



Australian Government

Defence Honours and Awards Appeals Tribunal

Gordon and the Department of Defence [2025] DHAAT 1 (27 February 2025)

File Number 2023/017

Re **Mr Patrick Gordon**
Applicant

And **The Department of Defence**
Respondent

Tribunal Rear Admiral Allan du Toit AM, RAN (Retd) (Presiding Member)
Commodore Vicki McConachie CSC, RAN (Retd)
Ms Louise Hunt

Hearing Date 29 August 2024

Appearances Mr Patrick Gordon

Captain Paul Fothergill OAM, RAN,
Director of Navy Honours and Awards
Mrs Allison Augustine, Acting Director,
Directorate of Honours and Awards, Department of Defence

DECISION

On 27 February 2025, the Tribunal decided to recommend to the Minister that the decision that Mr Patrick Gordon not be recommended for the Conspicuous Service Medal for his actions in 1965 while serving in HMAS *Yarra* should be affirmed, and that Mr Gordon should also not be recommended for a Distinguished Service Decoration for that service.

CATCHWORDS

DEFENCE HONOUR – Conspicuous Service Medal - Distinguished Service Decorations - Indonesian Confrontation - 1965 – HMAS Yarra (III) – Operation AWKWARD – Singapore harbour

LEGISLATION

Defence Act 1903 – ss 110T, 110V(1), 110VA and 110VB(1)

Defence Force Regulation 2016 – Regulation 35

Distinguished Service Decorations

Letters Patent and Regulations for the Distinguished Service Decorations, Commonwealth of Australia Gazette No. S25, dated 4 February 1991

Amendment of the Distinguished Service Decorations Regulations, Commonwealth of Australia Gazette No. S18, dated 22 February 2012

Determination for the Distinguished Service Decorations, Commonwealth of Australia Gazette No. S125, dated 1 August 2012

Conspicuous Service Decorations

Letters Patent and Regulations for the Conspicuous Service Decorations, Commonwealth of Australia Gazette No. S108, dated 7 May 1990

Conspicuous Service Decorations, Ministerial Determination, dated 25 September 1997

Introduction

1. The Applicant, Mr Patrick Gordon, seeks review of a decision dated 1 August 2023 by the Department of Defence, to refuse to recommend him for the Conspicuous Service Medal for his actions in 1965 while serving in HMAS *Yarra* during Confrontation.

Decision under review

2. On 7 September 2020, Mr Gordon applied to the Department of Defence requesting a review for medallic recognition for his actions on or about 2 June 1965 for service in HMAS *Yarra* during Confrontation.¹

3. On 1 August 2023, the Department of Defence wrote to Mr Gordon advising that the Director of Navy Honours and Awards had undertaken extensive research of his application and decided not to progress the request.²

4. On 8 September 2023, Mr Gordon made application to the Tribunal seeking review of the above decision.³

Tribunal jurisdiction

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

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

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

¹Application to Defence, Mr Patrick Gordon, dated 7 September 2020.

²Application for Review, Mr Patrick Gordon, dated 8 September 2023.

³Ibid.

Conduct of the review

8. In accordance with its Procedural Rules, on 12 September 2023 the Tribunal wrote to the Secretary of the Department of Defence informing him of Mr Gordon's application for review. The Tribunal requested a merits-based assessment of Mr Gordon's actions against the eligibility criteria for the Conspicuous Service Medal and a report on the material questions of fact and reasons for the decision to refuse the original application. The Tribunal also requested that the Secretary provide copies of documentation relied upon in reaching the decision and any other relevant documents.⁴

9. On 5 December 2023, the Director of Honours and Awards in the Department of Defence provided a submission on behalf of Defence.⁵ The Defence submission included several relevant documents, including a comprehensive report of Defence's merits-based assessment of Mr Gordon's actions prepared by the Director Honours and Awards.⁶

10. The Defence submission was provided to Mr Gordon for comment on 5 December 2023.⁷ Mr Gordon responded with his comments on 7 December 2023.⁸ The Tribunal heard the matter on 29 August 2024.

Mr Gordon's service

11. As per the Defence report, Mr Gordon enlisted in the Royal Australian Navy on 9 January 1961 and discharged on 8 January 1973. He completed Artificer⁹ Apprentice training on 16 December 1964 before joining HMAS *Yarra*.¹⁰ At the time of his discharge, he held the rank of Chief Petty Officer Engine Room Artificer (ERA).

12. Relevant to this review, Mr Gordon served in HMAS *Yarra* from 17 January 1965 to 30 September 1966. At the time of the incident under review, he held the rank of Able Seaman ERA3 and was in the final year of his five-year Artificer apprenticeship.

