention of those events. The report also mentioned that the specific nature of the unexploded ordnance had little bearing on the assessment, and added that Defence accepts and agrees with the description provided by Mr Dunn in his application. Nor did Defence argue that the service rendered was not 'in action' or 'in circumstances similar to armed conflict' as required by the Gallantry Decorations Regulations, noting that senior Defence staff have previously formed the view that the EOD task performed on operational ('warlike') service against potentially lethal weapons does meet the intent of the Regulation 3A amendment.³³

34. Defence stated that it was clear that Chief Petty Officer Stevens was exposed to mortal danger by his actions to render safe the unexploded weapon. However it argued that his actions and the very dangerous job that he was performing were entirely consistent with his training. Defence referred back to the extract from the book *All in the Line of Duty*, in particular the authors having described the scenario as being *almost like the EOD staff from HMAS Penguin had set up the whole scene*, referring to training that Chief Petty Officer Stevens had received during his advanced EOD course.

35. In its assessment, Defence stated that it agreed with the previously recorded Tribunal expectation that all soldiers, sailors and airmen in battle and conducting themselves in accordance with their training will be acting bravely and also agreed that gallantry requires a higher standard of conduct than bravery, and usually will require a

³² Ibid.

³³ Review of Recognition – Mr Jason Dunn obo CPO Gavin Stevens.

special and additional element of courage, fearlessness, daring or heroism to have been demonstrated.

36. Defence put forward the view that Chief Petty Officer Stevens executed the job that was expected of him, entirely in accordance with his training. Defence did not dispute that the job was dangerous, nor that the sophistication of the weapon represented a more advanced threat, but put forward the view that neither the sophistication of the weapon nor the inherently dangerous nature of the role speak to gallantry. Rather, Defence stated that Chief Petty Officer Stevens demonstrated a 'text-book' response to a challenging explosive ordnance demolition task and submitted that his actions did not meet the eligibility criteria set out by the Australian Gallantry Decorations. It did however note that his actions in neutralising the mine were undertaken in hazardous circumstances.

37. Defence stated that the exemplary manner in which Chief Petty Officer Stevens successfully neutralised the sophisticated sea and land mine meets the eligibility criteria for the Commendation for Distinguished Service.³⁴

Mr Dunn's comment on the Defence Report

38. In his comment on the Defence Report, Mr Dunn made a number of observations and contentions, including that:

- a) Chief Petty Officer Stevens was in action as required by the Australian Gallantry Decorations Regulations;
- b) Chief Petty Officer Stevens performed acts of gallantry in that, while he was acting in accordance with his training, he was not acting as expected, noting that this was the first time in history that anyone in the ADF or the United States had performed a Render Safe Procedure (RSP) of a Destructor mine, and that the probability of him returning to the patrol alive was very low, including due to the presence of anti-personnel mines. He described it as 'an almost certain suicide mission' due to the sophisticated nature of the DST mine;
- c) whilst the only RSP at the time was to walk in, place a charge next to the mine, walk out and blow it in place, Chief Petty Officer Stevens' actions may never be repeated as it is now accepted that a .50 calibre sniper rifle can be used, reducing the risk to the EOD operator; and
- d) whilst he was not seeking an upgrade to the Distinguished Service Medal for Chief Petty Officer Stevens' actions, Mr Dunn pointed out that, in his original submission, he had stated that Chief Petty Officer Stevens was commanding the

³⁴ Review of Recognition – Mr Jason Dunn obo CPO Gavin Stevens.

tactical EOD patrol, thereby meeting the criteria for the Distinguished Service Cross and the Distinguished Service Medal.³⁵

Evidence provided at hearing

39. Captain Scott Craig, Commanding Officer of Australian Clearance Diving Team Three in Iraq in 2003 and an EOD subject matter expert, gave sworn evidence that what Chief Petty Officer Stevens did on 18 April 2003 in approaching and rendering safe a dangerous and sophisticated Destructor mine on the Al Faw peninsula was an extremely heroic act which placed his life at great peril. Captain Craig, who had nominated Chief Petty Officer Stevens for the MG in June 2003, said that it was a special, additional act of courage and, in his view, above and beyond what was expected of him. Although trained in that ordnance, Chief Petty Officer Stevens was the first person ever to do an approach on a live DST. Captain Craig submitted that, whilst there was a textbook procedure for neutralising that particular mine, it had never been done before on a live Destructor. He said that there was no alternative SOP or other remote option available at the time to neutralise a Destructor mine.

