



# Australian Government

## Defence Honours and Awards Appeals Tribunal

### **Stevens and the Department of Defence [2024] DHAAT 5 (2 August 2024)**

File Number 2023/013

Re **Mr Edwin Brian Stevens**  
Applicant

And **The Department of Defence**  
Respondent

**Tribunal** Mr Stephen Skehill (Presiding Member)  
Major General Mark Kelly AO DSC (Retd)  
Ms Louise Hunt

**Hearing Date** 30 May 2024

**Appearances** Mr Edwin Brian Stevens

Mrs Allison Augustine, Acting Director Honours and Awards,  
Department of Defence  
Mrs Jen Robinson,  
Acting Assistant Director Honours and Awards,  
Department of Defence

#### **DECISION**

On 2 August 2024, the Tribunal decided to recommend to the Minister that the decision that Mr Edwin Brian Stevens not be recommended for a Conspicuous Service Decoration should be affirmed.

## **CATCHWORDS**

*DEFENCE HONOUR – Conspicuous Service Decoration – completion of the Special Air Service (SAS) Regiment Cadre Course – definition of ‘outstanding devotion to duty’ – definition of ‘outstanding achievement’ – meritorious devotion to duty – meritorious achievement.*

## **LEGISLATION**

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

*Conspicuous Service Decorations Letters Patent and Regulations, Commonwealth of Australia Gazette S108 of 7 May 1990.*

*Conspicuous Service Decorations Regulations Revocation and Determination, Commonwealth of Australia Gazette S220 dated 17 October 2008.*

## **Introduction**

1. The Applicant, Mr Edwin Brian Stevens, seeks review of a decision dated 6 January 2023 by the then Director of Honours and Awards of the Department of Defence, Mr Ian Heldon, to refuse to recommend him for the Conspicuous Service Medal for his completion of the Special Air Service (SAS) Regiment Cadre Course in 1969.

## **Decision under review**

2. Prior to 6 January 2023, Mr Stevens had corresponded with the Directorate of Honours and Awards seeking recognition by way of the Conspicuous Service Medal for his completion of the SAS Cadre Course in 1969.

3. On 6 January 2023, Mr Heldon wrote to Mr Stevens advising him that he had formed the view that Mr Stevens' service did not meet the conditions for the award of the Conspicuous Service Medal and, on that basis, Mr Heldon had decided that Mr Stevens would not be recommended for the award.<sup>1</sup>

4. On 4 August 2023, Mr Stevens made application to the Tribunal seeking review of the above decision,<sup>2</sup> seeking either the Conspicuous Service Cross or the Conspicuous Service Medal for his service.<sup>3</sup>

## **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 Conspicuous Service Decorations are 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.

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<sup>1</sup> Letter, Mr Heldon to Mr Stevens, dated 6 January 2023.

<sup>2</sup> Application, Mr Stevens to the Tribunal, dated 4 August 2023.

<sup>3</sup> Letter, Mr Stevens to the Tribunal, dated 29 June 2023.

## Conduct of the review

8. In accordance with its Procedural Rules, on 10 August 2023 the Tribunal wrote to the Secretary of the Department of Defence informing him of Mr Stevens' application for review. The Tribunal requested a merits-based assessment of Mr Stevens' claims against the eligibility criteria for the Conspicuous Service Decorations 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.<sup>4</sup>

9. On 27 October 2023, the Director of Honours and Awards in the Department of Defence provided a report on behalf of Defence.<sup>5</sup> The Defence submission included several relevant documents including a Report from the SASR History and Research Centre, a register of nominees for the SAS Cadre Course 1968-69, and initial correspondence from the SASR History and Research Centre. Defence also included Mr Stevens' service record.<sup>6</sup>

10. The Defence report was forwarded to Mr Stevens for comment on 20 November 2023.<sup>7</sup> Mr Stevens responded with his comments on 10 December 2023.<sup>8</sup>

11. The matter was heard by the Tribunal on 30 May 2024.

12. At the commencement of the hearing, the Presiding Member informed the parties that he had been advised by Ms Hunt that she had just realised that she, in another capacity as a member of the Veterans' Review Board, had previously dealt with an application to that Board made by Mr Stevens. The Presiding Member said that he had concluded that that prior dealing did not constitute an actual conflict of interest because the subject matter of the Board application and the subject matter of the present Tribunal application were totally unrelated and that, subject to any contrary view from Mr Stevens, he was minded to direct that Ms Hunt should remain as a member of the panel assigned to the present matter. Mr Stevens said that he was content for Ms Hunt to remain as a panel member so long as she was able to bring an open mind to the present matter. The Presiding Member advised Mr Stevens that Ms Hunt had assured him that she was so able. Accordingly, the matter proceeded with the panel as originally constituted.