13. Mr Gordon has been awarded the following medals for his service:

- a) Australian Active Service Medal 1945-75 with Clasp MALAYSIA
- b) Clasp VIETNAM to the Australian Active Service Medal 1945-75

⁴ Letter, Mr Stephen Skehill to Mr Greg Moriarty, dated 12 September 2023.

⁵ Letter, Mr Ian Heldon to Mr Stephen Skehill, dated 5 December 2023.

⁶ Defence report, *Review of Recognition for Patrick James Gordon*.

⁷ Letter, Tribunal to Mr Patrick Gordon, dated 5 December 2023.

⁸ Letter, Mr Patrick Gordon to the Tribunal, dated 7 December 2023.

⁹ A Navy Artificer is a skilled naval rating that has successfully undergone a five-year formal apprenticeship in skill of hand and specialist knowledge training at sea and ashore. Trade training equips the Artificer with the skills and qualifications to manage ship's machinery, gas turbines, diesel engines and ventilation systems, as well as power generation and distribution, and electrical control systems.

¹⁰ Defence report, *Review of Recognition for Patrick James Gordon*.

- c) General Service Medal 1962 with Clasps MALAY PENINSULA and BORNEO
- d) Vietnam Logistic and Support Medal
- e) Australian Service Medal 1945-75 with Clasp FESR
- f) Australian Defence Medal
- g) Pingat Jasa Malaysia¹¹

Eligibility criteria for the Conspicuous Service Decorations

14. The Australian Conspicuous Service Decorations were created on 18 October 1989 to provide recognition to Australian Defence Force members and certain other persons for outstanding or meritorious achievement or devotion to duty in non-warlike situations.¹² The Decorations consist of the Conspicuous Service Cross (CSC) and the Conspicuous Service Medal (CSM). The eligibility criteria are set out in the Australian Conspicuous Service Decorations Regulations,¹³ as follows:

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

The CSM shall be awarded for meritorious achievement or devotion to duty in non-warlike situations.

Eligibility criteria for the Distinguished Service Decorations

15. As Mr Gordon's service in HMAS *Yarra* during Confrontation in 1965 was determined to be in warlike operations, Defence also considered his actions against the conditions for the Commendation for Distinguished Service.¹⁴

16. 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 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.*¹⁵

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

¹¹ Defence report, dated 28 November 2023, Folio 14 and follow-up email advice, dated 2 July 2024, confirming that Mr Gordon additionally received the Australian Defence Medal

¹² Commonwealth of Australia Gazette No. S108 dated 7 May 1990 (*Letters Patent and Regulations for the Australian Conspicuous Service Decorations*).

¹³ *Ibid.*

¹⁴ Defence report, dated 28 November 2023.

¹⁵ Commonwealth of Australia Gazette No. S25 of 4 February 1991 (*Letters Patent and regulations for the Distinguished Service Decoration*).

18. 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.*¹⁶

Mr Gordon’s applications to Defence

19. As per the Defence report, Mr Gordon first applied to Defence in 2019 seeking to be issued with the Australian Operational Service Medal. At that point Mr Gordon referenced his service in *HMAS Yarra in Sembawang on or about 26th July 1965*, advising that the *ship was mined by Indonesian divers*’ and that he was *‘instructed to go to the boiler room alone, the hatches were secured and I had to go through the process of making the ship operational.*¹⁷

20. A year later on 26 December 2020, Mr Gordon applied to Defence for an unspecified award, stating:

*Whilst service on HMAS Yarra during 1965, I was an ERA 3. On or about 2 June 1965 the ship Yarra was subject to attack by foreign divers and there were substantial reports of mines being attached to the hull of the ship. There were explosions heard, probably defensive measures. On that day I was directed to go to the boiler room alone and the hatches were dogged down to prevent water flooding should the mines ‘go off’.*¹⁸

21. After seeking further detail from Mr Gordon on what he was called upon to do and what he did during the period, Defence advised Mr Gordon on 1 August 2023 that there was no evidence that his actions reached the threshold of *meritorious achievement or devotion to duty* for a CSM. While acknowledging that it would have been emotionally concerning and daunting on that night, Defence considered that Mr Gordon and others involved fulfilled their duties as directed and expected.¹⁹

¹⁶ Commonwealth of Australia Gazette No. S18 of 22 February 2012 (*Amendment of the Distinguished Service Decorations Regulations*).

¹⁷ Defence report, dated 28 November 2023.

