



Australian Government

Defence Honours and Awards Appeals Tribunal

Wilkes and the Department of Defence [2024] DHAAT 9 (29 November 2024)

File Number 2023/022

Re **Mr Gary William Wilkes**
Applicant

And **The Department of Defence**
Respondent

Tribunal Air Commodore Anthony Grady AM (Retd) (Presiding Member)
Brigadier Dianne Gallasch AM CSC (Retd)
Mr Jonathan Hyde

Appearances Mr Gary William Wilkes
Applicant

Mrs Allison Augustine
Acting Director
Directorate of Honours & Awards, Department of Defence

Mrs Jen Robinson
Manager Honours and Reviews
Directorate of Honours & Awards, Department of Defence

Hearing Date 30 July 2024

DECISION

On 29 November 2024, the Tribunal decided to recommend to the Minister that the decision of Department of Defence to refuse to recommend Mr Gary William Wilkes for a Distinguished Service Decoration be set aside and instead that Mr Wilkes be recommended for the Commendation for Distinguished Service.

CATCHWORDS

DEFENCE HONOUR – Distinguished Service Decorations - Chief of General Staff
Commendation – Somalia - Operation SOLACE – Application of quota

LEGISLATION

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

Defence Regulation 2016 Section 35

Distinguished Service Decorations

*Commonwealth of Australia Gazette No. S25 Distinguished Service Decorations
Regulations* dated 4 February 1991

*Commonwealth of Australian Gazette, No. S18, Distinguished Service Decorations
Regulations* dated 22 February 2012

Introduction

1. The Applicant, Mr Gary William Wilkes, seeks review of a decision of the Department of Defence that he not be recommended for a Distinguished Service Decoration for his service as the Transport Troop Commander of the 1st Battalion Support Group on Operation SOLACE in Somalia.

Decision under review

2. On 31 May 2023, Mr Wilkes made application to the Directorate of Honours and Awards in the Department of Defence (the Directorate) seeking that his nomination for a Distinguished Service Medal for his service in Somalia be reconsidered and awarded to him.¹ On 7 December 2023, Defence wrote to Mr Wilkes advising that it believed he had been suitably recognised with a Chief of General Staff Commendation.

3. On 7 December 2023, Mr Wilkes made application to the Tribunal seeking review of the decision of the Department of Defence.

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 honour in response to an application. Regulation 35 of the *Defence Regulation 2016* lists the defence honours that may be the subject of a reviewable decision. The Distinguished Service Medal is included in the defence honours listed in Regulation 35. Therefore, the Tribunal has jurisdiction to review refusal decisions in relation to this defence honour.

5. 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

6. In accordance with its Procedural Rules, on 19 December 2023, the Tribunal wrote to the Secretary of the Department of Defence informing him of Mr Wilkes' application for review. The Tribunal requested a merits-based assessment of Mr Wilkes' actions against the eligibility criteria for the Distinguished Service Decorations and a report on the material

¹ In its letter to Mr Wilkes, Defence confirmed that he had been nominated for a Commendation for Distinguished Service for his service in Somalia rather than a Distinguished Service Medal.

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.

7. On 3 April 2024, the Acting Director of Honours and Awards, Mrs Allison Augustine, in the Department of Defence provided a submission on behalf of Defence.² The Defence submission included several relevant documents, including a report of Defence's merits-based assessment of Mr Wilkes' actions prepared by the Acting Director.³

8. The Defence submission was provided to Mr Wilkes for comment on 4 April 2024. Mr Wilkes responded with his comments on 5 April 2024 and again on 24 and 26 April 2024. The Tribunal heard the matter on 30 July 2024.

Mr Wilkes' service

9. Mr Wilkes enlisted in the Australian Regular Army on 17 May 1978 and served in the Royal Australian Corps of Transport. He discharged on 16 May 1984 before re-enlisting on 17 June 1986 and serving until 23 August 1994.

10. Mr Wilkes then served in the Ready Reserve Force from 24 August to 2 October 1994, and returned to the Australian Regular Army on 3 October 1994 where he served until his discharge on 19 October 1994.

11. Relevant to this application, the then Sergeant Wilkes served in Somalia on Operation SOLACE from 18 January to 18 May 1993.

12. For his service in the Army, Mr Wilkes has received the following:

- Australian Active Service Medal with Clasp 'SOMALIA'
- Australian Service Medal with Clasp 'SOMALIA'
- Defence Force Service Medal
- Australian Defence Medal
- Chief of General Staff Commendation
- Meritorious Unit Citation
- Returned from Active Service Badge⁴

Eligibility criteria for the Distinguished Service Decorations

13. The Distinguished Service Decorations, being the Distinguished Service Cross, the Distinguished Service Medal and the Commendation for Distinguished Service were established by Letters Patent on 15 January 1991 in the *Commonwealth of Australia Gazette*

² Letter, Mrs Allison Augustine to Mr Stephen Skehill, dated 3 April 2024

³ Defence report, dated 3 April 2024

⁴ Ibid

No S25 dated 4 February 1991 for the purpose of:

... according recognition to members of the Defence Force and certain other persons for distinguished command and leadership in action or distinguished leadership in action or distinguished performance of their duties in warlike operations.

14. Award of the Decorations is governed by Regulations set out in a Schedule to the Letters Patent.

15. The words ‘in action’, described in the clause quoted above, were removed by the *Commonwealth of Australia Gazette No S18 Amendment of Distinguished Service Decorations*, dated 22 February 2012. Conditions for the award of the Decorations are set out in the amended Regulation 3:

3. (1) *The Distinguished Service Cross shall be awarded only for distinguished command and leadership in warlike operations;*
- (2) *The Distinguished Service Medal shall be awarded only for distinguished leadership in warlike operations;*
- (3) *The Commendation for Distinguished Service may be awarded for distinguished performance of duties in warlike operations.*

Mr Wilkes’ application

16. On 7 December 2023, Mr Wilkes submitted an application to the Tribunal seeking to have the Defence decision reviewed and to have his Chief of General Staff Commendation upgraded to a Distinguished Service Decoration.

17. Mr Wilkes submitted a copy of his Chief of General Staff Commendation, a handwritten letter from Colonel William Mellor,⁵ and a handwritten nomination for the Distinguished Service Medal by Captain⁶ William Jakab,⁷ with his application, stating that he should have received the Distinguished Service Medal he was nominated for, and that he felt unjustly treated in receiving the Chief of General Staff Commendation instead.

The Defence report

18. The Defence report was provided under copy of a letter to the Tribunal from the Acting Director of Honours and Awards, Mrs Allison Augustine, signed on 3 April 2024. The report stated that in response to Mr Wilkes’ application, Defence undertook a review of Mr Wilkes’ service records, available contemporaneous records, and other relevant material,

⁵ Colonel Mellor was the Commander Australian Forces Somalia

⁶ The Defence report lists Mr Jakab’s rank as Lieutenant when he served in Somalia, but subsequent correspondence from Mr Jakab advised that he was a Captain

⁷ Although the handwritten nomination was undated and unsigned, Defence advised that the veracity of the document was confirmed by Mr Jakab

including the documents provided by Mr Wilkes.

19. Defence recommended that its original decision of 7 December 2023 to not recommend Mr Wilkes for a Distinguished Service Decoration be affirmed.⁸

20. Defence advised that on 31 May 2023, Mr Wilkes applied to the Directorate of Honours and Awards for a review of the decision to recognise his service on Operation SOLACE in Somalia with a Chief of General Staff Commendation, rather than a Distinguished Service Decoration.

21. Although the hand written citation prepared by Mr Jakab and provided by Mr Wilkes with his application to Defence was validated, Defence could not locate a nomination for Mr Wilkes for the Distinguished Service Medal.

22. Rather, Defence confirmed that the Somalia Individual Awards file contained a nomination for Mr Wilkes for a Commendation for Distinguished Service by the Commanding Officer 1 RAR Battalion Group, His Excellency (then Lieutenant Colonel) D.J. Hurley, and supported by Colonel Mellor. However the award was ultimately downgraded to a Chief of General Staff Commendation.⁹

23. In reaching its decision, Defence compared Mr Wilkes' service on Operation SOLACE against the eligibility criteria for the Distinguished Service Cross, the Distinguished Service Medal and the Commendation for Distinguished Service. In its view Defence considered that Mr Wilkes did not meet the eligibility criteria for any of the above honours and that he had been suitably recognised with a Chief of General Staff Commendation.

24. Defence further stated that although there was a recommendation for Mr Wilkes for a Commendation for Distinguished Service on the Somalia Individual Awards file, it did not question the decision to downgrade Mr Wilkes' nomination and award to a Chief of General Staff Commendation. Nor did Defence believe that the quota system that was applied to the original consideration of Somalia awards had any bearing on the review of Mr Wilkes' service.¹⁰

Evidence and findings from the accounts of the action in Somalia

25. Operation SOLACE was part of the Australian Defence Force contribution to the United Nations intervention in the Somali civil war from 1993 to 1995.

26. **Summary of Mr Wilkes' Actions.** As per the Defence report, Mr Wilkes was force assigned to Operation SOLACE with 1 RAR Battalion Group in Somalia from 18 January to

⁸ Defence report, dated 3 April 2024

⁹ Ibid

¹⁰ Defence report, dated 3 April 2024

18 May 1993. His service was with the 1st Battalion Support Group, which was part of 1 RAR Battalion Group.

27. Mr Wilkes' nomination for the Commendation for Distinguished Service was not for a specific action in Somalia but rather for his period of service during his deployment in Somalia.

28. Mr Wilkes' service records indicate that he received a 'special' Annual Confidential Report for the period 15 December 1992 to 15 April 1993 regarding his service in Somalia on Operation SOLACE. The report, which was prepared by (then) Major Harnwell and supported by (then) Lieutenant Colonel Hurley included the following statement by Major Harnwell on Mr Wilkes' performance.