40. Captain Craig said that he took the requirement for the safety of Iraqi civilians and coalition military personnel into account when considering Chief Petty Officer Stevens' recommendation to approach and render safe the DST. In authorising the neutralisation of the DST, which had the ability to target an operator, he considered the personal risk to Chief Petty Officer Stevens, but determined that the mine posed a considerable risk to both the local population and coalition forces, including low flying aircraft, if it was not neutralised. He explained that that part of the Al Faw peninsula was part of the transit route for coalition helicopters, and that the sensitivity and unpredictability of that piece of ordnance could have impeded the safe transit of aircraft. In the absence of viable alternatives or mitigating options, Captain Craig considered that there was an operational imperative to neutralise it. He also believed that there was a risk to the ADF's reputation if it was not dealt with.

41. On the question of whether Chief Petty Officer Stevens was 'in action' or 'in circumstances similar to armed conflict', Captain Craig said that the Al Faw peninsula and the area of Iraq in which AUSCDT 3 was operating at the time was still considered a free fire zone in which coalition forces could be called on to provide or return fire at any given time. In his view, the risk to the EOD patrol and the people in the patrol was therefore still real and significant. This was not disputed by Defence. In response to Defence assertions, Captain Craig emphasised that EOD clearance is an integral part of all combat operations, and not just a mission conducted after combat operations end.

³⁵ Letter, Mr Jason Dunn to Mr Jay Kopplemann, 4 November 2022.

42. Turning to the confusion that arose at the time of whether or not the Destructor was part of the order of battle and had been used by US forces in Iraq in 2003, Captain Craig said that the fact that one had been unexpectedly encountered by the patrol led to precautions immediately being put in place in southern Iraq because of the risk posed by this particular piece of sophisticated ordnance. This, Captain Craig said, resulted in a significant slowing down of subsequent clearance processes in southern Iraq. Defence did not dispute the nature of the unexplored ordnance and accepted and agreed with the description of events on the day provided by Mr Dunn in his application.

43. Mr Paul Papalia, who as a Lieutenant Commander was Executive Officer of Clearance Diving Team Three at the time of the incident, in his sworn evidence agreed with the evidence given by Captain Craig, in particular the decision making process involved in authorising Chief Petty Officer Stevens to approach and neutralise the Destructor mine which, in his view, was probably the most threatening piece of ordnance that could be encountered by an explosive operator at that time.

44. Mr Papalia, who was also an EOD subject matter expert, said that he was coincidentally along with the EOD patrol on the day in question. He explained that AUSCDT 3 was embedded in 3 Commando Brigade Royal Marines, and had been tasked with conducting tactical EOD operations on the Al Faw peninsula and further to the north west where they were based. Mr Papalia submitted that the operations on the Al Faw peninsula were entirely focused on reducing risk to coalition forces and civilians and that, in the event that ordnance that represented an immediate risk was found or had the potential to be exploited by insurgents or Iraqi forces, the patrol had been tasked to clear it.

45. Mr Papalia said that when Chief Petty Officer Stevens conducted his initial approach on the ordnance, it was clear that it was a Mark 80 Series bomb but that it only became apparent that it was a sophisticated DST when Chief Petty Officer Stevens got close enough to recognise it. Mr Papalia said that there was serious consideration around whether or not Chief Petty Officer Stevens should be authorised to make any further approach. Mr Papalia said that whilst it could not be considered a virtual suicide mission as suggested by Mr Dunn - because he would never have authorised it - it was a potentially deadly, life-threatening, and perilous mission as there was no way that the operator could know beforehand the sensitivity level of the weapon.