13. During the course of the hearing, the Tribunal requested Defence to provide a supplementary submission to substantiate an assertion of fact made in the Defence report. This was received on 24 June 2024 and forwarded to Mr Stevens for any comment he

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<sup>4</sup> Letter, Mr Stephen Skehill to Mr Greg Moriarty, *Review of recognition for Mr Edwin Brian Stevens*, dated 10 August 2023.

<sup>5</sup> Letter, Mr Heldon to Mr Skehill, *Review of Recognition – 55948 – Mr Edwin Brian Stevens*, dated 27 October 2023.

<sup>6</sup> Report, Department of Defence, dated 27 October 2023.

<sup>7</sup> Letter, Mr Jay Kopplemann to Mr Stevens, dated 20 November 2023.

<sup>8</sup> Letter, Mr Edwin Stevens to Mr Kopplemann, dated 10 December 2023.

wished to offer. Mr Stevens' comments on that supplementary submission were received on 26 July 2024.

### **Mr Stevens' service**

14. Mr Stevens service record confirmed that he served in the Regular Army Supplement from 18 February 1969 to 10 April 1970. He was discharged on 7 April 1970 under AMR 176(1)(p) *that the soldier gave false information to a person to whom information was required to be given in connection with his enlistment (in that he did not reveal evidence of his pre-existing medical condition).*<sup>9</sup> In 2019, following an application by Mr Stevens, Defence made a determination under Section 26 of the *Defence Regulation 2016* to allow him to be treated as if he were medically discharged.<sup>10</sup> The terms of Mr Stevens' discharge were not a matter relevant to the present application.

### **Eligibility criteria for the Conspicuous Service Decorations**

15. The Australian Conspicuous Service Decorations (the Decorations) were created on 18 October 1989 to provide recognition to members of the ADF and certain other persons for outstanding or meritorious achievement or devotion to duty in non-warlike situations. The Decorations consist of the Conspicuous Service Cross and the Conspicuous Service Medal. The eligibility criteria are set out in the Australian Conspicuous Service Decorations Regulations (the Regulations), as follows:

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

*The Conspicuous Service Medal shall be awarded for meritorious achievement or devotion to duty in non-warlike situations.*<sup>11</sup>

### **Mr Stevens' application to Defence**

16. In his letter to Defence of 14 December 2021, Mr Stevens argued that he should be awarded the Conspicuous Service Medal because he *was the only soldier in the Australian Army who qualified in the Special Air Service Regiment Cadre Course after only completing recruit and Infantry Corps training in 1969. It had not been done prior to me and as Regimental records will show it has not been done since.*

17. Mr Stevens' application went on to extensively describe the arduous nature of his recruit, infantry corps and SASR Cadre training. He also submitted material from his service record, including the transfers and detachments form showing his dates of

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<sup>9</sup> Extracts service record, Report, Department of Defence dated 27 October 2023.

<sup>10</sup> Letter, Lieutenant Colonel J.C. Shortt, CSC to Mr Stevens, dated 10 July 2019.

<sup>11</sup> *The Australian Conspicuous Service Decorations, Commonwealth of Australia Gazette S108*, dated 7 May 1990.

training, the posting order following his SASR Cadre training, and the records of his psychological assessment undertaken prior to selection for SASR cadre training.<sup>12</sup>

### **Defence's refusal**

18. Mr Heldon's letter of 6 January 2023 stated that, although a review of Mr Stevens' service history did not identify any evidence of Mr Stevens completing the SASR Cadre Course, his service record indicated that on 10 November 1969 he qualified as an SAS Trooper Grade 1. As the completion of the SASR Cadre course was a likely precondition to qualification at this grade, Defence considered his application on that basis.