During OP Solace SGT Wilkes has been the OIC of IBSG transport element. He has demonstrated good leadership in the achievement of all allocated 1st, 2nd and 3rd line transport tasks. He has completed command, planning, administrative and liaison functions not normally allocated to a SGT. He has maintained an average 88% equipment availability and the transport tp(-) has completed over 168000km incident free. His leadership is such that he consistently sets high standards of determination and commitment to his soldiers. Equally he demands high standards from his soldiers and he has the total respect of the soldiers under his command. He is enthusiastic SNCO¹¹ who has good knowledge and a 'can do' attitude. He has consistently demonstrated good ability and with more time in rank and applicable subject courses for promotion, he will make a good warrant officer.¹²

29. Both Mr Wilkes and Defence supplied a handwritten document by Mr Jakob nominating Mr Wilkes for the Distinguished Service Medal. The nomination reads:

During Operation SOLACE Sergeant Wilkes was posted as the troop commander for the second line transport element. In this capacity he demonstrated distinguished leadership in the achievement of all allocated first, second and third line transport tasks.

Sergeant Wilkes commanded 17 soldiers and managed an asset of 19 B and C vehicles. As such he completed command, administrative, planning and liaison functions not normally assigned a Sergeant.

Whilst maintaining an 88 percent average equipment availability, the transport troop completed a total of 155,200 kilometres. None of Sergeant Wilkes's equipment were grounded due to accident.

¹¹ Senior Non-Commissioned Officer

¹² Mr Gary Wilkes, 'special' Annual Confidential Report, service records (PAC Promotion Processes), page 45

Sergeant Wilkes' leadership was such that he consistently set an example of determination and commitment to his soldiers. He demanded the highest standard during troop operations yet always received the complete respect of those under his command. His devotion was demonstrated by his continual emphasis on the development of his junior non-commissioned officers and his enhancement of the profession and technical qualities of all his soldiers.

Sergeant Wilkes consistently maintained high morale due to his ability to balance task, group and individual needs. His soldiers demonstrated that they had been issued clear orders prior to commencement of tasks. As an element, the transport troop was not overcome by difficulties such as late notice tasking and changes to task details. All customer units have commended the transport troop on its' responsiveness and professional approach. Such commendation is a reflection of the inspired leadership demonstrated by Sergeant Wilkes during Operation SOLACE.¹³

Mr Wilkes' comments on the Defence report

30. On receipt of the Defence report, Mr Wilkes supplied initial email correspondence to the Tribunal on 5 April 2024 where he said that Defence had *contradicted itself* and had *no idea* what he did on Operation SOLACE.¹⁴ In further email correspondence submitted on 24 and 26 April 2024, Mr Wilkes stated that Defence should have consulted with those who had submitted him for a Distinguished Service Decoration, and listed many of his duties in Somalia, including additional duties such as tasking of the Battalion Transport Platoon, decontamination of battalion group vehicles and equipment prior to their return to Australia, and stated that he came under fire on a number of occasions.

Tribunal hearing

31. The hearing was conducted on 30 July 2024. At the hearing Mr Wilkes did not provide any additional evidence in support of his claim, or supply a witness. He also made it clear that he was no longer seeking the Distinguished Service Medal.¹⁵ Despite that view, the Tribunal did not automatically remove the Distinguished Service Medal from its consideration, choosing instead to firstly establish whether Mr Wilkes' performance on Operation SOLACE could be considered *distinguished*.

32. It was clear to the Tribunal that Mr Wilkes still suffered acutely from the effects of his Post Traumatic Stress Disorder diagnosis. As a consequence, during the hearing the Tribunal was not able to assess certain specific aspects germane to the review. This included

¹³ *Nomination to be awarded the Distinguished Service Medal, Australia Day 1994, 321193 Sergeant Gary William Wilkes*, prepared by (then) Captain Andrew Jakab, undated but date stamped 2 February 1999 by Veterans Board Brisbane

¹⁴ Mr Wilkes' comments on the Defence report, supplied via email on 5 April 2024

¹⁵ Hearing audiotape recording, elapsed time 20:20-20:30

the command and control arrangements in place during Operation SOLACE, which is discussed below. The Tribunal subsequently sought further clarification after the hearing concluded, including requests for information from Mr Jakab and (now) Colonel Harnwell. The Tribunal is grateful for their participation in this review.

33. For its part, Defence did not directly challenge any of Mr Wilkes' claims at the hearing, and instead focused on the manner in which the Chief of General Staff Commendation had been 'presented' to Mr Wilkes. Defence accepted that there were shortcomings in the way in which Mr Wilkes had received his award and offered to have the Commendation presented to him in a more appropriate manner and reflecting its proper status.

Tribunal analysis

34. That Mr Wilkes had a particularly successful deployment as part of Operation SOLACE was not in contention. Nor was the fact that Mr Wilkes was part of a warlike operation an issue. Indeed, the very fact that Mr Wilkes was nominated for a Commendation for Distinguished Service, and awarded a Chief of General Staff Commendation for his efforts in an operation where the entire force was ultimately recognised for sustained outstanding service, speaks to both the strength and quality of his performance. The only question before the Tribunal, therefore, was whether Mr Wilkes' performance was in fact *distinguished*.

35. The 1 RAR Battalion Group deployment to Somalia as part of Operation SOLACE was the first international deployment of Australian land forces to a warlike operation since the end of Australian participation in the Vietnam War in 1972. It was also the Australian Defence Force's first participation in a significant United Nations-endorsed Western alliance intervention since the end of the Cold War.¹⁶ It was also the first time that the Distinguished Service Decorations were awarded to recognise performance in warlike operations.

36. The haste in which the operation was planned,¹⁷ combined with limitations on the size of the detachment,¹⁸ the nature of the mission¹⁹ and the operating environment introduced ongoing and significant challenges for the deployment. Although the operation was clearly considered a major success, the 1 RAR Battalion Group consistently operated over and above

¹⁶ Breen, B. (2022), *Australian Forces Somalia 1992-1993*, Australian Army Campaign Series No 31, Newport NSW, Big Sky Publishing, page 4

¹⁷ 1 RAR was expected to be on the ground in Somalia roughly one month after the Government had announced its commitment. This period included the Period of Reduced Activity. In contrast, deployed forces had six months to prepare to the previous operation in Namibia. There were also limited opportunities to reconnoitre the proposed area of operations or assess its suitability for 1 RAR operations, Breen, B. (2022), *Australian Forces Somalia 1992-1993*, Australian Army Campaign Series No 31, Newport NSW, Big Sky Publishing, page 16

¹⁸ The Land Commander, Major General W. Blake AO DC, directed that '1RAR and its assigned sub-units to down-size to fit Canberra's numbers cap.' Breen, B. (2022), *Australian Forces Somalia 1992-1993*, Australian Army Campaign Series No 31, Newport NSW, Big Sky Publishing, page 17

¹⁹ This being to provide a secure environment for the distribution of humanitarian aid 'in a violent, impoverished, starving society.' 1 RAR controlled a sector of 17,000 square kilometers populated by an estimated 380,000 people. 1 RAR's main tasks were to protect humanitarian workers, aid convoys, and the population from marauding bandits. The bandits, predominantly in the town of Baidoa, were stealing aid for profit, and terrorising the local population through acts that included robbery, rape, and murder.

what might be expected of them in the ordinary course of the operation. Indeed, the 2022 Tribunal *Inquiry into Unit Recognition for Australian Defence Force service in Somalia* found that:

*...the Battalion Group, including Headquarters Australian Forces Somalia, performed substantially above its normal capacity for operations. The dangers faced, the living and working conditions experienced, and the challenges of supply, were met head on. For a Group which had no training or experience in humanitarian relief, including working with non-government organisations, it performed substantially above its expected capacity.*²⁰

37. It also found that:

*...the 1 RAR Battalion Group...served continuously and for long hours in difficult conditions. Their achievements were only possible through the dedication and work ethic of all personnel involved.*²¹

38. Although it had been recognised with a Chief of General Staff Commendation in late 1993,²² as a consequence of the 2022 Tribunal Inquiry, 1 RAR Battalion Group was awarded a Meritorious Unit Citation for *sustained outstanding service in warlike operations*.²³

39. The Tribunal noted that nineteen personnel across the 1 RAR Battalion Group were nominated by the in-theatre command chain for distinguished service decorations.²⁴ Six of the nineteen personnel were nominated for Distinguished Service Medals, and the remainder were nominated for the Commendation for Distinguished Service. These nominations had been ranked in order of merit by the Commander of Australian Forces in Somalia, Colonel William Mellor; and Mr Wilkes' nomination for the Commendation for Distinguished Service had been ranked as number fourteen of the nineteen 'subordinate' nominations.²⁵

40. Although the number of Distinguished Service Decorations available to Operation SOLACE personnel was initially assumed by higher headquarters to be fifteen, the final figure was ultimately set to nine. Importantly, both of these figures ultimately *included* the Distinguished Service Crosses awarded to the two senior Australian commanders in theatre at the time who had not been included as part of the original list.²⁶ This meant that just seven of

²⁰ *Inquiry into Unit Recognition for Australian Defence Force service in Somalia*, Defence Honours and Awards Appeals Tribunal, 31 October 2022, paragraph 5

²¹ *Ibid*, paragraph 8

²² *Ibid*, paragraph 5

²³ This was despite a Tribunal Inquiry in 2010 that found that *there was no error in due process leading to the award of a CGS Commendation rather than an MUC* as listed in the 2022 *Inquiry into Unit Recognition for Australian Defence Force service in Somalia*, paragraphs 3-5

²⁴ This number reflected the number of 'subordinates' being nominated by the command group, and therefore excluded senior Australian commanders in theatre at the time, two of whom were ultimately awarded a Distinguished Service Cross. The total number of Distinguished Service Decorations being considered by 'the system' was therefore twenty-one.

²⁵ Operational Awards – Somalia, Department of Defence, 93/26619

²⁶ The internal Defence mechanism for establishing the quota for Distinguished Service Decorations at nine as opposed to fifteen was based on *pro rata* calculations that took into account the number of deployed personnel

the nineteen ‘original’ nominees ultimately received a Distinguished Service Decoration.