46. Mr Papalia said that the decision made by Captain Craig to ultimately support Chief Petty Officer Stevens' recommendation, and authorise his continued approach on the Destructor, was done in full consultation with himself, Chief Petty Officer Stevens as the leader of the patrol and then Petty Officer Troy Pudney, the other qualified EOD supervisor and second-in-charge in the patrol. Mr Papalia said that their quick deliberations had determined that if the destructor was not dealt with, it would have posed a direct threat to the local population and coalition forces, including low-level flight by

aircraft. He also said that it lay in close proximity to the KAA and the main supply route, a reasonable size road along which both coalition military personnel and Iraqi civilians were travelling on a regular basis since the Al Faw peninsula was by then occupied by coalition forces. It was, therefore, necessary in accordance with their tasking, to conduct that clearance to ensure the safety of coalition forces and civilians.

47. Mr Papalia advised the Tribunal that approaching the Destructor ultimately required the willingness of Chief Petty Officer Stevens to undertake the task, which would in his view require great courage. Mr Papalia did not speculate on what direction would have been provided if Chief Petty Officer Stevens had not recommended or had been hesitant or unwilling to undertake the task. In answering a hypothetical question put to him by the Tribunal, Captain Craig said that whilst Chief Petty Officer Stevens could have said no, he could, if necessary, have ordered Chief Petty Officer Stevens to make the approach on the Destructor. Captain Craig was not, however, sure what he would have done if Chief Petty Officer Stevens had not willingly and unhesitatingly recommended continuing his approach on the weapon and accepted the considerable risks to his personal safety, given the high levels of uncertainty in relation to the probability of success.

48. On the issue raised by Defence in its report that Chief Petty Officer Stevens was simply doing the job that was expected of him, entirely in accordance with standard operating procedures and his training, Mr Papalia disagreed. He was of the view that whilst this might be superficially correct, in practice it was completely inaccurate. Mr Papalia said that this type of ordnance had never been approached in an operational manner, and that nobody had conducted an approach on a Destructor before this task in Iraq in 2003. Mr Papalia explained that the standard operating procedures with which Chief Petty Officer Stevens was complying on the day in question were derived entirely through theory. In his view, Chief Petty Officer Stevens was informed with knowledge of the type of ordnance and the mechanisms by which it would be initiated, but it was all theory, and there was no guarantee that adopting those measures would not result in a negative outcome.

49. Rather than a normal explosive ordnance task, Mr Papalia considered that the task undertaken by Chief Petty Officer Stevens on the day was very much akin to the approach taken by the Render Mine Safe operators in London during the Second World War, who would walk in on ordnance and adopt measures that they hoped would work, but had no confidence that they would. Mr Papalia submitted that those involved were recognised as having exhibited gallantry and extraordinary courage. Mr Papalia said that on that day in question, he believed that Chief Petty Officer Stevens was doing a very similar task. It was the first time anybody had approached a Destructor in the field, and for all that he knew, he might adopt all the measures to the highest possible standard, and still have the ordnance detonate, with only one possible outcome.

50. Mr Papalia told the Tribunal that Chief Petty Officer Stevens' actions on the day were an extraordinary act of courage which met all of the criteria for him being awarded the MG, for which he had originally been nominated by Captain Craig. Mr Papalia emphasised that his evidence was based on direct involvement. He and the other explosive ordnance disposal specialists in the patrol had all witnessed Chief Petty Officer Stevens' extraordinary courage first hand.

51. When asked about his thoughts and concerns on the day, Chief Petty Officer Stevens told the Tribunal that, because of the significant risk that the Destructor posed, he couldn't recommend leaving it in place. As there was no alternative means of neutralising the mine, Chief Petty Officer Stevens considered that he had no option but to recommend approaching it and attempting to neutralise it himself.