19. Mr Heldon advised that he had sought advice from a representative of the Special Air Service Regiment History and Research Centre who had advised that it was not unusual in that era for soldiers who were undertaking, or had recently completed, their initial employment training to undertake the SASR Cadre Course. Mr Heldon's letter stated that, in his view, completion of that course did not meet the conditions for the award of the Conspicuous Service Medal, and that based on the evidence available, he had decided to not recommend Mr Stevens for that award.<sup>13</sup>

### **Mr Stevens' application to the Tribunal**

20. Mr Stevens' application to the Tribunal of 29 June 2023 again emphasised the fact that he was selected for SASR Cadre training immediately following initial employment training and the arduous nature of that SASR Cadre training, including abuse which he said was meted out by instructors. Mr Stevens disputed the veracity of Mr Heldon's submission regarding graduates of initial employment training being selected for SASR cadre training. He stated that he later assisted regimental officers and sergeants on three subsequent Cadre courses and submitted that there were no soldiers on any of those courses who had just completed initial employment training.

### **The Defence report**

21. The Defence report was provided under copy of a letter to the Tribunal from the Director Honours and Awards, Mr Ian Heldon, signed on 27 October 2023. Defence noted in its report that, in his application to the Tribunal, Mr Stevens made reference to both the Conspicuous Service Medal and the Conspicuous Service Cross. While Mr Stevens did not make an application to Defence for a Conspicuous Service Cross, for the purposes of its report Defence considered whether Mr Stevens' service would meet the conditions of either honour.

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<sup>12</sup> Letter, Mr Stevens to Defence, dated 14 December 2021.

<sup>13</sup> Letter, Mr Heldon to Mr Stevens, dated 6 January 2023.

22. In its report, Defence submitted that there was little guidance regarding what constitutes ‘meritorious achievement or devotion to duty’. For the purposes of its report and making an assessment of Mr Stevens’ actions, Defence stated that it used the definition of ‘meritorious achievement’ as being *exemplary behaviour or actions that contributed to a mission, task or job and was of a higher standard than others in similar circumstances*; and ‘devotion to duty’ as being *commitment over and above the person’s expected duty*.

23. The report stated that in response to Mr Stevens’ application, Defence undertook a review of Mr Stevens’ application, his service records, available contemporaneous records of the SASR Cadre Course in 1968-69, and any other relevant material.

24. The report stated that given the available information, with the exception of entries in his Service Record, which referred to his qualifying as an SAS Trooper, there was no evidence of Mr Stevens having completed the SAS Cadre course. Accepting the assertion that Mr Stevens did complete the course as a precondition to qualifying as an SAS Trooper, Defence submitted that he was not the only member to complete this course after completing only Basic Training and Initial Employment Training (IET). In doing so, Defence advised that, based on information supplied by the SASR History and Research Centre, 48 members who had only completed Infantry IET or Signals IET successfully completed the course in 1968-69.

25. Defence submitted that it did not consider Mr Stevens’ actions in completing the course to meet the criteria of demonstrating exemplary performance that was of a higher standard than others, and therefore did not meet the condition of demonstrating meritorious achievement. Given enrolment on this course was voluntary and commitment to its completion was expected of all attending, Defence submitted that it did not consider Mr Stevens demonstrated commitment over and above his expected duty and therefore does not meet the criteria of devotion to duty.

23. Given Defence did not consider Mr Stevens’ actions met the conditions of the Conspicuous Service Medal, the Defence position was that he also did not meet the conditions for the higher award of the Conspicuous Service Cross.

24. Defence also stated that it did not consider the circumstances of Mr Stevens’ discharge to be relevant to consideration of whether his service met the conditions of a Conspicuous Service Decoration.

25. Defence thus recommended to the Tribunal that the decision to not recommend Mr Stevens for the Conspicuous Service Medal be affirmed.<sup>14</sup>

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<sup>14</sup> Letter, Mr Heldon to the Tribunal, dated 27 October 2023

26. Information on Mr Stevens' service record, supplied with the Defence report, indicate that he approached Defence in 2004 seeking his service and medical records and information about claimed service in Vietnam, which he stated were SAS 'Black Ops'.<sup>15</sup> While able to supply some service documentation in response to the request, Mr Stevens was advised by the Central Army Records Office that he did not leave Australia as far as his records go.<sup>16</sup> The issue of any such service was not relevant to the present application for review.