41. The Tribunal was unable to locate any evidence that any of the nominations had been considered by an honours and awards board, either in-theatre or by higher headquarters in Australia.²⁷ Rather it seemed to the Tribunal that senior commanders, presumably supported by their own internal staff processes, provided individual insight and recommendations to support the process.

42. The Tribunal noted that, in concert with the reduction in overall distinguished service recommendations, the preferences for the distribution of distinguished service decorations by the Land Commander, Major General Murray Blake AO DSC, were significantly at variance to those that had been nominated by the in-theatre chain of command. Although Mr Wilkes’ Commendation for Distinguished Service nomination was amended by Major General Blake to a Chief of the Defence Force Commendation, he also stated:

‘Good effort, just below [name removed by Tribunal] in quality and would be my pri2 for any additional CDS.’²⁸

At the time the Major General Blake made these comments, the ‘target’ for Distinguished Service Decorations for Operation SOLACE was still fifteen.

43. Although the Tribunal was not bound by any quotas and needed only concern itself with whether Mr Wilkes’ performance on Operation SOLACE met the threshold of *distinguished service*, it nevertheless observed that Mr Wilkes’ Commendation for Distinguished Service nomination clearly enjoyed some support from Major General Blake.

44. Although the Tribunal was somewhat concerned by the methodology employed within Defence to reduce the number of Distinguished Service Decorations from fifteen to nine,²⁹ it noted that even if the number of Distinguished Service Decorations had remained at fifteen, Mr Wilkes would not have received a Commendation for Distinguished Service, given the quota limitations in place at the time. This was notwithstanding Major General Blake’s support.

and the duration of the deployment, Operational Awards – Somalia, Department of Defence, 93/26619 lists: *LCAUST/ACPERA-A & CGS have interpreted the Defence Instruction on Operational awards (FLAG B) as it reads; ‘over a six monthly period’. CDF insists that COSC and the Defence Instruction is meant to read for a total of six months service. Thus CDF is insisting that the Somalia awards be limited to 3 DSC/DSM and 6 Commendations for Distinguished Service. This is based on 17 weeks service in Somalia as a ratio of the Defence Instruction six months benchmark.*
ie 1000 members
DSC/DSM 1 award for every 200 5 awards
Comm/n 1 award for every 100 10 awards
15 awards were bid for however CDF is applying a 17/26 ratio and is limiting army to a total of 9 awards.
The two positive aspects of this...exercise is that...CDF is offering Service Commendations at his level.

²⁷ This is not surprising to the Tribunal since these fora were not an endemic part of the process at that stage.

²⁸ Operational Awards – Somalia, Department of Defence, 93/26619

²⁹ The Defence Headquarters methodology centred exclusively on the numbers of deployed personnel, and the duration of the deployment, rather than being merit-centric.

45. Although Army's Chief of General Staff,³⁰ Lieutenant General Grey, initially supported Major General Blake's recommendation for a Chief of the Defence Force Commendation,³¹ Mr Wilkes subsequently received a Chief of General Staff Commendation rather than a Chief of the Defence Force Commendation by virtue of the protracted, and at times apparently heated, exchanges between higher headquarters in relation to the number of Distinguished Service Decorations that ought to be approved.³²

46. Following the reduction in available Distinguished Service Decorations from fifteen to nine, Mr Wilkes was awarded a Chief of General Staff Commendation in October 1993. There was no record of the process by which the Chief of the Defence Force Commendation recommended by Lieutenant General Grey was amended to a Chief of General Staff Commendation. The Commendation reads:

The Land Commander has brought to my attention your distinguished performance of duty as the Transport Commander of the 1st Battalion, The Royal Australian Regiment Group in Baidoa, Somalia.

Your detailed planning and management of your Troop ensured that they were able to respond to short notice tasks as well as maintain the high tempo of work rate required to support convoy escorts. Maintenance of troop vehicles and response to tasking were key factors in the Battalion's success during this peacemaking operation.

*I commend you for tireless efforts and pursuit of excellence throughout Operation SOLACE. Your achievements have brought great credit to you, your Corps and Australia and are in keeping with the highest tradition of the Australian Army.*³³

47. The Tribunal noted that, at the time of issue, service commendations were *intended primarily to cater for situations in which formal recognition in the form of honours and awards would not be justified or, for various reasons, would not be contemplated.*³⁴

48. The Tribunal also noted that although service commendations were *intended to provide selected senior military commanders with the means of formally recognising....exceptional, outstanding or meritorious service*, there were no criteria at the time that sought to define, or differentiate between, these levels of performance.^{35,36} Similarly, the Tribunal noted that the intent of Chief of the Defence Force Commendations in 1993 was

³⁰ Now known as Chief of Army

³¹ Defence report, dated 3 April 2024

³² Operational Awards – Somalia, Department of Defence, 93/26619

³³ Chief of General Staff Commendation as supplied with application for review, dated 7 December 2023

³⁴ Internal Commendation Scheme as supplied with Defence report, dated 3 April 2024

³⁵ Ibid

³⁶ The Tribunal noted that this was at odds with current Defence commendation arrangements which are hierarchically based, whereby gold, silver or bronze commendations are awarded based on the merit of the service or act. (*Defence Instructions (General) 31-2*, Amendment 3, 8 December 2004, paragraph 2, as listed in the Defence report, dated 3 April 2024

to recognise *members of the Services posted to Defence Central positions, Joint Service establishments or to those involved in joint exercises or operations.*³⁷ The principal determinant between the issuing of a Chief of the Defence Force Commendation and a Chief of General Staff Commendation was therefore posting status.³⁸ Like the Chief of General Staff Commendation, there were no performance criteria attached to a Chief of the Defence Force Commendation, other than for recognising *exceptional, outstanding or meritorious service.*

49. Accordingly it was not possible, in the Tribunal's view, to directly link the awarding of any 1993 Defence commendation to a 'hierarchical' level of performance. Despite its apparent 'superiority', the Tribunal formed the view that the issuing of Chief of the Defence Force Commendations was a compromise offered by Chief of the Defence Force staff during negotiations in relation to the number of Distinguished Service Decorations available, to soften the blow for the relatively large number of personnel who would otherwise have not received recognition. This view is supported by the following extract:

*The two positive aspects of this long drawn out exercise is that the AO option for [name removed by the Tribunal] and that CDF is offering Service Commendations at his level.*³⁹

The Defence position

50. The Tribunal noted that Defence had, quite evidently, invested a significant amount of time and effort into a merits review for Mr Wilkes. For the most part, but with some notable exceptions outlined below, the Tribunal broadly agreed with the approach taken by Defence. The Tribunal also agreed with the Defence position in relation to the definition for *distinguished service*, this being that for service to be '*distinguished*', the individual in that role or appointment would have *successfully discharged duties that were **additional** or **superior** to those normally pertaining to the individual's rank and employment.*⁴⁰

51. The merits review,⁴¹ correctly in the Tribunal's view, included an assessment against both the Distinguished Service Cross and Distinguished Service Medal criteria, in which Defence acknowledged that Mr Wilkes met the threshold for command and leadership as a Transport Troop Commander. However, the report also stated that:

'...Defence considers neither the size of his troop, nor the complexity of his command would have exceeded what would be expected for a Senior Non-Commissioned Officer to lead and manage, with the support of a number of Junior

³⁷ Internal Commendation Scheme as supplied with Defence report, dated 3 April 2024

³⁸ This is different to current arrangements. *Defence Instructions (General) 31-2*, paragraph 2 states: '*In very special cases the highest level of commendation, a Chief of the Defence Force (CDF) Commendation, may be awarded.*'

³⁹ Operational Awards – Somalia, Department of Defence, 93/26619

⁴⁰ Merits Based Assessment – Recognition of Sergeant Gary William Wilkes (8292133/321193) for his service as the Transport Troop Commander 1st Battalion Support Group – Operation SOLACE from 18 January to 18 May 1993 as supplied with the Defence Report, dated 3 April 2024

⁴¹ Ibid

*Non-Commissioned Officers. While systemic logistical issues (i.e. lack of spare parts) would have made successful completion of tasks more difficult, **this challenge would have been experienced by all units in Somalia.** [emphasis added]’⁴²*

52. Although the Tribunal agreed with the Defence observation that *this challenge would have been experienced by all units in Somalia*, it did not agree that this was the correct test. In the Tribunal’s view, the logistics challenges simply provided context to the operating environment, and it was Mr Wilkes’ actual performance in meeting or overcoming these challenges that must necessarily form the basis for any assessment of his performance. As far as the Tribunal was aware, Defence did not conduct any such assessment of this nature.

53. The Defence report also stated that:

*There are [a] number of independent sources that attest to Mr Wilkes’ performing his duties as the BSG Transport Troop Commander to a very high standard. One of the annual reports and Mr Jakab’s nomination characterise Mr Wilkes’ service as being above that, **which would be expected of a Sergeant.**[emphasis added]’⁴³*

54. The Tribunal had some difficulty with this statement which, in its view, seemed to imply that the performance of sergeants is universally expected to be higher than a *very high standard*. This cannot sensibly be the case. The Tribunal takes the view that the performance of sergeants largely conforms to the same ‘normal distribution’ that characterises most other ranks in that, despite the ‘system’s’ best efforts to prevent it, there will almost certainly be some sergeants who perform below expectations, just as there will be others who perform at or above expectations. The Tribunal nonetheless took the Defence position as being acknowledgement that Mr Wilkes’ performance, in an otherwise extremely challenging environment, was above a very high standard.