52. Air Vice Marshal Quaipe, who appeared for Defence and had conducted the merit review for Defence of Chief Petty Officer Stevens' eligibility for the MG, shared the key findings of his review and the logic that led to his conclusion that Chief Petty Officer Stevens was not eligible for the MG, but rather that his actions did meet the criteria for the award of the Commendation for Distinguished Service. Importantly, Air Vice Marshal Quaipe stressed that there was no fundamental disagreement regarding Chief Petty Officer Stevens' actions on 18 April 2003 which were accurately described by Mr Dunn. Air Vice Marshal Quaipe said that his review focussed on Chief Petty Officer Stevens' eligibility for recognition under the regulations and that he had considered the degree to which his actions could be considered to be gallant.

53. In what Air Vice Marshal Quaipe admitted was a difficult consideration of gallantry, he advised the Tribunal that he gave weight to the controlled circumstances and the manner in which Chief Petty Officer Stevens conducted the task. In Air Vice Marshal Quaipe's view, the evidence suggested that Chief Petty Officer Stevens and his patrol had considerable latitude in determining how to proceed with the disposal of this particular weapon. He said that the patrol was not in contact with enemy forces and that there did not seem to have been any urgency or imperative for action.

54. Air Vice Marshal Quaipe admitted that there were elements in Chief Petty Officer Stevens' subsequent actions, once a decision was made for him to approach the mine, that could be regarded as special or different. He referred specifically to Mr Dunn's contention that this was the first exposure of any ADF member to this particular ordnance and Chief Petty Officer Stevens' actions in conducting his approach to the mine. However, Air Vice Marshal Quaipe told the Tribunal that he had formed the view that these special and additional elements did not speak to a level of gallantry but rather were all related to the nature of the dangerous and sophisticated weapon that Chief Petty Officer Stevens, an experienced explosive ordnance disposal specialist, was approaching.

55. Air Vice Marshal Quaipe considered it reasonable to conclude that, despite the threat posed by the mine, Chief Petty Officer Stevens was confident that the disposal of this weapon was within his capabilities as a mine clearance expert. Moreover, Air Vice Marshal Quaipe considered that the techniques that Chief Petty Officer Stevens employed to approach the weapon demonstrated that he considered and understood the risk of detonation, but that he clearly concluded that his disposal action was reasonable.

56. Air Vice Marshal Quaipe told the Tribunal that Chief Petty Officer Stevens clearly demonstrated bravery in approaching and neutralising this weapon in hazardous circumstances, and that he had formed the view that the exemplary manner in which Chief Petty Officer Stevens completed the task made him eligible for recognition by the Commendation for Distinguished Service – an award that recognises such distinguished performance of duties in warlike operations.

Tribunal Consideration

57. The question of whether or not there had been a failure in due process and maladministration in the nomination process by which Chief Petty Officer Stevens was awarded the Commendation for Distinguished service rather than the MG was essentially irrelevant to the issue before the Tribunal. Similarly, in the absence of any substantiating evidence, the Tribunal formed no judgement on the veracity of Mr Dunn's claims regarding Captain Griffith's reported advice to Rear Admiral Bonser, except that, unlike Captain Griffith, the Tribunal has, based on the available evidence, accepted that the weapon in question was a DST. The issue for Tribunal consideration was thus simply whether or not, on the merits and having regard to all relevant evidence, Chief Petty Officer Stevens met the eligibility criteria for the MG. Resolution of that issue essentially turned on the facts of what occurred on the day in question.

58. The Tribunal has previously noted that all the gallantry decorations accord recognition for individuals 'who perform acts of gallantry in action'. Whilst 'in action' is a relatively straight-forward concept, 'gallantry' is an abstract term which is not defined in the Regulations. Various dictionary definitions such as 'dashing courage; heroic bravery'³⁶ and 'courageous behaviour, especially in battle'³⁷ are largely circuitous and unhelpful. Some countries have attempted to differentiate between 'bravery' and 'gallantry', defining the later as recognition of military personnel who carry out acts which put their lives at risk while involved in operational service, whilst 'bravery' is defined as saving or attempting to save the life of another person in the course of which they place their own life at risk.³⁸ Again this is largely unhelpful in defining gallantry in the context of the Australian Honours and Awards system.