¹⁸ *Ibid*, page 15

¹⁹ Application for Review, Mr Gordon, dated 8 September 2023.

Mr Gordon's application to the Tribunal

22. In Mr Gordon's application to the Tribunal, he sought to refute the Defence claim that he was doing as directed and expected and there were others in the same situation.

Whilst on HMAS Yarra in Singapore in 1965 there was an attack by foreign divers who were reported to have been seen by our divers who threw exploding charges into the water along the ships side. It was reported that enemy divers had put mines on the hull of the ship.

I understand that I was to be part of a skeleton crew who would make the ship ready for sea. This came about because civil authorities would not tow the ship because of risk.

I went to the boiler room and clearly remember the hatch being locked above me. I was the only one in that place. I do not remember much after that.²⁰

23. Mr Gordon then explained how he had taken seriously the advice from Captain Loxton that 'he expected me to look after his ship for him.' And that therefore it was 'no surprise that when standing on the wharf alongside HMAS Yarra [on the day of the incident], that Mr Gordon volunteered to be in the boiler room and take the ship to sea.'²¹

...After all, I was looking after his ship for him.

So it wasn't because I was a pressed man or a good obedient chap that I did what I did, I was eager and delighted to have such an opportunity to shine.²²

24. Similarly, in disputing the belief that others were in the same situation as him on the day of the incident, Mr Gordon stated:

I don't agree with this view. To compare being in the boiler room adjacent to mines on the hull; with someone elsewhere in the ship is absurd. I knew that the steel side of the ship was thin and that is where a diver would place mines for best effect. I was where I wanted to be. Frightened sure, but still driven by Captain Loxton's mandate.²³

Timelines

25. Mr Gordon's initial application to Defence referred to his actions during events on or about 26 July 1965,²⁴ while his subsequent application referred to an event on and about 2 June 1965.²⁵ In his application to the Tribunal, he generically referenced an event in 1965.²⁶ While Mr Gordon did not specify the dates of 4 and 5 June 1965 in his applications to either Defence or the Tribunal, correspondence from the Department of

²⁰ Application for review, Mr Patrick Gordon, dated 8 September 2024.

²¹ Ibid.

²² Ibid.

²³ Ibid.

²⁴ Defence report, dated 28 November 2023.

²⁵ Application to Defence, Mr Patrick Gordon, dated 7 September 2020.

²⁶ Application for Review, Mr Gordon, dated 8 September 2023.

Defence supplied with Mr Gordon's application to the Tribunal references *his service and actions on the night of 4/5 June 1965 in Singapore in the vicinity of HMAS Yarra*.²⁷ Additionally, the Defence report provided to the Tribunal, based on the archival record, specifically focussed on the events that occurred on those days.²⁸ The Tribunal accepted that this was the event referred to by Mr Gordon for review.

The Defence Report

26. The Defence report was provided under copy of a letter to the Tribunal from the Director of Honours and Awards, Mr Ian Heldon, signed on 28 November 2023. The report stated that in response to Mr Gordon's application, Defence undertook a review of Mr Gordon's service records, available contemporaneous records of recommendations for awards in connection with service during 1965, and relevant research sourced from the National Archives Australia, Australian War Memorial and Naval History Section at the Sea Power Centre.

27. In undertaking this research, Defence compared the information provided by Mr Gordon regarding his actions and that as listed in documents detailed above, including the HMAS *Yarra* Report of Proceedings and the letter from the ship's Captain (0028/2/29) for 4 June 1965. Defence confirmed that it believed Mr Gordon fulfilled his duties as directed in what would have been fearful and concerning conditions for a young sailor.²⁹

28. The report confirmed that having considered Mr Gordon's application and the other information and evidence in a merit based assessment; Defence found that his actions on 4 and 5 June 1965 did not meet the conditions for the Conspicuous Service Decorations or the Distinguished Service Decorations. Defence recommended that the decision not to recommend Mr Gordon for the Conspicuous Service Medal in the Australian Honours and Awards System be affirmed.³⁰

Mr Gordon's comments on the Defence report

29. On 5 December 2023, Mr Gordon was provided with a copy of the Defence report and asked to provide his comments on that report. Mr Gordon replied via email on 7 December 2023.

30. In respect of Defence's research, Mr Gordon advised that his application relied on the concept of *what I believed at that time and in that place*.

The Chief mechanic did say 'you got lucky Gordon' you got the boiler room'. That wasn't a command, but indeed a statement of fact. He must have known that I wanted to excel and indeed 'save Captain Loxton's ship'. Which I did do! Only a lesser part when compared with the clearance divers bold and dangerous activities; but I thought it was a big deal.