55. Finally, in a letter to Mr Wilkes dated December 2023, Defence stated that:

*The original Commendation for Distinguished Service nomination was considered on its merits by your then chain of command and they determined that your performance did not meet the conditions to recommend the award of a **Commendation for Distinguished Service** [emphasis added] and instead awarded a Chief of General Staff Commendation. Defence relies on the knowledge and expertise of its senior Officers to appropriately assess the performance of those in their command in regards to honours and awards.*⁴⁴

56. It appeared to the Tribunal that the statement in bolded text above was not entirely accurate. The Tribunal was unable to locate any evidence that the chain of command at the

⁴² Ibid

⁴³ Ibid

⁴⁴ Letter, Defence Honours and Awards to Mr Wilkes, dated 7 December 2023 as supplied with the Defence Report, dated 3 April 2024

time ever analysed Mr Wilkes' performance in such detail, or made a proper merits-based determination.⁴⁵

57. Rather, all of the evidence available to the Tribunal suggested that the chain of command at the time was instead entirely focused on determining the numbers of Distinguished Service Decorations that would ultimately be available, and attempted to regulate the batch of twenty-one nominations to fit under these revised arrangements.⁴⁶

58. It was apparent to the Tribunal that Mr Wilkes' nomination was not considered on its merits or downgraded on the basis of it not meeting *the conditions to recommend the award of a Commendation for Distinguished Service*.

59. Further, the Tribunal considered that Defence's comment that it *relies on the knowledge and expertise of its senior Officers to appropriately assess the performance of those in their command in regards to honours and awards*⁴⁷ as being somewhat corrosive to its own proposition, given that these same senior officers, up to and including the Land Commander, clearly considered Mr Wilkes' nomination to be 'CDS-worthy'.

60. The Defence merits review also included comparative assessments against other Commendation for Distinguished Service recipients, per the following extract:

The narratives of CDS recipients shows the high threshold of distinguished performance of duty in Somalia that was required for the award. Six CDSs were awarded for service on Operation SOLACE. Private Day and Corporal Martin were each awarded a CDS for actions under fire. Captain Dodds commanded a force consisting of the combined Mortar and Direct Fire Support Weapons Platoons during operations in Somalia. Captain Dodds' narrative details how he overcame his relative inexperience to achieve excellent results in a senior command position in comparison to his peers. Major McKaskill commanded B Squadron 3rd/4th Cavalry and his service was notable for his ability to '...analyse operational tasks, develop plans and make difficult leadership decisions'. Major McKaskill's CDS narrative described how he established strong relationships with local community groups and relief agencies, this extended to personally arranging sponsorship of a number of local Somalia schools with schools in Australia. Major Moon commanded C Company IRAR and his CDS narrative describes how his leadership enabled the highly successful achievement of mission goals in a challenging environment that 'placed much greater demands than usual on the

⁴⁵ This statement also runs counter to Defence's own assessment elsewhere that '*The reasons for this additional change in level of award was not documented.*' Research Report – Recognition of Sergeant Gary William Wilkes (8292133/321193) for his service as the Transport Troop Commander 1st Battalion Support Group - Operation SOLACE from 18 January to 18 May 1993, as supplied with the Defence report, dated 3 April 2024

⁴⁶ Operational Awards – Somalia, Department of Defence, 93/26619. The 21 nominations include the 19 'subordinate' nominations and the two nominations that included CO IRAR and CAFS.

⁴⁷ Letter, Defence Honours and Awards to Mr Wilkes, dated 7 December 2023 as supplied with the Defence Report, dated 3 April 2024

ability of company commanders to plan and conduct successful missions'. Major Stanhope was Officer Commanding of the Civil-Military Operations Team in Somalia. Major Stanhope was awarded a CDS for leadership of his team that resulted in the Battalion successfully delivering relief aid, raising auxiliary forces and courts in eight towns and fostering the redevelopment of the political, social and economic infrastructure of the Baidoa region. Major Stanhope was the main point of contact for all elements of the local community and he handled the 'myriad of intricate problems to him with wisdom and foresight.'⁴⁸

61. The Tribunal was not persuaded that the comparison with other Commendation for Distinguished Service recipients was sufficiently compelling to warrant removing Mr Wilkes from the same consideration. This was particularly the case since, unlike more recent reviews where both long and short versions of the draft citations were available, only the short versions (which are constrained in their ability to provide amplification of performance) were available for consideration.

62. It was apparent that of the six Commendations for Distinguished Service awarded post Operation SOLACE, two were awarded to infantry non-commissioned officers for their performance under fire. It was clearly not appropriate to attempt to compare Mr Wilkes' draft commendation to these individuals. Three of the remaining four Commendation for Distinguished Service medals were awarded to majors. Momentarily setting aside the fact that comparative analyses should remain at the periphery of merit-based assessments, the Tribunal considered that the lack of recipients at similar rank and role largely negated comparisons between Commendation for Distinguished Service recipients, as there was clearly no mechanism that satisfactorily accommodates a performance-based comparison between the relatively large disparities in both rank and role. Notwithstanding, the Tribunal did not accept that Mr Wilkes' Commendation for Distinguished Service citation was so deficient or inferior as to be unable to meet the threshold for CDS consideration.

63. However, the Tribunal did consider the citation of one other billet in which the member performed roles and exercised responsibilities most similar to (then) Sergeant Wilkes. This citation was for Lieutenant McDonald, who commanded the Transport Platoon within Administration Company of 1 RAR,⁴⁹ and who was ultimately awarded a Chief of the Defence Force Commendation. Examination of Lieutenant McDonald's citation⁵⁰ not only highlighted strong similarities across key transport-centric themes but, perhaps more importantly, demonstrated that there was no cogent reason why Sergeant Wilkes ought to have been removed from at least consideration for a Chief of the Defence Force Commendation.

⁴⁸ Merits Based Assessment – Recognition of Sergeant Gary William Wilkes (8292133/321193) for his service as the Transport Troop Commander 1st Battalion Support Group – Operation Solace from 18 January to 18 May 1993, as supplied with the Defence report, dated 3 April 2024

⁴⁹ Not to be confused with the Transport Troop of the Battalion Support Group of 1 RAR Battalion Group, commanded by Mr Wilkes

⁵⁰ Lieutenant C. J. McDonald, Citation for Chief of the Defence Force Commendation, dated October 1993, as provided by the Department of Defence, 11 July 2024

64. Defence was also critical that there were:

*...no specific examples provided on what tasks he undertook that were of a higher standard than would be expected of a Sergeant in the position of Troop commander.*⁵¹

65. The Tribunal accepted that the draft Commendation for Distinguished Service citation did not provide specific examples of **tasks** undertaken by Mr Wilkes. However, the Tribunal took the view that the fact that Mr Wilkes' citation might not be as technically comprehensive as others arguably said more about the quality of penmanship as it did about the quality of service.⁵² Regardless, on face value the citation appeared to have been sufficiently persuasive at the time to convince the chain of command that Mr Wilkes' service had indeed been distinguished.

66. Notwithstanding any technical deficiencies that might have been evident in the citation, the citation did highlight a number of key attributes that instead led to outcomes that were identified as being a *key factor in the Battalion Group's success during OPERATION SOLACE*.⁵³ Mr Wilkes' performance is discussed in more detail below.

67. Mr Wilkes' draft Commendation for Distinguished Service citation reads:

For distinguished performance as the Transport Troop commander of the 1st Battalion The Royal Australian Regiment in Baidoa, Somalia during OPERATION SOLACE.

Sergeant Gary William Wilkes displayed dedication and determination in the command of his troop. Maintenance of troop vehicles and response to tasking requirements were a key factor in the Battalion Group's success during OPERATION SOLACE. His detailed planning and management of his Troop ensured that they were able to respond to short notice tasks as well as maintain the high tempo work rate required in supporting relief aid convoy escorts. The outstanding performance of the troop resulted in him being held in high regard by the members of the 1st Battalion The Royal Australian Regiment Group.

Sergeant Wilkes demonstrated distinguished qualities of leadership, resource management and dedication in the performance of his duty. His tireless efforts and

⁵¹ Defence report, dated 3 April 2024

⁵² Mr Jakab subsequently acknowledged some of these deficiencies when in a letter of support for Mr Wilkes to the Department of Veterans' Affairs in 1999, as supplied with the Defence report dated 3 April 2024, he stated: 'Looking back, although it covers the key achievements of WO2 Wilkes, the draft citation does not adequately describe the environment WO2 Wilkes worked in.'

⁵³ Extract from Mr Wilkes' draft Commendation for Distinguished Service citation, as supplied with the Defence report, dated 3 April 2024

*pursuit of excellence brings great credit upon himself, his Corps and the Australian Army.*⁵⁴

68. As part of its research into 1 RAR Battalion Group's performance on Operation SOLACE, the Tribunal was struck by the relatively large number of individuals who, in the Tribunal's view, acted in such a way as to bring great credit upon themselves and the 1 RAR Battalion Group more generally. It was, in the Tribunal's view, not unreasonable to expect that some of these individuals might also have been recognised. In any case, the Tribunal felt that the nomination of Mr Wilkes in the first instance against a cohort of such strong overall performance was, in and of itself, quite telling.

Command and Control arrangements on Operation SOLACE

69. The Command and Control arrangements as they applied to transport arrangements throughout Operation SOLACE were central to the Tribunal's deliberations. This was because the Tribunal considered that it was this aspect that best addressed the issue of whether Mr Wilkes had successfully discharged duties that were *additional* or *superior* to those normally pertaining to his rank and employment.

70. At the hearing the Tribunal was unable to clearly establish the Command and Control arrangements as they applied to the Transport Troop during Operation SOLACE. These arrangements were made less clear by the presence of, and interaction with, 1 RAR's Transport Platoon which formed part of the 1 RAR Battalion Group Administration Company,⁵⁵ and claims by Mr Wilkes that the BSG Transport Troop was routinely tasked directly from 1 RAR Battalion Group headquarters.

71. As a consequence, a Request for Information was distributed to Mr Jakab and (now) Colonel Harnwell, both of whom were expected to be able to expand on relevant Command and Control arrangements, and other aspects of the operation. The Request for Information specifically sought clarification on the Command and Control arrangements as they applied to the Battalion Support Group Transport Troop, Headquarters Administrative Company's Transport Platoon and 1 RAR Battalion Group, and any relevant implications. Responses were received from Colonel Harnwell and Mr Jakab on 26 and 24 September 2024 respectively. Mr Jakab also provided a supplementary response by e-mail on 1 October 2024.

