



Australian Government

Defence Honours and Awards Appeals Tribunal

Roper and the Department of Defence [2024] DHAAT 6 (13 August 2024)

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| File Number(s) | 2024/02 |
| Re | Corporal Nathan Lyle Jordan Roper Applicant |
| And | The Department of Defence Respondent |
| Tribunal | Mr Stephen Skehill (Presiding Member) Commodore Vicki McConachie CSC RAN (Retd) Major Gary Mychael OAM CSM (Retd) |
| Hearing Date | 31 July 2024 |
| Attendance | Corporal Nathan Lyle Jordan Roper – Applicant Ms Jo Callaghan Assistant Director, Service and Campaign Awards Directorate of Honours and Awards Mrs Cassandra Liplyn Manager, Current Service Directorate of Honours and Awards |

DECISION

On 13 August 2024, the Tribunal decided:

- (a) to affirm the decision that Corporal Nathan Roper not be recommended for the First Clasp to the Defence Long Service Medal; and
- (b) not to recommend to the Minister that the eligibility criteria for the Defence Long Service Medal and Clasps to it be amended.

CATCHWORDS

DEFENCE AWARD – Defence Long Service Medal – First Clasp - eligibility criteria – allocation of reserve service days, financial year versus enlistment year – no exception – requirements of Chief of the Defence Force Determinations

LEGISLATION

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

Defence Regulation 2016, Regulation 36

Commonwealth of Australia Gazette S352, dated 10 July 1998. Defence Long Service Medal Regulations 1998, Letters Patent dated 26 May 1998.

Commonwealth of Australian Gazette S160, dated 30 March 2000, Defence Long Service Medal Regulations 1998, Amendments of Letters Patent dated 3 March 2000.

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

Commonwealth of Australia Gazette S2, dated 3 January 2002, Defence Long Service Medal Regulations, Amended Letters Patent dated 5 December 2001.

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.

Introduction

1. The Applicant, Corporal Nathan Roper, seeks review of a decision dated 20 September 2023¹ of the Department of Defence to refuse to recommend him for the First Clasp to the Defence Long Service Medal (DLSM) for his service in the Permanent Air Force and Air Force Reserve.

Decision under review

2. On 17 April 2023,² Corporal Roper submitted an application to the Directorate of Honours and Awards in the Department of Defence (the Directorate) for an assessment of his eligibility for the First Clasp to the DLSM. On 20 September 2023, the Directorate advised Corporal Roper via email that he had only served eighteen of the twenty qualifying service years required to be awarded the First Clasp to the medal.³

3. On 20 February 2024, Corporal Roper made application to the Tribunal seeking review of the above decision.

Tribunal jurisdiction

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

Corporal Roper's service

5. As per Corporal Roper's service records, he enlisted in the Royal Australian Air Force on 20 February 2001 on an open-ended enlistment period until 30 December 2008. On 31 December 2008 Corporal Roper transferred to the Air Force Active Reserve and is still serving.⁴

6. Corporal Roper has been awarded the following for his service:

- the Australian Defence Medal;
- the Defence Long Service Medal;
- the National Emergency Medal with Clasp QLD 2010-11;
- the Clasp to the National Emergency Medal TC DEBBIE 2017; and
- the Clasp to the National Emergency Medal NTH QLD 2019.⁵

¹ Email Mr Grant Butterworth, Honours and Awards, Department of Defence to (then) Leading Aircraftman Roper, dated 20 September 2023.

² Corporal Roper's medal application to Defence, dated 17 April 2023.

³ Application for review to Tribunal, Corporal Nathan Roper, dated 20 February 2024.

⁴ Corporal Roper's service records extracts from Defence Report dated 23 November 2023.

⁵ Defence Report.

Eligibility Criteria for the Defence Long Service Medal

Letters Patent and Regulations

7. 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'⁶ Regulations 3, as amended in 2002, 4 and 5 made under the Letters Patent relevantly provide:

Award of the Medal

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;
 - (ii) at least 1 day's qualifying service on or after 20 April 1994; or
- (b) has given:
 - (i) qualifying service for a period of at least 15 years or periods that, in total, amount to at least 15 years; and
 - (ii) at least 1 day's qualifying service on or after 14 February 1975; and
 - (iii) all of the qualifying service before 20 April 1994; and
 - (iv) qualifying service, none of which can be recognised for the Defence Force Service Awards Regulations, either by reason of its length or its character.⁷

Award of clasp

4. A clasp may be awarded to a person who:

- (a) Has been awarded the Medal; and
- (b) Has given qualifying service for each period of at least 5 years or periods that, in total, amount to at least 5 years, additional to the periods mentioned in regulation 3.