³⁶ The Macquarie Dictionary on-line accessed 8 August 2020.

³⁷ The Oxford Dictionary on-line accessed 8 August 2020.

³⁸ <http://medals.nzdf.mil.nz/category/d/index.html>.

59. As recorded earlier, the Tribunal has previously observed that there is an expectation that all service personnel in battle conducting themselves in accordance with their training will be acting bravely. The Tribunal has also stated that the concept of gallantry is greater than collective or individual acts of bravery and above and beyond what was expected of an individual or group who were bravely doing what they were trained to do or expected to do as part of a role, rank or responsibility. The Tribunal has observed that gallantry requires a higher standard of conduct than bravery and usually a special and additional element of courage, fearlessness, daring or heroism will have been demonstrated, and that what amounts to an ‘act of gallantry’ necessarily varies according to the individual circumstances of each action and depending on many factors, including the level of threat, the person’s training, role and responsibility, the risk to the individual and/or the group, and the consequences of undertaking, or not undertaking, the particular act.

60. Taking this into account, to be eligible for the award of the MG, Chief Petty Officer Stevens’ actions would, in accordance with the Regulations, need to demonstrate that he had performed *acts of gallantry in action in hazardous circumstances*.³⁹

61. Having reviewed the evidence, the Tribunal observed that there was no fundamental disagreement regarding Chief Petty Officer Stevens’ actions in neutralising a dangerous and sophisticated US Mk36 DST Destructor mine, and that those actions were undertaken in hazardous circumstances. The Tribunal formed the view that Chief Petty Officer Stevens’ actions on 18 April 2003 were accurately described in the material provided by Mr Dunn, in the words extracted from his Commendation for Distinguished Service citation, and in the evidence given to the Tribunal by Captain Craig, Mr Papalia, Chief Petty Officer Stevens and the other witnesses that appeared before the Tribunal.

62. The Tribunal was, therefore, satisfied that the requirement for the act to have been performed in *hazardous circumstances* had been met. The Tribunal was similarly satisfied that there was no fundamental disagreement regarding whether Chief Petty Officer Stevens’ actions could be considered to have occurred *in action* or *in circumstances similar to armed conflict* at the time that he neutralised the Destructor mine. In this regard, the Tribunal did note that, in processing other nominations for recognition, senior Defence staff have previously formed the view that the EOD task performed on operational (‘warlike’) service against potentially lethal weapons does meet the criteria of the Regulation 3A amendment.

³⁹ Commonwealth of Australia Gazette No. S25 – Gallantry Decorations Regulations - dated 4 February 1991.

63. Based on the evidence, the Tribunal was satisfied that the mine rendered safe by Chief Petty Officer Stevens was a US Navy Mk36 DST Destructor mine. As Destructor mines were not part of the 2003 order of battle, the Tribunal formed the view, based on all the available evidence and its own research, that the Destructor mine unexpectedly encountered by the patrol and neutralised by Chief Petty Officer Stevens in the Khawr Abd Allah flood plain was one of the 42 Mk 36 Destructor mines laid in that area by the US Navy twelve years previously during Operation DESERT STORM. Noting the inherent inaccuracies of low-level, high speed aerial minelaying, the Tribunal considered it probable that the mine found by the patrol had either inadvertently been laid short of the nearby waterway or had skipped across the water surface and landed on the floodplain. The Tribunal also formed the view that because of the time elapsed from when the mine was laid, and the possibility that it might have been moved by seasonal flood waters during the ensuing years, it was potentially damaged and unstable, adding an extra level of danger, although this would not have been apparent to either Chief Petty Officer Stevens or his command chain at the time, who similarly would have been unaware that the mine had in fact been laid 12 years previously.

64. The fundamental threshold question for the Tribunal then turned on whether or not Chief Petty Officer Stevens' actions on the day in question could be considered to have been gallant, noting the Tribunal's expectation that gallantry will require a higher standard of conduct than bravery and will usually require a special and additional element of courage, fearlessness, daring or heroism to have been demonstrated.