72. Neither Defence nor Mr Wilkes provided any additional substantive comment on either of the Request for Information responses.

⁵⁴ Ibid

⁵⁵ The Transport Platoon Commander (Lieutenant McDonald) received a CDF Commendation for his efforts on Operation SOLACE.

73. In his response to the Request for Information, Colonel Harnwell stated:

The BSG was under command of the 1 RAR Bn Gp. That means that I was under direct command of LTCOL Hurley. All staff within the BSG were under my command. I also had 'technical command' back to my parent organisation, 3 BASB and to LTCOL Saw (the CO) when relevant, as well as to HQ Australian Force in Mogadishu (COL Mellor and LTCOL Woolnough). The BSG structure included an operations cell, where non-routine tasking was considered and directed as required. LT Jakab worked in the operations cell, along with other junior officers. He was also assigned from his parent sub-unit, Tpt Sqn, 3 BASB, along with SGT Wilkes and the transport troop personnel. I would suggest that LT Jakab and SGT Wilkes had a closer working relationship, both being from the same unit prior to the Operation. Routine tasking was from the BSG operations cell to the relevant element – transport, supply, maintenance, medical, etc. Tasking between 1 RAR Administrative Company and BSG was via the operations cells in each unit, radio or other correspondence as necessary: I attended daily orders groups with LTCOL Hurley and the other Company Commanders, then I would conduct my own orders groups with my team (including SGT Wilkes). There was also discussion between myself and OC Administrative Company MAJ McDonald, or with the Quartermaster MAJ McLeod and they would also routinely discuss matters with my operations cell staff. The working relationship between the 1 RAR Bn Gp and BSG was mostly informal with a 'can do' attitude. The Bn was our major dependent unit and the focus of our efforts.⁵⁶

74. In his response to the Request for Information, Mr Jakab said:

The BSG Transport Troop was always under command of HQ 1 BSG. Its tasks were assigned by the BSG Operations Cell (of which I was a member). The BSG Transport Troop was not placed under the command of the 1 RAR Administrative Company or its Transport Platoon.⁵⁷

75. As part of a separate Request for Information question relating to comments made by the Commanding Officer, 1 RAR Battalion Group, (then) Lieutenant Colonel Hurley, in his Post Activity Report about the 'brigading' of assets, Mr Jakab also stated that *at no point were 1 BSG transport resources "pooled" and placed under command of 1 RAR, its sub-units or officers.*⁵⁸

76. It is also worth noting that the statement provided by Sergeant Russell appears to contradict both Mr Jakab's and Colonel Harnwell's comments regarding direct tasking from 1 RAR Headquarters, at least in the initial stages of the Operation. Sergeant Russell wrote:

⁵⁶ Colonel Mark Harnwell, response to Request for Information, dated 26 September 2024

⁵⁷ Mr Andrew Jakab, response to Request for Information, dated 24 September 2024

⁵⁸ Ibid

*From day one the tasking came from CMOV 1 RAR Headquarters directly to the Transport Headquarters for allocation to drivers and vehicles. This happened until Battalion Support Group (BSG) was up and running.*⁵⁹

77. Lastly, again as part of a response to a separate question, Mr Jakab wrote:

*A BSG Transport Troop was then normally commanded by a lieutenant with the support of at least one sergeant and an additional corporal assigned to troop headquarters. SGT Wilkes's troop headquarters consisted of himself only. This meant that the command, administrative and planning responsibilities normally performed by three was performed by one – SGT Wilkes.*⁶⁰

A relatively unique case

78. Analysis of the eleven distinguished service reviews finalised since the Tribunal's inception in 2008⁶¹ revealed that there was only one other case where a nomination for distinguished service was supported throughout the entirety of the nomination process. In this matter, there was clearly never a question as to whether distinguished service had been rendered, the argument instead revolving around which of the distinguished service decorations should be recommended.⁶²

79. Thus, Mr Wilkes' Commendation for Distinguished Service nomination was the only case to have come before a Tribunal where a nomination for a distinguished service award was unchallenged throughout the assessment process⁶³, and where this support did not translate into the envisaged award, or similar.

80. Mr Wilkes' case is also characterised by not only a citation that lacks supporting detail and context, but a paucity of other supporting documentation that is not entirely conducive to being able to genuinely conduct a merits review.

⁵⁹ Research report – Recognition of Sergeant Gary William Wilkes, (8292133/321193) for his service as the Transport Troop Commander 1st Battalion Support Group - Operation SOLACE, from 18 January to 18 May 1993 as supplied with Defence Report, dated 3 April 2024

⁶⁰ Mr Andrew Jakab, response to Request for Information, dated 24 September 2024

⁶¹ Including the Tribunal's predecessor, the Defence Honours and Awards Tribunal. Five of the applicants eventually recognised with a distinguished service decoration were not initially nominated for any award, three applications were either withdrawn by the applicant, withdrawn by Defence or dismissed by the Tribunal chair. One applicant was not nominated for an award by the chain of command at the time, Defence did not support any award and this decision was upheld. One applicant was nominated for a Distinguished Conduct Medal by the chain of command at the end of Second World War, but the application *may have been subject to a failure in due process*.

⁶² Lieutenant Colonel Paul Scanlan obo Soldier P, *P and the Department of Defence [2014] DHAAT 28 (4 July 2014)*

⁶³ Up to and including in-principle support at Major General

81. This gave rise to an obvious question: To what extent was a first-principles approach required to establish that distinguished service was rendered, where it was clear that the chain of command up to Major General was satisfied that Mr Wilkes' service was distinguished, and that Mr Wilkes was denied a Commendation for Distinguished Service only by virtue of quota limitations?

82. The Tribunal also noted the Defence position in relation to distinguished service reviews is that by virtue of the *subjective nature of honours and awards*, ...[Defence prefers] *to rely on the judgment of the chain of command during the nomination approval process*.⁶⁴ The Tribunal accepted that the nature of honours and awards assessments means that Defence has few options but to rely on the judgement of the chain of command, and that for the most part this judgement is sound. However, the Tribunal also accepted that for a range of reasons beyond the scope of this review, this approach is imperfect. There are clearly no guarantees that the chain of command will always make the correct decision, or be able to make what the Tribunal might ultimately see as the most correct or preferable decision. In any case, the Tribunal considered that the near-universal view that Mr Wilkes' service throughout Operation SOLACE was distinguished did far more to support the view that Mr Wilkes rendered distinguished service than it did to erode it.

83. In this context, the Tribunal formed a view that the unusual and near-universal level of support for Mr Wilkes was persuasive, and notwithstanding the relative lack of independent supporting documentation was nonetheless prepared to proceed on the basis that it need only be satisfied that, on balance, Mr Wilkes' service was *distinguished*.

84. As part of this process, the Tribunal undertook analysis against the two elements of the accepted definition of *distinguished* service, this being whether the individual had *successfully discharged duties that were superior or additional to those normally pertaining to the individual's rank and employment*.

85. This analysis relied in part upon the guidelines that had been developed for the Conlon review,⁶⁵ and which were intended to provide consistency in the interpretation of *duties or responsibilities which were additional or superior to those normally pertaining to their rank, appointment, employment or position*. These guidelines are set in full below:

- a. Service involving command and leadership, leadership or performance of duties may be considered to be 'distinguished' having regard to actions taken or qualities displayed either:
 - i. on a single occasion; or
 - ii. across a longer period such as a rotation, posting/tour or career;

⁶⁴ Defence position, *Conlon and the Department of Defence [2024], DHAAT 1, (11 April 2024)*, paragraph 42

⁶⁵ *Conlon and the Department of Defence [2024], DHAAT 1, (11 April 2024)*, paragraph 98

- b. Service may be ‘distinguished’ when it involves undertaking significant additional duties over and above those reasonably expected of the individual’s rank or role, provided that all duties are undertaken successfully, authoritatively or in a manner commanding great respect having regard to the degree by which they exceeded the usual expectations of the individual’s rank or role;
- c. Service may also be ‘distinguished’ notwithstanding that it involves only performing the duties expected of the individual’s rank or role, provided that such performance is clearly superior when compared to the reasonable expectations of the usual performance of others of the same rank, in the same or similar role/s or in similar circumstances:
 - i. by significantly exceeding those reasonable expectations on a particular occasion; or
 - ii. by meeting the level of reasonable expectation consistently and reliably over an extended period in the most demanding and exceptional circumstances;
- d. The concept of superior performance is not met by simply performing better than others on the same occasion or over the same period. Given that others may be performing at a level below what is reasonably expected of them, the proper basis of comparison is by reference to reasonable expectations;
- e. In either event, regard should be had to all relevant circumstances such as:
 - i. the experience and training of the individual;
 - ii. the size, breadth and complexity of the task performed; and
 - iii. the nature of the environment in which the service was performed; but
- f. Even where ‘distinguished’ service has been performed on an occasion or over a period, because Defence honours and awards are granted in exercise of the Governor-General’s discretion and not as a matter of entitlement, it may nevertheless be appropriate to withhold grant of a Distinguished Service Decoration (or any other honour or award) where there are other countervailing factors in an individual’s conduct that mean that grant would be inconsistent with the integrity of the Defence honours and awards system.

Was Mr Wilkes performance *superior* to those normally pertaining to his rank and employment?

86. As stated previously, throughout Operation SOLACE, the then Sergeant Wilkes acted as the Battalion Support Group Transport Troop commander, whereby he commanded seventeen soldiers and managed nineteen B and C class vehicles. The Troop commander position is normally held by a Royal Australian Transport Corps Lieutenant.