27. Documentation provided with the Defence report shows that in 2017, Mr Stevens wrote to the then Minister for Defence, Senator the Hon Marise Payne, seeking recognition for claimed service in Laos. In this correspondence, he provided a detailed account of his claimed service on a covert mission to Laos.<sup>17</sup> It appears that in related correspondence he stated that if this service was not to be recognised, then he did not want a response advising that there was no record of what he claimed to have done<sup>18</sup>. On that basis, it appears that no response was provided. Again, the issue of any such service was not relevant to the present application for review.

### **Mr Stevens's comments on the Defence report**

28. On 10 December 2023, Mr Stevens provided extensive comments on the Defence report. While much of this commentary centred on his mode of discharge and other information from his service record that was supplied with the Defence report, such as his claimed service in Laos, he provided the Tribunal with a vividly detailed seven-page exposition of his experiences during SASR Cadre Training. This included a description of his experiences at Rottnest Island, Swanbourne Barracks and at a military training ground near Collie.

29. Mr Stevens summarised this exposition by saying:

*In summary the S.A.S.R Cadre Course was the most physically and mentally course I have ever done in my life. I had run and run for nearly nine months. Continued training under Lieutenant Flannery and Sergeant Ramsey after the Cadre course. Completed the two mile and nine mile runs three times in that duration. I made myself better by seeking out different staff to teach me different skills that made me a better soldier. Map reading was not the only skill that I learned from the different instructors especially during Infantry Corps training. The Phonetic alphabet was another.*

*Take exception to (Defence's) remarks that there was nothing exceptional about my service as it was I who made me an exceptional soldier. Who is this man to make such a statement. Was he in the army during 1969 – 1970? I seriously doubt it as if he is a Warrant Officer Class 2 he may have joined the army in the 1980's*

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<sup>15</sup> Extracts service record, Report, Department of Defence dated 27 October 2023.

<sup>16</sup> Ibid.

<sup>17</sup> Ibid

<sup>18</sup> Ibid.



*– 1990's. Did he have the complete syllabus of the Cadre Course that I participated on? Again, I seriously doubt it. Is he or has he ever been a member of the Special Air Service Regiment? Finally, all through my service I made myself a better soldier than most of my counterparts I worked with. My status of discharge has been changed to that of a medical separation and up until then with the continued training I became an exceptional soldier in all facets of S.A.S. work.*

*That ends my submission to be awarded the Conspicuous Service Medal and as my service records make me out to be a liar and delusional is it only Officers who Honours and Awards award the CSM or CSC. You may take affront at that but it seems to me that Honours and Awards will go to any length to not award me the CSM.<sup>19</sup>*

### **Tribunal Consideration**

30. At the hearing Mr Stevens stated that he had applied for a Conspicuous Service Decoration only because he had been informed by others, who he believed were in a position to know, that he was the first person to complete the SASR Cadre course after previously completing only Basic Training or Initial Employment Training and that no one else had since done so. It was on this basis also that he had decided to appeal against the Defence decision refusing to recommend him for the Conspicuous Service Medal.

31. Accordingly, a key issue for the Tribunal was whether or not the Defence assertion that 48 members who had only completed Infantry IET or Signals IET had successfully completed the course in 1968-69. While the Defence report included a hand-written table that provided details of SASR Cadre course enrolments of the period, it appeared to the Tribunal that that material was not sufficient to substantiate the Defence assertion. The Tribunal thus asked Defence to provide a supplementary submission in support of its assertion. As noted above, that further submission was provided and then copied to Mr Stevens for comment. In response, he again stated that he had applied for the Conspicuous Service Decoration because he had been told that he was the first and only person who had only completed Infantry IET or Signals IET and then successfully completed the course.

32. The Defence supplementary submission said that, on further research, the number of ADF members who had successfully completed the course in 1968-69 after only completing Infantry IET or Signals IET was in fact 50 rather than the previously advised 48. While the submission did not name those individuals, because of their protected identity status as SASR members, the Tribunal was satisfied that this figure should be accepted as accurate given the content of the supplementary submission and the level at which it was signed. For his part, Mr Stevens did not challenge the Defence supplementary submission.