65. In reviewing the evidence, the Tribunal was not prepared, as was Defence, to dismiss Chief Petty Officer Stevens' actions and the very dangerous and uncertain job that he performed against a dangerous and highly unpredictable weapon - which could have cost him his life had it gone wrong - as simply doing what he was trained for in accordance with his standard operating procedures, and what was expected of him as an experienced EOD specialist. Similarly, the Tribunal did not fully subscribe to the proposition that Chief Petty Officer Stevens and his patrol had considerable latitude in determining how to proceed with the disposal of this particular weapon, nor did it agree with Defence that the controlled circumstances and the manner in which Chief Petty Officer Stevens conducted the task diminished his eligibility for consideration for a gallantry award.

66. The evidence clearly showed that the tactical EOD patrol led by Chief Petty Officer Stevens was tasked with clearing all ordnance found between the recently instituted coalition main supply route and the low water mark on the Al Faw peninsula that represented an immediate risk to Iraqi civilians or coalition forces, or had the potential to be exploited by insurgents or Iraqi forces. Although much was made of the apparent imperative to act, the Tribunal saw the decision making process and its outcomes as largely irrelevant to the question as to whether Chief Petty Officer Stevens' actions on the day could be seen to be gallant. Whether the decision taken to approach and render safe the DST there and then was correct or not has, in the Tribunal's view, no direct

bearing on whether Chief Petty Officer Stevens displayed gallantry by willingly and unhesitatingly recommending the execution of, and then conducting a demanding task that clearly generated significant levels of risk, and in the worst case, would have cost him his life.

67. The Tribunal accepted the evidence that a Destructor mine had never been approached in an operational manner before this particular task in Iraq. Moreover, the Tribunal accepted the evidence that while Chief Petty Officer Stevens was armed with knowledge of the type of ordnance and the mechanisms by which it would be initiated, this was entirely academic and that there was, even with the adoption of those measures, a genuine possibility of a catastrophic outcome. Indeed, based on high observed inadvertent activation rates during even advanced EOD training,⁴⁰ the Tribunal considered that the counter-DST training likely created as much doubt about the likelihood of success as it did to generate confidence. As a result, the Tribunal formed the view that the perceived risk to Chief Petty Officer Stevens was unquantifiable at best, but based on the inadvertent activation rates during training and the attendant uncertainty surrounding DST training and procedures, was potentially extremely high. This is in apparent contrast to the position reached by Defence which seems to suggest that the risk was acceptable.

68. The Tribunal formed the view that Chief Petty Officer Stevens, appreciating the unquantifiable risks and fully aware of the unproven nature of the procedures involved, demonstrated special, additional elements of courage and daring through his unhesitating willingness to risk his life by attempting to render safe a sophisticated and highly unpredictable munition. He did this in extremely hazardous circumstances, which required him to probe for anti-personnel weapons by hand on his final, timed approach to the weapon. These elements were, in the view of the Tribunal, acts of gallantry rather than simply being related to the execution of a demanding technical task as claimed by Defence. In reaching this conclusion, the Tribunal accepted the evidence given by Captain Craig, supported by Mr Papalia and the other eye witnesses that the outcome was at best uncertain. The Tribunal also formed the view that these actions required a special, additional act of courage, more than simply bravery, and were above and beyond what was expected of Chief Petty Officer Stevens on the day in question.

69. In recommending Chief Petty Officer Stevens for the MG, the Tribunal recognised that the Regulations do not confer an automatic entitlement to the award where the eligibility criteria are met. Conferral of the award will require an exercise of discretion by the Governor-General on the recommendation of the Minister.

⁴⁰ As submitted by Captain Mulder at hearing and confirmed by RAN EOD training experts post-hearing in response to a request by the Tribunal for additional information.

Tribunal Decision

70. In light of all of the above, the Tribunal has decided to recommend to the Minister that he not accept the decision that Chief Petty Officer Stevens not be recommended for the Medal for Gallantry and for that he decide instead that Chief Petty Officer Stevens be recommended for the Medal for Gallantry.