87. Although it noted that all of the 1 RAR Battalion Group were operating in trying conditions, the Tribunal considered that the operating environment generated particular challenges for the transport elements. These included extreme temperatures, the impact on their relatively small workforces of additional security requirements, and the prevalence of camel thorn⁶⁶ which presented *complications for the conduct of operations and particularly the serviceability of vehicles*,⁶⁷ the latter being compounded by well-documented and significant issues with the provision of spare parts, in part highlighted in the following extracts:

*The ambivalent sustainment of the AFS (Australian Forces in Somalia) reflected poorly on ADF logistic organisations, which were unrehearsed and indifferent about the sustainment of land forces deployed overseas....the lack of US-equivalent spare parts for [1 RAR] Group's fleet of vehicles and equipment constrained operations, increased risk and lowered morale.*⁶⁸

*With the short notice to deploy, the Australian Army's logistics and movement systems were put under severe pressure. After two weeks of driving on rough roads and tracks in a hot dusty environment with camel bush thorns, vehicle spare parts were being used at unprecedented rates. Frequent puncturing of tyres and damage to inner tubes had a significant impact on operations.*⁶⁹

88. Defence acknowledged the impact of logistics shortfalls on Mr Wilkes' troop in their report when they stated:

*Mr Wilkes would have had limited supplies of vehicle spare parts to keep his transport trucks maintained and operational.*⁷⁰

89. The Tribunal also noted that, similar to other 1 RAR Battalion Group elements, the Battalion Support Group was required to augment overnight security arrangements at the airfield against Somali *infiltrators*.⁷¹ Mr Wilkes also deployed one of his troops to the Transport Platoon of Administration Company in a liaison role.⁷² These actions had the effect of further reducing the effective capacity of an already stretched workforce. Against this backdrop, Mr Wilkes' transport troop *maintained an average 88% equipment availability and*

⁶⁶ Camel thorn is a small tree with stems covered in sharp spines endemic to Africa

⁶⁷ *Report of the Visit to Somalia by Brigadier P. J. Abigail, 19 May 1993*, paragraphs 9 and 10, ADF Correspondence file November and December 1992, Australian War Memorial 330, PKI/106/19

⁶⁸ Breen, B. (2022), *Australian Forces Somalia 1992-1993*, Australian Army Campaign Series No 31, Newport NSW, Big Sky Publishing, page 4

⁶⁹ *Inquiry Into Unit Recognition For Australian Defence Force Service In Somalia*, Defence Honours and Awards Appeals Tribunal, dated 31 October 2022, paragraph 156

⁷⁰ Research Report – Recognition of Sergeant Gary William Wilkes (8292133/321193) for his service as the Transport Troop Commander 1st Battalion Support Group - Operation SOLACE from 18 January to 18 May 1993, as supplied with the Defence report, dated 3 April 2024

⁷¹ Breen, B. (2023) *Chasing Bandits in the Badlands: Australian Soldiers adjusting attitudes in Somalia 1993*, Newport NSW, Big Sky Publishing, page 31

⁷² Hearing audio recording 32:59

... completed over 168000km incident free.⁷³

90. In response to a question at the hearing about how this rate of effort compared with other operations and/or exercises, Mr Wilkes stated that it was significantly higher than would be expected, even on larger exercises. He offered similar views in relation to equipment availability.⁷⁴

91. This stance was broadly consistent with the view offered by Colonel Harnwell who, in response to a Request for Information query as to the relevance of these statistics, which had been included in Mr Wilkes' Special Annual Confidential Report, stated that these figures demonstrated *a high, but not overwhelming tempo of activity*.⁷⁵

92. As part of his Request for Information response, Mr Jakab broadly agreed, but included other relevant observations:

*My recollection is that OP SOLACE was an operation that was logistically demanding, and that the tempo of support operations was high compared with my experience in training and other exercises. Vast distances would be covered on individual tasks with little opportunity for sleep. This tempo was sustained throughout the deployment. From time to time, support from US Army and USMC logistics elements would relieve the pressure; however, this was infrequent. SGT Wilkes was able to set an excellent example in this environment and this maintained the morale of the soldiers under his command in demanding circumstances.*⁷⁶

93. Critically, this level of performance was achieved in an atypical Command and Control structure that arguably placed significantly more responsibility on Mr Wilkes than his 1 RAR counterpart.⁷⁷ Notwithstanding the different 'label' (ie Platoon vs Troop), 1 RAR's Transport Platoon was a similar sized organisation to the Battalion Support Group Transport Troop, with a similar (but not identical) function. Throughout Operation SOLACE, 1 RAR Transport Platoon was commanded by a Lieutenant.

94. However, as Mr Jakab attested, 3 Brigade Administrative Support Battalion transport troop deployed to Operation SOLACE without its typical (full) complement of headquarters staff:

A BSG Transport Troop was then normally commanded by a lieutenant with the support of at least one sergeant and an additional corporal assigned to troop headquarters. SGT Wilkes's troop headquarters consisted of himself only. This

⁷³ Mr Gary Wilkes, Annual Confidential Report, as supplied with the Defence report, dated 3 April 2024

⁷⁴ Hearing audio recording, 44:00-45:30

⁷⁵ Colonel Mark Harnwell, response to Request for Information, dated 26 September 2024

⁷⁶ Response to Request for Information, Mr Andrew Jakab, dated 24 September 2024

⁷⁷ The 1RAR Transport Platoon is, notwithstanding the different name (ie Platoon vs Troop) a similar sized organisation to the Battalion Support Group Transport Troop, and was commanded by a Lieutenant.

*meant that the command, administrative and planning responsibilities normally performed by three was performed by one – SGT Wilkes.*⁷⁸

95. On this basis it seemed clear that throughout Operation SOLACE, Mr Wilkes fulfilled the roles and responsibilities normally assigned to the Lieutenant in addition to his own duties. Although Mr Jakab offered the view that this meant that Mr Wilkes had successfully discharged responsibilities that were superior to those normally pertaining to his rank and employment,⁷⁹ and that Mr Wilkes had therefore met the criteria for distinguished service, the Tribunal could not agree with this proposition. This was because this logic also meant that, as a matter of principle, any subordinate who temporarily but successfully filled a role normally assigned to a superior rank and successfully fulfilled those superior responsibilities—would be eligible for a Distinguished Service Decoration. The Tribunal had some difficulty accepting that this was the intent of defence policy as it applied to distinguished service.

96. The mere fact that one has successfully fulfilled the roles normally assigned to a ‘superior’ rank does not, in the Tribunal’s view, automatically make the discharge of those duties superior. Rather, the Tribunal considered that the correct test was whether Mr Wilkes’ performance was *clearly superior* to the reasonable expectations of the usual performance of other Sergeants, in the same or similar role/s or in similar circumstances.

97. The Tribunal noted that the Commendation for Distinguished Service nomination for Mr Wilkes assessed the performance of the troop as being *outstanding*.⁸⁰ The Tribunal also noted that the Chief of General Staff Commendation itself acknowledged that Mr Wilkes’ performance on Operation SOLACE was *distinguished*, ostensibly on the basis of Mr Wilkes’ *detailed planning and management, ...tireless efforts and pursuit of excellence* which underpinned 1 RAR Battalion Group’s ability to respond to short notice tasks and to maintain the tempo of operations. Both of these aspects were seen by relevant commanders at the time as central to the success of the mission. The Tribunal considered that the mere fact that Mr Wilkes was seen in this light is a great credit to him, particularly given the significant increase in workload and the real potential for fatigue that the absence of a junior officer and other key personnel would have generated.

98. As Defence noted, there were a number of personnel who attested to Mr Wilkes’ performance. This included the Department of Veterans’ Affairs statement provided by Mr Jakab which included the following extract:

Aside from being technically competent and tactically proficient, Gary showed the kind of inspirational leadership which was critical to his success in maintaining the

⁷⁸ Ibid

⁷⁹ Mr Jakab stated that ‘...in addition to the superior command responsibilities that the then Sergeant Wilkes assumed, he also performed the additional administrative and detailed planning responsibilities that would normally be assigned to Troop Sergeant or Corporal (381)’ and that as a consequence Mr Wilkes ‘objectively met the criteria for “distinguished service” whilst deployed with the 1 RAR Battalion Group throughout Operation Solace.’ Further response from Mr Andrew Jakab to Request for Information, dated 1 October 2024

⁸⁰ Commendation for Distinguished Service citation for Sergeant Gary William Wilkes, as supplied with the Defence report, dated 3 April 2024

morale of his people during a difficult deployment. Gary demonstrated physical courage in many hazardous environments. He was always prepared to impose his physical presence in interactions with hostile Somali locals in a manner which disarmed them of their negativity without recourse to violence. He would do this even in circumstances when Australian soldiers were outnumbered and naturally fearful of uncertain situations because of an unpredictable enemy that was not always easy to identify.

The moral standards that he brought to the performance of his duties were beyond reproach and he never compromised the ethical basis for Australia's involvement in the Somali Civil War.⁸¹

99. The Tribunal considered that these statements evidenced strong support for Mr Wilkes, and tended to place his performance towards, if not at, the upper echelons of superior performance.

100. In addition to the perspectives provided by the then Captain Jakab, Sergeant Hilton, Sergeant Russell, Lance Corporal Wilton and the immediate chain of command who generated both the Commendation for Distinguished Service nomination and the performance appraisal report, there were a number of independent sources that attested to Mr Wilkes' performing his duties as the Battalion Support Group Transport Troop Commander to at least a very high standard. A letter from the Commander of the Australian Forces in Somalia, Colonel Mellor, to Sergeant Wilkes congratulating him on the Chief of General Staff Commendation noted that:

.. the Operation depended so much on the transport assets and they invariably got the job done, and with an unblemished safety record. That sort of performance is a reflection of your commitment, management skills and flexible approach to the task.