²⁷ Application for Review, Mr Gordon, dated 8 September 2023.

²⁸ Ibid.

²⁹ Ibid.

³⁰ Ibid.

I did believe that there were 'bad guys' under the ship with limpet mines and that their best effect would be to blow a big hole in Yarra's boiler room. Please note that type 12 escort destroyers did not have any protection against that! The steel hull was less than 6mm thick steel. No armour plating on those classes of destroyer.

So that is where I wanted to be...³¹

31. In validating what he believed was demonstration of conspicuous service, Mr Gordon stated:

I believed that 'bad guys' were under Yarra with mines, and here was my opportunity to save Captain Loxton's ship. I wasn't concerned about the consequences of the other ships at the wharf blowing up, I just wanted to save his boat!

I did volunteer and went to the boiler room willingly. It is only when they locked me down there alone that the realization that I was overly motivated became clear. That day a lonely place! But normally busy with 4 or perhaps 5 people there.

So I pottered around down there probably preparing to 'flash up'. No one came, no one called on the 'phone. There was no 'smoking gun' down there. It is a relief that nothing happened!

But later on things changed for me, I remember nothing that night nor indeed for the rest of that stay in Singapore. It may be (guessing now) that when the 'bombs' went off during the evening that I got a bit of a fright.³²

HMAS Yarra during Confrontation, 1962-1966

32. The Confrontation, known as *Konfrontasi* in Indonesian, was a small, undeclared war fought from 1962 to 1966. It was caused by Indonesia's actions to destabilise the newly formed Federation of Malaya (following the end of the Malayan Emergency in 1960). The actual war began when Indonesia launched a series of cross-border raids into Malaysian territory in early 1963.³³

33. Australian units that fought during Confrontation did so as part of a larger British and Commonwealth force under British command. Australia's commitment to operations against Indonesia in Borneo and West Malaysia fell within the context of its membership

³¹ Mr Gordon's response to the Defence report, dated 7 December 2023, Folio 102

³² Ibid.

³³ The Indonesian Confrontation, 1963-66, Australian War Memorial, [Indonesian Confrontation, 1963-66 | Australian War Memorial \(awm.gov.au\)](https://www.awm.gov.au/indonesian-confrontation-1963-66/), accessed 26 February 2024.

in the Far East Strategic Reserve.³⁴ As per the Defence report, Australia's contribution included Royal Australian Navy ships serving in the surrounding waters.³⁵

34. In 1965, HMAS *Yarra* spent two months conducting anti-infiltration patrols in Malayan and Borneo waters during the conflict. In June and July, *Yarra* was employed on guard ship duty off the Tawau area, and during this time, the ship conducted shore bombardments as a deterrent against possible Indonesian incursions.³⁶

HMAS *Yarra*, June 1965

35. The HMAS *Yarra* Report of Proceedings for June 1965 noted that the month *was spent carrying out self-maintenance in Singapore Naval Base, exercising off the east coast of West Malaysia with VICTORIOUS,³⁷ taking part in Exercise WINDY WEATHER and from the 19th, carrying out the duties of guard ship in the Tawau Area.* The Captain remarked that *it has been an interesting period not without moments of considerable interest and excitement.*³⁸

36. While there was no report of activity occurring on 2 June 1965, the report detailed events that occurred on the evening of Friday 4 June 1965:

On the evening of Friday 4th, there occurred the extraordinary affair of the missing diver, which was reported in detail in my letter 0028/2/29 of 6th June. At 2100 on the 4th, a sentry sighted bubbles aft. After several officers, including the Engineer Officer and two others with diving experience, had observed them, it was decided they originated from a diver. Later that night a trial was carried out with a ships diver and exactly the same effect produced. Grenades and scare charges were dropped and the bubbles ceased. A search of the ship's bottom produced no result.

Next morning, after a check bottom search, two young divers commenced a search of the sea bottom and claim they sighted a man dressed as a diver sitting on the bottom motionless and seemingly dead. They both came to the surface to report this find and unfortunately could not go back as they had insufficient air. An interval of some 20 minutes elapsed before a diver again entered the water. The body could not be located and in spite of several thorough searches, has not been seen since. Nothing was seen in the vicinity which could have been mistaken for a body.

Factors pointing to the existence of a diver are the activities of the previous night and the sighting and examination at a distance of 3 to 4 feet, by two men who, in

³⁴ Ibid.

³⁵ Defence report, dated 28 November 2023.