Qualifying service

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 Commonwealth of Australia Gazette S352 dated 10 July 1998, *Defence Force Long Service Medal Letters Patent and Regulations*, dated 26 May 1998.

⁷ Commonwealth of Australia Gazette S2 dated 3 January 2002, *Defence Long Service Medal Regulations, Amended Letters Patent* dated 5 December 2001.

(ii) gave efficient service;⁸
[...]

8. 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

Chief of the Defence Force (CDF) Determinations

9. The Chief of the Defence Force (CDF) has made no determination under the definition of efficient service. There are however, two determinations of the CDF made under Regulation 5(a)(i).

10. *2021 CDF Determination* - On 16 March 2021 the Chief of the Defence Force (CDF) issued a Determination relevant to Corporal Roper's circumstances that is still in force. The Determination stipulated that:

The following table specifies the minimum annual periods of service to be completed by a member for a year of qualifying service. The period of service may consist of one, or a combination, of the following:

- a. Days remunerated at Defence rates of salary or sessional fees.*
- b. Days on which the member is eligible for a Reserve service payment under Chapter 4 Part 9 Division 4 of the Defence Determination 2016/19, Conditions of service, as in force from time to time.*
- c. Days of approved voluntary unpaid Reserve service.*

11. The table specifies that, in order to qualify for the DLSSM, the minimum period of annual qualifying service for all members of the Australian Defence Force from 20 April 2000 would be 20 days.¹⁰ 'Days' is not further defined in the Determination.

12. The 2021 CDF Determination expressly revoked the previous *2013 CDF Determination* dated 6 February 2013, which had also stipulated that the minimum qualifying period was 20 days for all Australian Defence Force members.¹¹

13. *2000 CDF Determination* - On 13 April 2000 the CDF issued a Determination that, among other things, 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

⁸ Commonwealth of Australia Gazette S352 dated 10 July 1998, *Defence Force Long Service Medal Letters Patent and Regulations*, dated 26 May 1998.

⁹ Commonwealth of Australia Gazette S160, 30 March 2000, *Defence Long Service Medal, Amended Letters Patent*.

¹⁰ *Defence Long Service Medal Determination 2021*, dated 16 March 2021, Folio 47

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

20 days service per year calculated at the anniversary of the enlistment or appointment of the member [emphasis added].¹²

Corporal Roper's application to the Tribunal

14. In his application to the Tribunal, Corporal Roper sought to use the 'financial year' method of calculating his years of service for the DLSP, in lieu of the 'enlistment year' method as set out in the Defence emails attached to his Tribunal application. Corporal Roper cites three previous Tribunal reviews which he claimed were as examples of the use of the 'financial year' method.¹³

15. Corporal Roper further stated:

It is unfortunate that these cases have not been successful but as you can see in my table below, I do meet the requirements of the DLSP clasp. Again, I wish to reach out to you (DHA) and your team for me to be assessed as previous members have been without taking this same issue to the Tribunal and wasting time and resources.

[...]

As a senior government officer, I know that there is always someone who can look on previous decisions from a Tribunal and honour them to ensure the same request does not continue to re-occur and take up time.

16. Corporal Roper provided the following table showing his calculation based on financial years¹⁴:

| Start Month | End Month | Status | Days required | Days served | Qualifying year | Aggregated year |
|-------------|------------|--------------|---------------|-------------|-----------------|-----------------|
| 20/02/2001 | 19/02/2002 | PAF | 20 | >20 | Yes | 1 |
| 20/02/2002 | 19/02/2003 | PAF | 20 | >20 | Yes | 2 |
| 20/02/2003 | 19/02/2004 | PAF | 20 | >20 | Yes | 3 |
| 20/02/2004 | 19/02/2005 | PAF | 20 | >20 | Yes | 4 |
| 20/02/2005 | 19/02/2006 | PAF | 20 | >20 | Yes | 5 |
| 20/02/2006 | 19/02/2007 | PAF | 20 | >20 | Yes | 6 |
| 20/02/2007 | 19/02/2008 | PAF | 20 | >20 | Yes | 7 |
| 20/02/2008 | 19/02/2009 | PAF | 20 | >20 | Yes | 8 |
| 31/12/2008 | | AFRES TFR | | | | |
| 01/07/2009 | 30/06/2010 | AFRES | 20 | >20 | Yes | 9 |
| 01/07/2010 | 30/06/2011 | AFRES | 20 | >20 | Yes | 10 |
| 01/07/2011 | 30/06/2012 | AFRES | 20 | >20 | Yes | 11 |
| 01/07/2012 | 30/06/2013 | AFRES | 20 | >20 | Yes | 12 |
| 01/07/2013 | 30/06/2014 | AFRES | 20 | >20 | Yes | 13 |
| 01/07/2014 | 30/06/2015 | AFRES | 20 | >20 | Yes | 14 |
| 01/07/2015 | 30/06/2016 | AFRES | 20 | >20 | Yes | 15 |
| 01/07/2016 | 30/06/2017 | AFRES | 20 | >20 | Yes | 16 |
| 01/07/2017 | 30/06/2018 | AFRES | 20 | >20 | Yes | 17 |