*Yours was certainly an **outstanding effort**.⁸²*

101. Similarly, a letter from Major General Blake stated:

*My congratulations on your Award of the Chief of General Staff Commendation for your **exemplary** performance of duty as the Transport Troop Commander..... You richly deserve such recognition.*

*Your sustained commitment, dedication and professionalism have been **exceptional and are an example to all**. You and your family have every reason to be proud of your achievement.⁸³*

⁸¹ Statement by Mr Jakab in support of Mr Wilkes' Department of Veterans' Affairs application, dated 4 January 1999, as supplied with the Defence report, dated 3 April 2024

⁸² Letter, Colonel W.J.A. Mellor DSC AM ADC to Sergeant G Wilkes, dated 11 December 1993 as supplied with application for review, Mr Gary Wilkes, dated 7 December 2023

⁸³ Letter, Major General M.P.Blake AO MC to Sergeant G. Wilkes, dated 3 December 1993, as supplied with

102. In affording weight to these statements, the Tribunal acknowledged the limitations and the context of such congratulatory letters, from those without an intimate knowledge of the events. However, the Tribunal was nevertheless prepared to broadly accept the sentiments embodied in the letters from Colonel Mellor and Major General Blake, particularly the former, at face value, given that they were both written by senior officers who formed part of the chain of command at the time, and were directly involved in the assessment of Operation SOLACE awards.

103. Further, although congratulatory letters clearly lie beyond the boundaries of what might normally be taken into consideration, the Tribunal was prepared to accept that they were entirely consistent with the limited official documentation that was available at the time. Notwithstanding the reservations in relation to congratulatory letters expressed above, the Tribunal considered that these officers would not have used descriptors such as *exceptional*, *exemplary* and *outstanding* unless they accurately described Mr Wilkes' performance as they saw it. For the reasons expressed, the Tribunal was prepared to give the various letters some evidential weight, tempered in part by the remarks above.

Formal performance appraisal

104. Mr Wilkes received formal feedback on his performance on Operation SOLACE as part of a 'Special' Annual Confidential Report from Major Harnwell dated 15 April 2023, who indicated that he knew Mr Wilkes' work performance *Very Well*. In broad terms, Mr Wilkes was assessed as meeting the strongest levels of performance in all thirteen mandatory areas of assessment, and in five (*Reliability*, *Leadership*, *Conduct*, *Appearance* and *Organising/Administrative Ability*), received the highest possible (typically asterisked) score. None of these assessments were subsequently amended by Lieutenant Colonel Hurley. The narrative drafted by Major Harnwell is laid out in full below. The Tribunal noted that although the relative brevity and informal style required in senior non-commissioned officer reports can sometimes appear to run counter to the assigned score, it is the score that matters.

Application of Knowledge (High/A): Has good knowledge of tpt [transport] matters and applies it to achieve good results.

Reliability (): All tasks allocated have been achieved on time and with minimal guidance.*

Acceptance of responsibility (Seeks/A): As OIC Transport he has taken on greater responsibility than worn ranks SGTs normally would.

Leadership (): Cares for his soldiers. Has a firm but friendly manner. His soldiers work very well for him.*

Initiative (Self Starter/A): Has a mature approach & takes the initiative. Uses all opportunities to be effective.

Commonsense (Consistent/A): His maturity and balanced approach provide good examples to his soldiers. Tasks are easily achieved.

Oral communications (Convincing/A): Is a confident SNCO who gets his message across to all rank levels.

Interpersonal relations (Contributes/A): Works very well with all rank levels. Still has to accept females into land Army and on ops.

Conduct (*): A fine example to his subordinates and peers.

Appearance (Smart/A): No commentary but rated as Smart (highest score)

Physical Fitness (Acceptable/B): Quite fit for age (38)

Organising/Administrative Ability (*): Coordinates resources to achieve excellent results.

Written Communication (Convincing/A): Clear and concise. Requires more attention to staff duties.⁸⁴

105. The Tribunal's attention was drawn to a number of these statements, particularly the fact that Mr Wilkes had *taken on greater responsibility than worn ranks SGTs normally would*; that all allocated tasks had been *achieved on time and with minimal guidance*; and that he had achieved *excellent results*. Against the challenges of the operating environment, the threat environment, the logistics shortfalls and the additional workload imposed upon him by virtue of being 'a one-man HQ',⁸⁵ this seemed truly remarkable.

106. Overall, the assessing officer (Major Harnwell) rated Mr Wilkes' performance as *Above the standard required of the rank worn*. Lieutenant Colonel Hurley agreed with this assessment, further stating:

*'SGT Wilkes has done an excellent job on OP SOLACE demonstrating good leadership and decision making skills.'*⁸⁶

107. In context, the Tribunal considered this to be an extremely strong report.

⁸⁴ Special Annual Confidential Report, Part 2 – Appraisals, dated 15 April 1993 as supplied with the Defence report, dated 3 April 2024

⁸⁵ Per Mr Jakab's statement that *'SGT Wilkes's troop headquarters consisted of himself only...This meant that the command, administrative and planning responsibilities normally performed by three was performed by one.'*

⁸⁶ Ibid

108. The Tribunal noted the apparent ‘disconnect’ between the highest possible rated assessments for Leadership (*), which both assessors supported, and the use of the adjective ‘good’ by both assessors in relation to Mr Wilkes’ leadership. Notwithstanding that the then Lieutenant Colonel Hurley also expressed the view that Mr Wilkes had ‘*done an excellent job*’, the Tribunal observed that, in Army’s vernacular of the day, ‘good’, at least to some extent, clearly meant far more than the common language interpretation of the word. This observation is supported by the fact that the Land Commander, Major General Blake, saw that Mr Wilkes’ ‘*Good effort...*’⁸⁷ was still worthy of Commendation for Distinguished Service.

109. The narrative of Mr Wilkes’ Annual Confidential Report that covered the period 2 October 1992 to 1 October 1993 read:

*SGT Wilkes is a very good SNCO. He performed very well as the senior member of the Tpt Sqn element involved in the UN operation in Somalia.*⁸⁸

110. Lieutenant Colonel Saw, who was the senior assessor for the Report, stated:

*SGT Wilkes is one of the best SGTs in this unit [3rd Brigade Administrative Support Battalion]. He is confident, capable and well-motivated. He performed at a **clearly superior** level during OP SOLACE. He was responsible with **minimal direction** for the management of the BSG’s 2nd line TPT asset. He is a good leader and motivator.*⁸⁹

111. As to whether Mr Wilkes’ performance was *superior* to one of his peers in this role, the Tribunal considered that this was almost certainly the case. The view was formed on the basis of the evidence which pointed to the skilful manner in which Mr Wilkes executed the greater responsibilities assigned to him in his role as Troop Commander, the sustained nature of this performance and the moral and physical courage Mr Wilkes displayed throughout the complex and difficult deployment.

Were Mr Wilkes’ duties *additional* to those normally pertaining to his rank and employment?

112. During Operation SOLACE, Mr Wilkes was solely responsible for second line transport functions. In accordance with Army doctrine, second line transport supports *daily resupply and routine tasks within a formation, including distribution of combat supplies*.⁹⁰ However, the Tribunal noted that as part of both the original Distinguished Service Medal

⁸⁷ Comment by Major General Blake, Internal Commendation Scheme as supplied with Defence report, dated 3 April 2024

⁸⁸ Sergeant Wilkes’ Annual Confidential Report, 2 October 1992-1 October 1993, as supplied with the Defence report, dated 3 April 2024

⁸⁹ Ibid

⁹⁰ *Road Transport Operations Handbook* (LWP-CSS 4-3-2), Australian Army, dated 28 March 2011, paragraph 1.3

narrative and his Special Annual Report, Mr Wilkes was credited with demonstrating ...*good leadership in the achievement of all allocated 1st, 2nd and 3rd line transport tasks.*⁹¹

113. As part of his Request for Information response, Mr Jakab stated:

The point is that, in addition to providing conventional second line transport support to 1 RAR (for example troop lifting, bulk water and fuel transport and distribution point operations), the 1 BSG Transport Troop would also provide support direct to 1 RAR sub-units that would normally be provided by the 1 RAR Administrative Company Transport Platoon.

Further, the 1 BSG Transport Troop would also be allocated longer range, heavy transport tasks from Mogadishu terminal into the Human Relief Sector. Normally operations from bases, along lines of communications outside an assigned Area of Operations (AO) would be performed by, or with the support of, third line elements. The 1 RAR Battalion Group did not have the benefit of third line transport support so these tasks were allocated to the 1 BSG Transport Troop.

*In summary, the 1 BSG Transport Troop would perform any transport task allocated to it inside Somalia, irrespective of whether those tasks would normally be performed by separate first, or third, line elements. The breadth of these responsibilities would not normally be assigned to a single second line transport sergeant without relief, or additional support, over the course of an operational deployment.*⁹²

114. In contrast, as part of his Request for Information response, Colonel Harnwell simply provided definitions of first, second and third line transport tasks, and, in relation to Mr Wilkes simply said: *These tasks were generally routine and within the capabilities of a good SNCO to coordinate.*⁹³ Although the Tribunal acknowledged this observation, in light of the fact that the Transport Troop was normally commanded by a junior officer, it had some difficulty accepting Colonel Harnwell's proposition at face value. While not being critical, the Tribunal noted that Colonel Harnwell did not have a transport background.

115. Similarly, as part of his response to the Defence report, Mr Wilkes stated:

I did not just command my own troops and transport assets but also tasked the battalion's transport platoon, the platoon sgt did know what to task them with as I had centre seated troop carrying vehicles, they didn't!In my opinion [Defence] failed

⁹¹ Third Line assets consist of vehicles authorised in the area of operations for the purpose of supplementing second line transport. It includes general and specialised transport assets and operates along the lines of communication. It is primarily employed to support a deployed force between the point of disembarkation and manoeuvre organisations but also has the ability to supplement second line transport assets when required. Third line transport is generally provided by the force support group transport squadrons integral to the logistic support force.

⁹² Mr Jakab response to Request for Information, dated 24 September 2024

⁹³ Colonel Harnwell response to Request for Information, dated 26 September 2024

*to understand daily activities at and above my rank level in which they would have had a greater understanding if they looked at the bigger picture ...*⁹⁴

116. The Tribunal also noted the fact that, as part of a supplementary response to the Request for Information process, Mr Jakab stated:

*Further, SGT Wilkes did not have the benefit of a Troop Sergeant or Corporal (381) assigned to his Troop Headquarters. Accordingly....he also performed the additional administrative and detailed planning responsibilities that would normally be assigned to Troop Sergeant or Corporal (381)...*⁹⁵

117. The Tribunal took the view that, when considered in concert, the requirement to conduct third line tasking, the ongoing support to 1 RAR Battalion Transport Platoon and the absence of both a Lieutenant and a Corporal from his headquarters clearly constituted *additional* duties.