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<sup>19</sup> Letter, Mr Stevens to Tribunal dated 10 December 2023.

33. The material thereby available to the Tribunal indicates that 29 ADF members successfully completed the course in 1968 after only completing Infantry IET or Signals IET in 1968 and 21 in 1969. Because Mr Stevens' service was from 18 February 1969 to 10 April 1970, this means that he could not have been the first ADF member to successfully complete the SASR Cadre course after only completing Infantry IET or Signals IET. In any event, even if he had been the first, in the view of the Tribunal simply being the first to do something that was thereafter repeatedly expected of and done by others would not meet the test of 'meritorious achievement' or 'devotion to duty'. And clearly, whoever may have been the first, there were many more who subsequently did the same.

34. While the Tribunal accepts that it was not unreasonable for Mr Stevens to have applied for the Conspicuous Service Medal in reliance on the advice provided to him by others, it is thus apparent that the argument he advanced of being the first and only had no basis in fact.

35. The Tribunal also accepts that the SASR Cadre course completed by Mr Stevens was arduous and challenging, and he is to be congratulated for successfully completing it. However, successful completion of that course was the expectation of all who agreed to participate in it, there is no suggestion that the particular course he undertook was materially different to other Cadre courses of the time, and there is no evidence that Mr Stevens' performance on the course materially exceeded the expectations or performance of other attendees.

36. At the hearing Mr Stevens did not advance any other argument in support of his claim to the honour he sought. Notwithstanding this, the Tribunal did consider whether there was any other alternative basis on which a recommendation in his favour might be made. In doing so, it considered whether the definitions of 'meritorious achievement' and 'devotion to duty' set out in the Defence report set the bar for the Conspicuous Service Medal at too high a level. The Tribunal considered however that those asserted definitions were not unreasonable and that there was nothing else of relevance in Mr Stevens' service records that would warrant such a recommendation.

37. Finally, as noted above, the Conspicuous Service Decorations are only available for service 'in non-warlike situations'. At the hearing, the Tribunal asked Defence whether, if the Tribunal did conclude that Mr Stevens' service met the 'meritorious achievement' and 'devotion to duty' criteria, Defence would contest that that service was not 'non-warlike'. The Defence representatives said that, in those circumstances, Defence would agree that Mr Stevens' service was non-warlike.

38. The Tribunal queried why that was so. It referred to its recent report of the *Inquiry into medallic recognition for service with Rifle Company Butterworth*. The exhaustive research conducted by the Tribunal in the course of that Inquiry established that:

- on 17 May 1993 Cabinet had agreed to definitions of ‘warlike’ and ‘non-warlike’ service that had been recommended by the Minister for Defence and the Minister for Industrial Relations;
- those definitions clearly recognised the existence of a third category of ADF service – ‘normal peacetime duty’;
- it was further decided by Cabinet on the recommendation of the Ministers that those definitions were to be applicable to recommendations for the award of medals;
- there has been no subsequent definition of any Cabinet that varied that decision;
- a 2018 restatement by the Minister for Defence of nature of service classifications, applicable only to future ADF service, expressly maintained the three separate categories of ADF service; and
- there has been no informed decision by any Minister that any different definition should apply to the term ‘non-warlike’ as it applies in the context of Defence honours and awards.

39. The Defence representatives did not challenge or express any disagreement with the conclusions drawn by the Tribunal in that report. Instead, they simply stated that Defence administered the Conspicuous Service Decorations on the basis that ‘non-warlike’ meant ‘other than warlike’.

40. It is clear that Mr Stevens’ service was peacetime service and would not be ‘non-warlike’ under the analysis set out in the report. However, because of the conclusions it had reached as set out above in relation to the ‘meritorious achievement’ and ‘devotion to duty’ criteria, it was unnecessary for the Tribunal to seek to reach a final view on whether or not the Defence position that Conspicuous Service Decorations could be awarded for both peacetime and non-warlike service was correct.

### **Tribunal Decision**

41. In light of all of the above, the Tribunal concluded that the Defence decision to refuse to recommend Mr Stevens for the Conspicuous Service Medal was both reasonable and correct. It accordingly decided to recommend to the Minister that the decision that Mr Stevens not be recommended for a Conspicuous Service Decoration should be affirmed.