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

¹³ Laughlin-Young and the Department of Defence [2023] DHAAT 14 (17 July 2023); Jackson and the Department of Defence [2021] DHAAT 14 (13 October 2021); Clarke and the Department of Defence [2022] DHAAT 06 (27 May 2022).

¹⁴ Application to the Tribunal from Corporal Roper.

| | | | | | | |
|------------|------------|-------|----|-----|-----|---------------|
| 01/07/2018 | 30/06/2019 | AFRES | 20 | >20 | Yes | 18 |
| 01/07/2019 | 30/06/2020 | AFRES | 20 | >20 | Yes | 19 |
| 01/07/2020 | 30/06/2021 | AFRES | 20 | >20 | Yes | 20 |
| 01/07/2021 | 30/06/2022 | AFRES | 20 | 11 | No | |
| 01/07/2022 | 30/06/2023 | AFRES | 20 | >20 | Yes | 21 |
| 01/07/2023 | 30/06/2024 | AFRES | 20 | >20 | NO | Still serving |

Defence's previous statements to Corporal Roper

17. On 29 September 2023, Miss Florence Finel of the Directorate of Honours and Awards emailed Corporal Roper stating:

In order for an ADF member to be eligible for the Defence Long Service Medal, 20 days of service per enlistment year must be completed. During the Tribunal Appeal of Mr Laughlin-Young, examples of assessments for both a calendar year and a financial year calculation were used to demonstrate that no matter which of these methods were used, Mr Laughlin-Young did not provide sufficient service per year.

The CDF Determination for the Defence Long Service Medal and Defence Long Service Awards stipulates the enlistment years calculated on the anniversary of enlistment of appointment of a member. The Tribunal agree with Defence on this matter.

I understand that a members Reserve service is allocated by financial year, however, we have no discretion to assess a member's eligibility based on a members preference of financial or calendar year basis, nor there is a precedence in this matter...¹⁵

Defence report

18. The Defence report confirmed that, following Corporal Roper's application to the Tribunal, the Directorate re-assessed his eligibility for the First Clasp to the DLSM and that the re-assessment supported the original decision to not recommend him for the Clasp.¹⁶

19. Defence reviewed Corporal Roper's service against the DLSM Regulations and Determinations outlined above. Defence revised its previous opinion and stated that it was now of the view that Corporal Roper had rendered 19 (rather than 18) years' eligible service in the Permanent Air Force and the Air Force Reserve. Defence further stated that, provided Corporal Roper remained enlisted and rendered sufficient qualifying service, he would become eligible to receive the First Clasp to the DLSM on 19 February 2025.¹⁷

¹⁵ Email from Miss Finel to Corporal Roper dated 29 September 2023.

¹⁶ Defence Report, dated 18 April 2024.

¹⁷ Ibid.