118. In addition to the above, and despite the fact that Mr Wilkes being solely responsible for the command, administrative support and planning aspects of the Troop would have elevated his workload and effectively bound him to the office, the Tribunal noted his physical presence on *numerous* tasks, per the following extract from a statement supplied by Mr (then Sergeant) Hilton:

*SGT Wilkes on numerous occasions attached himself to one of these tasks to rest drivers or provide vital protection manning the vehicle mounted weapons. He was present during the rioting of food drops and during the supply and rotation of troops to the Embassy in Mogadishu. Whilst operating from Mogadishu we were required to make numerous trips through the then volatile streets of the Capital and the infamous green line. He was on hand to provide support when Australian and Canadian troops were fired upon at the Mogadishu Airport of which a large element of my section including SGT Wilkes were present. SGT Wilkes often attached himself to the specialist section as an escort when conducting long range refuelling and resupplying of 3/4 Calvary Regiment and the resupply of compounds in Baidoa occupied by aid workers and protected by Australian troops.*⁹⁶

119. This sentiment was supported by Lance Corporal Wilton, who was attached to the Battalion Support Group as a driver for the entirety of Operation SOLACE. As part of a written submission, Lance Corporal Wilton stated:

On numerous occasions the then SGT Wilkes.....accompanied me on tasks as both

⁹⁴ Mr Wilkes' comments on the Defence report, supplied via email on 26 April 2024

⁹⁵ Mr Jakab further response to Request for Information, dated 1 October 2024

⁹⁶ Extract from a statement provided by Mr (then Sergeant) Hilton, dated 1 December 1998, in support of the Department of Veterans' Affairs application for Mr Wilkes as supplied with the Defence report, dated 3 April 2024. Mr Hilton was a Corporal in the Battalion Support Group Transport Troop in Somalia

*driver and some times escort to ensure that the task went according to plan.*⁹⁷

120. The Tribunal took the view that Mr Wilkes' personal presence on numerous tasks far exceeded what was required or expected of him and that, in concert with the allocation of additional tasking and the absence of key personnel from his headquarters, these constituted *significant additional duties* over and above those reasonably expected of the individual's rank or role.

121. As to whether Mr Wilkes was *successful* in the discharge of his duties, the Tribunal took it as being self-evident that he was sufficiently successful to be nominated for a Distinguished Service Decoration. The Tribunal also considered that a number of documented views, including that *he has the total respect of the solders under his command* and the *outstanding performance of the troop resulted in him being held in high regard by the members of the 1st Battalion The Royal Australian Regiment Group*, combined with the views of senior officers that his performance had been **exceptional, exemplary** and **outstanding** strongly suggested that Mr Wilkes commanded great respect.

122. The Tribunal therefore considered that Mr Wilkes completed significant additional duties over and above those reasonably expected of the individual's rank or role, and that these duties were undertaken successfully, authoritatively *and* in a manner commanding great respect having regard to the degree by which they exceeded the usual expectations of the individual's rank or role.

Conclusion

123. The Tribunal considered it telling that Mr Wilkes was nominated for a Distinguished Service Decoration in an operation in which the entire deployment ultimately received a Meritorious Unit Citation, and where there was clearly strong competition for recognition.

124. In reaching its decision, the Tribunal noted that Mr Wilkes was nominated for a Commendation for Distinguished Service and that somewhat unusually this award was consistently supported, at least in principle, by the chain of command at the time up to and including Major General. Although Mr Wilkes was awarded a Chief of General Staff Commendation rather than a Commendation for Distinguished Service, the Tribunal considered that this outcome was not based on analysis of his performance, or consideration thereof against the distinguished service criteria. In contrast, it seemed evident that the only reason that Mr Wilkes did not receive a Commendation for Distinguished Service at the time was because of quota limitations.

125. The Tribunal also considered that Mr Wilkes was very possibly disadvantaged by a suboptimal citation, the basis for which had been drafted by a relatively junior officer with understandably limited experience in this type of staff work. With the benefit of hindsight, and

⁹⁷ Statement by 237948 Lance Corporal B. Wilton, dated 3 January 1999, as supplied with the Defence report, dated 3 April 2024

without meaning to be overly critical, the citation did not appear to accurately capture the true extent and impact of Mr Wilkes' outstanding and sustained performance on operations.

126. The Tribunal was satisfied that Mr Wilkes experienced an elevated workload, for a considerable period, without respite but retained a strong focus on the welfare of his subordinates. As set out in his Annual Confidential Report,⁹⁸ Mr Wilkes set a *fine example to his subordinates and peers*, supported numerous tasks with his physical presence despite the competing pressures of command, provided *inspirational leadership* and took on *greater responsibility than worn ranks SGTs normally would*. He required *minimal direction* despite operating in an atypical Command and Control environment, and he was by all accounts instrumental in providing critical decision support into 1 RAR's Transport Platoon. The Tribunal took the view that Mr Wilkes' performance was as strong as could reasonably be expected in the circumstances and it was difficult to imagine that many of Mr Wilkes' peers could have readily surpassed his performance. He clearly had the respect of his subordinates, his peers and the chain of command.

127. In reaching this decision, and despite a relative lack of other supporting documentation, the Tribunal was satisfied that the confidence by the chain of command that Mr Wilkes' performance had been distinguished was, on balance, defensible. Similarly, the Tribunal formed the view that Mr Wilkes had met the threshold for distinguished service in that he successfully discharged duties that were both *superior* and *additional* to those expected of his role and rank.

Distinguished Service Medal eligibility criteria

128. As to whether the discharge of distinguished performance might result in a recommendation for a Distinguished Service Medal the Tribunal noted that, as the Regulations stood in 1993, the Distinguished Service Medal was to be *awarded only for distinguished leadership in action*.⁹⁹ As part of its merits review, Defence had formed the view that Mr Wilkes had not demonstrated *leadership in action* as defined by the Australian Defence Force and that he had not met the eligibility criteria for the Distinguished Service Medal.

129. Previous Tribunal reviews have noted that the term *in action* involved *armed conflict in close proximity to or under the fire of an adversary*.¹⁰⁰ The Tribunal noted that just one Distinguished Service Medal was awarded for Operation SOLACE, this being to Corporal Aitken for his distinguished leadership as a section commander of C Company 1RAR. Corporal Aitken's section came under fire on three occasions, and *...his calm manner and sound appraisal of the situation ensured the sections reaction was balanced and effective*.¹⁰¹

⁹⁸ Special Annual Confidential Report, Part 2 – Appraisals, dated 15 April 1993 as supplied with the Defence report, dated 3 April 2024

⁹⁹ *Commonwealth of Australia Gazette No. S25 Distinguished Service Decorations Regulations* dated 4 February 1991

¹⁰⁰ *Gilbert and the Department of Defence [2022]*, DHAAT 16, (14 November 2022), paragraph 118

¹⁰¹ Merits Based Assessment – Recognition of Sergeant Gary William Wilkes (8292133/321193) for his service as the Transport Troop Commander 1st Battalion Support Group – Operation Solace from 18 January to 18

130. Although it seemed clear to the Tribunal that Mr Wilkes' presence on tasks had resulted in his potentially, and in some cases actually, being placed in harm's way, and that the 1 RAR Battalion Group worked long hours in an unstable often dangerous environment, the Tribunal was unable to locate any corroborative evidence of Mr Wilkes being directly subjected to enemy fire. In any event, 2012 amendments to the Distinguished Service Decorations Regulations (that were applicable at the time of making the reviewable decision) allow for the award of the Distinguished Service Medal in recognition of service in warlike operations, and not necessarily in action.

131. As outlined in *Hulse and the Department of Defence re: Jensen* [2020] DHAAT 15 (27 August 2020), *for distinguished leadership, an individual must be in a position where leadership is required and his or her leadership must be demonstrably superior to others with similar employment, responsibility and rank.*

132. The Tribunal noted that, as part of its analysis of eligibility for a Distinguished Service Medal, the Defence submission stated that *there are no examples provided where Mr Wilkes demonstrated a high level of independent decision-making or leadership in dealing with complex or difficult situations in pursuit of mission goals that would be expected of a SNCO in charge of a Troop.*

133. Although the genesis of these Defence-provided 'requirements' is not clear, it appeared to the Tribunal that this was an attempt by Defence to, at least in part, codify *demonstrably superior leadership*. Whether this is strictly true or not, the Tribunal was prepared to accept that any evidence of having *demonstrated a high level of independent decision-making or leadership in dealing with complex or difficult situations in pursuit of mission goals* would tend to support a view of *demonstrably superior leadership*. Although the Tribunal did not agree that there were *no* examples where it could be argued that Mr Wilkes displayed at least some elements of the Defence 'definition', it did accept that there were few examples, and that these were not sufficiently significant as to warrant a recommendation for a Distinguished Service Medal.

134. Further, the Tribunal was comfortable that the logic that underpinned near-universal support for a Commendation for Distinguished Service did not extend to a Distinguished Service Medal. Apart from the original handwritten nomination for a Distinguished Service Medal by Captain Jakab, which did not translate into a 'formal' Distinguished Service Medal nomination, there was no evidence of support for a Distinguished Service Medal by his chain of command. Despite Mr Wilkes' all round performance, the strong scores for *Leadership* in his Special Annual Report, and reference to *inspirational leadership*, the Tribunal was not convinced that these aspects could reasonably translate into a recommendation for a Distinguished Service Medal.

Tribunal decision

135. In light of the above, the Tribunal decided to recommend to the Minister that the decision of the Directorate of Honours and Awards in the Department of Defence to refuse to recommend Mr Gary Wilkes for a Distinguished Service Decoration be set aside, and that Mr Wilkes instead be recommended for a Commendation for Distinguished Service.