20. Defence provided the following table detailing its calculation of Corporal Roper’s qualifying service¹⁸:

| Start 12 Month | End 12 Month | Status | Days required | Days served | Qualifying year | Aggregated year |
|----------------|--------------|---------|---------------|-------------|-----------------|--------------------------------|
| 20/02/2001 | 19/02/2002 | PAF | 20 | >20 | Yes | 1 |
| 20/02/2002 | 19/02/2003 | PAF | 20 | >20 | Yes | 2 |
| 20/02/2003 | 19/02/2004 | PAF | 20 | >20 | Yes | 3 |
| 20/02/2004 | 19/02/2005 | PAF | 20 | >20 | Yes | 4 |
| 20/02/2005 | 19/02/2006 | PAF | 20 | >20 | Yes | 5 |
| 20/02/2006 | 19/02/2007 | PAF | 20 | >20 | Yes | 6 |
| 20/02/2007 | 19/02/2008 | PAF | 20 | >20 | Yes | 7 |
| 20/02/2008 | 19/02/2009 | PAF/RAR | 20 | >20 | Yes | 8 |
| 31/12/2008 | | | | | | Transferred to Active Reserves |
| 20/02/2009 | 19/02/2010 | RAR | 20 | 38.5 | Yes | 9 |
| 20/02/2010 | 19/02/2011 | RAR | 20 | 53 | Yes | 10 |
| 20/02/2011 | 19/02/2012 | RAR | 20 | 54 | Yes | 11 |
| 20/02/2012 | 19/02/2013 | RAR | 20 | 34.5 | Yes | 12 |
| 20/02/2013 | 19/02/2014 | RAR | 20 | 34.5 | Yes | 13 |
| 20/02/2014 | 19/02/2015 | RAR | 20 | 24 | Yes | 14 |
| 20/02/2015 | 19/02/2016 | RAR | 20 | 33 | Yes | 15-DLSM |
| 20/02/2016 | 19/02/2017 | RAR | 20 | 22 | Yes | 16 |
| 20/02/2017 | 19/02/2018 | RAR | 20 | 13 | No | 16 |
| 20/02/2018 | 19/02/2019 | RAR | 20 | 32.33 | Yes | 17 |
| 20/02/2019 | 19/02/2020 | RAR | 20 | 14 | No | 17 |
| 20/02/2020 | 19/02/2021 | RAR | 20 | 20 | Yes | 18 |
| 20/02/2021 | 19/02/2022 | RAR | 20 | 18 | No | 18 |
| 20/02/2022 | 19/02/2023 | RAR | 20 | 13 | No | 18 |
| 20/02/2023 | 19/02/2024 | RAR | 20 | 22 | Yes | 19 |
| 20/02/2024 | 19/02/2025 | RAR | 20 | 3 | | As at 15/04/2024 |

Corporal Roper’s comments on the Defence report

21. On 22 April 2024, Corporal Roper was provided with a copy of the Defence report and asked to provide his comments on that report. Corporal Roper replied via email on 23 April 2024, reiterating his view that:

My appeal was a request to be reviewed for my service by financial year, due to the fact that, that is how I receive my day allocations as a reservist and all other Defence entitlements are assessed on. E.G DHOAS. Therefore that is how I managed my time, ensuring I was maintaining my service requirement to maintain reserve employment and DHOAS.

Is there a reason that I have missed in the report, that addresses why the panel did not answer my request to be reviewed by financial year?

I may be reading the report wrong, However, it reads as if I had requested to be reviewed by my enlisted day as a reservist. This is not correct, my request is to be assessed by financial year, inline with other defence programs (DHOAS) and the reserve days/pay allocation.

¹⁸ Defence Report.

22. On 2 May 2024, Corporal Roper provided further comment on the Defence Report and included another copy of his table of service years shown in paragraph 14 above:

I have read the reply from the Defence report and their assessment of my service in anniversary and enlistment years is correct.

However, it again highlights the limited ability the Directorate of Honours and Awards (DH&A) have to assess Reservists in line with how they are paid and how the Defence Home Ownership Assistance Scheme (DHOAS) is applied.

- *As a Reservist my days are awarded per financial year. and*
- *To maintain my DHOAS contributions, I am required to complete my minimum service time (20 days) per financial year.*

The above 2 reasons heavily influence my attendance days, and depending on how I am assessed (PAF enlistment day or Reserve enlistment day) have either a 5- or 6-months variation. This variation is what has impacted my assessment for Long Service.

In reviewing the decision DH&A have made, I have found similar cases where other members have identified this disadvantage. I believe this is a disadvantage, as if my enlistment day was close to or in line with the financial year, this would not be an issue. Because as you can see in the table below, I would still qualify. The only year I failed to complete 1 year of 20days service, is due to my civilian employment operational events and personal injury.

In reading these previous submissions to the tribunal, I have seen the tribunal agree that this does create an issue when there are other factors influencing how you allocate your time serving in the defence force.

In summary, for the reasons above this is why I am asking the tribunal to assess my service time in financial years from when I joined the Reserves, as these other Defence Force influences do directly impact my service attendance and the Defence report demonstrates this is still outside the ability of the DH&A to consider.

Tribunal analysis

23. Two provisions of the Defence Act are of particular significance to the resolution of this application for review:

- *Section 110VB(6) provides that In reviewing a reviewable decision, the Tribunal is bound by the eligibility criteria that governed the making of the reviewable decision; and*
- *Section 110VB(3) provides that The Tribunal may also make any recommendations to the Minister that the Tribunal considers appropriate and that arise out of, or relate to, the Tribunal's review under subsection (2) of a*

reviewable decision.

24. That significance arises because the issues raised in this review are:

- Does Corporal Roper's service meet the eligibility criteria for award of the Clasp to the DLSM; and
- If not, would it be appropriate for the Tribunal to recommend that the eligibility criteria should be changed to render a person in his position eligible for that Clasp?

25. It is clear from the Regulations that, to be eligible for the DLSM or a Clasp to it, an ADF member must have rendered service for a specified number of years. It is not sufficient for a member to have rendered only the specified number of days. Both the specified number of years and the specified number of days must be served.

26. It is also clear from the 2000 CDF Determination that, for the purposes of the DLSM and Clasps to it, the first year commences on the date of enlistment or appointment and that each subsequent year is to be *calculated at the anniversary of the enlistment or appointment of the member*. This means that it is not permissible within the Regulations and associated Determinations to calculate years on any different basis such as financial or calendar years.

27. As noted above, and as repeatedly pointed out in previous decisions of the Tribunal, the CDF has not made a determination under the definition of eligible service. This means that all days of service must be counted in assessing the eligibility of an ADF member for the DLSM or a Clasp and that no days can be excluded because they are not eligible service. As a result and for example, days on which an ADF member might be committing a disciplinary offence or serving punishment for such an offence may still count towards the member's qualification for the DLSM or a Clasp.

28. Defence arrived at its original calculation of 18 years service by Corporal Roper by treating his permanent serviced and his reserve service separately. However, in its revised position set out in the Defence Report, it arrived at a figure of 19 years by treating the two periods of Corporal Roper's service as one. Because there was no gap between his permanent service and his reserve service, the Tribunal considered this to be the correct application of the Regulations and CDF Determinations.

29. The 2021 CDF Determination provides that, to be accepted as a qualifying 'day', one of the following criteria must be met:

- a. *Days remunerated at Defence rates of salary or sessional fees.*
- b. *Days on which the member is eligible for a Reserve service payment under Chapter 4 Part 9 Division 4 of the Defence Determination 2016/19, Conditions of service, as in force from time to time.*
- c. *Days of approved voluntary unpaid Reserve service.*

30. In the matter of *Laughlin-Young and the Department of Defence [2023] DHAAT 14* the Tribunal concluded that the Defence practice of aggregating days remunerated at less than the full rate of salary to arrive at a full-day-equivalent figure was incorrect and that a day in respect of which any amount of a Defence rate of salary was paid was a qualifying day.

31. In this case, Corporal Roper's pay records show that he was paid at the full daily rate for all but one of his days of Reserve service. However, as the day in respect of which he was paid at less than the full daily rate was 4 February 2019 and he otherwise met the specified number of days for the year in which that day fell, it is not necessary to rely on the interpretation outlined in Laughlin-Young in assessing Corporal Roper's eligibility.

32. It is clear from the notes to the 2021 CDF Determination that the specified number of days must be actually served within the year to which they are attributable. That is, it is not possible to carry-over excess days from one year to the next. Nor is it possible to average the total number of days served over all years of service. [The 2021 CDF Determination does however allow a limited degree of aggregation and averaging for Navy personnel, but not for Army or RAAF personnel].

33. Corporal Roper did not challenge the revised Defence calculation set out at paragraph 20 above. Rather, he accepted that it was a correct calculation based on anniversary years. Instead, he asked that his alternative calculation based on financial years be accepted so as to qualify him for the Clasp he sought.

34. Because of the express obligation imposed by section 110VB(6) for the Tribunal to apply the eligibility criteria as they stood at the date of the decision under review, it is simply not possible for the Tribunal to accede to that request and the Tribunal is therefore bound to affirm the Defence decision that he is not yet eligible for the First Clasp to his DLSM. As he is still serving in the Reserve, he may nevertheless still become eligible for the clasp within a relatively short period.

35. However, the Tribunal did give consideration to whether or not it would be appropriate, in exercise of the power in section 110VB(3), to recommend to the Minister that the eligibility criteria should be amended to allow use of a method of calculation of years other than the anniversary method.

36. Corporal Roper noted that various other aspects of relevant Defence service are based on financial years. His annual allocation of Reserve service days is made on a financial year basis. And benefits under the Defence Home Ownership Assistance Scheme are also based on a financial year. However, as each of those aspects are dependent upon the availability of Parliamentary appropriations and as such are provided on a financial year basis, aligning each with a financial year appears to the Tribunal to be fully appropriate.

37. In contrast, eligibility for the DLSM and Clasps is totally unrelated to budget appropriations and thus there is no reason why a financial year basis of calculation would be correspondingly appropriate in that context.

38. Indeed, in the Tribunal's view, adopting a financial year basis would be quite inappropriate. Doing so would mean that, unless a member enlisted on 1 July, all service in their first year of enlistment up to 30 June would have to be disregarded. Similarly, if a member discharged other than on 30 June, all service in their final year between 1 July and their date of discharge would have to be disregarded. Similar results would occur if a calendar year basis were adopted in preference to an anniversary year basis. As the purpose of the DLSM is clearly to recognise service, it would be most anomalous to adopt an eligibility criterion that ignored potentially significant periods of service that had in fact been rendered.

39. The Tribunal understands that, in prior periods, there may have been some cases in which Defence calculated years of service on each of an anniversary, financial and calendar year basis and awarded a DLSSM or Clasp if the specified number of years was met on any one of those bases. If that were a previous position adopted by Defence, it was incorrect from the time of the CDF Determination of 13 April 2000, which mandated use of the anniversary year method. And it appears clear that it is certainly not the present position of Defence, given that it refused Corporal Roper's claim in this case notwithstanding that that he would have accrued 20 years service on a financial year basis.

40. In his written submissions to the Tribunal, Corporal Roper asserted that the Tribunal had used a financial or calendar year basis in three previous cases. However, that is an incorrect conclusion from each of those cases:

- In *Jackson and the Department of Defence [2021] DHAAT 14* the Tribunal noted that, on Defence calculations, the applicant did not qualify for the DLSSM no matter which of the anniversary, financial or calendar bases was applied. Having concluded that the applicant did not meet the eligibility criteria for the DLSSM as affected by the CDF Determination, its decision was to recommend that the Minister should consider amending the eligibility criteria to allow an ADF member discharged on service-related medical grounds to qualify notwithstanding that they had, for that reason, been unable to complete the requisite period of service.
- In *Clarke and the Department of Defence [2022] DHAAT 06* the Tribunal again noted Defence calculations based on each of anniversary, financial and calendar years, but expressly stated that *the Directorate's policy of assessing an applicant's service by financial and calendar year can only be viewed as inconsistent with [the 2000 CDF Determination], given the clear stipulation contained therein that calculation of annual service be confined to enlistment year only*. The Tribunal referred in supportive terms to the recommendation for amendment of the eligibility criteria made in the Jackson case.
- In *Laughlin-Young and the Department of Defence [2023] DHAAT 14* the Tribunal noted that the applicant would not have qualified for the DLSSM on either the anniversary, financial or calendar basis using the method of calculation of days adopted by Defence. However, it concluded that that method was incorrect and that any day in respect of which any amount of Defence rate of pay was paid was a qualifying day. Accordingly, its decision was that the applicant qualified under the anniversary basis when that alternative method of calculating days was applied.

41. In light of the above, the Tribunal concluded that it was not appropriate to recommend to the Minister that the eligibility criteria be amended to align the calculation of years of service to either financial years or calendar years. In its view, the anniversary year basis afforded the most appropriate method of calculating service actually rendered.

42. The Tribunal also concluded that it would not be appropriate to recommend that the eligibility criteria be amended to allow the DLSSM to be awarded when the specified number of years was met on any one of three alternative bases of anniversary years, financial years or calendar years. While recognising that any system that adopts an arbitrary criterion may generate the occasional anomaly, it was of the view that the

anniversary year method was to be preferred because it was the most closely aligned to a calculation by reference to the number of days of service actually rendered.

43. In concluding this statement of reasons, the Tribunal does wish to emphasize the sentiment, expressed to Corporal Roper at the hearing, of appreciation of and gratitude for his extended and valuable service not only to the ADF but also to the Queensland Fire and Emergency Services, each of which is committed to keeping the community safe.

Tribunal decision

In light of all of the above, the Tribunal decided:

- (c) to affirm the decision that Corporal Nathan Roper not be recommended for the First Clasp to the Defence Long Service Medal; and
- (d) not to recommend to the Minister that the eligibility criteria for the Defence Long Service Medal and Clasps to it be amended.