³⁶ HMAS *Yarra* (III), Royal Australian Navy, [HMAS *Yarra* \(III\) | Royal Australian Navy](#), accessed 16 February 2024.

³⁷ The British aircraft carrier HMS *Victorious*.

³⁸ HMAS *Yarra* – Report of Proceedings – June, 1965, AWM78, Report of Proceedings, HMA Ships and Establishments, HMAS *Yarra* Item no. 374/5, Title January 1964- December 1965.

*spite of very severe interrogation, have not changed their original story. Factors against its existence are that it hasn't been seen since and the improbability of the event.*³⁹

37. A report (0028/2/29) by the Office of the Flag Officer Commanding HM Australian Fleet, to the Secretary, Department of the Navy, dated 6 June 1965 provided more fulsome details regarding the event of 4 June 1965 and the witness statements of the two divers who discovered the body of the diver on the seabed.⁴⁰

38. The report provided slightly more detail on the actions taken by *Yarra* after spotting the air bubbles close to the starboard side.

At 2107 the ship assumed modified Awkward state 2 and the diving guard ship H.M.S. VICTORIOUS was informed. The ship was closed down to State 1 watertight condition Zulu, and watch was set on Harbour intercom.

At 2113 a hand grenade was dropped adjacent to the bubbles. Indications by this time were that the bubbles emanated from a swimmer using compressed air breathing apparatus.

...as a precautionary measure, a hand grenade was dropped at 2116.

At 2118 divers were fully prepared to enter the water to conduct a bottom search. Police were in attendance on-board by this time and a patrol craft had arrive in the area.

One scare charge was dropped at each of the forward and after areas at 2110 and 2118 respectively. Apart from a quantity of dead fish, refuse and oil, nothing further was observed in the upsurge. However, the bubbles ceased.

At 2159 all divers were clear of the water, but were instructed to carry out a further search on the morning of the 5th June. The ship reverted to modified Awkward State 3 and watertight condition Yankee at 2145.

[...]

At 0746 [on 5 June] following a report by BOWMAN that he had seen an object which might have been a large charge in the vicinity of the body the ship assumed modified Awkward State 2 and A.B.C.D State 1 Condition Zulu. Preparations were also made to clear the berth with the aid of tugs.

³⁹ HMAS *Yarra* – Report of Proceedings – June, 1965, AWM78, Report of Proceedings, HMA Ships and Establishments, HMAS *Yarra* Item no. 374/5, Title January 1964- December 1965.

⁴⁰ Department of the Navy, File no. 161720566, National Archives of Australia, A1813, 1617/205/66.

[...]

At 0835 the Fleet Clearance Diving team took over underwater search operations. By this time tugs were standing by and all preparations had been made to shift berth. It is perhaps unfortunate that the tug ADVICE paid no heed to the diving signal or diving operations and closed YARRA using a large amount of engine power. At about 1000 it was decided not to move ship as no charges had been located.⁴¹

39. The event is also listed in the book written by Ian Pfenningwerth, *Tiger Territory, the Untold Story of the Royal Australian Navy in Southeast Asia from 1948 to 1971*, as follows:

There was, however, a more serious incident in HMAS Yarra on the night of 4 June 1965 – the extraordinary affair of the missing diver, as the Report of Proceedings termed it. Briefly bubbles were seen alongside the ship, which was berthed in the Stores Basin at the Naval Base. Underwater lights were switched on and hand grenades and one pound (454g) scare charges dropped as the ship went to the highest state of watertight integrity. The diving guard ship was informed and a harbour patrol craft summoned. Twenty-five minutes after the alert, Yarra’s divers were in the water on a bottom search, but nothing was discovered. The following morning the ship’s divers conducted a follow up search and a sweep of the sea bed under the ship.

At 0720 they surfaced and reported sighting the body of a diver dressed conventionally in a diving suit, face mask and underwater breathing apparatus. The body was resting on the bottom in a crouched-over position. No sign of life was evident. Divers then re-entered the water in an effort to re-locate the body. One of the divers thought there might have been a large charge in the vicinity of the body, which caused preparation for moving the ship, but on re-examination, nothing was found.⁴²

Mr Gordon’s submissions to the Tribunal

40. Mr Gordon said that he had received the Governor General’s award on completion of apprentice training at HMAS *Narimba*. He told the Tribunal that in 1961, while undergoing training, he had briefly served in the ill-fated destroyer HMAS *Voyager* that sank on 10 February 1964.

⁴¹ Department of the Navy, File no. 161720566, National Archives of Australia, A1813, 1617/205/66.

⁴² Pfenningwerth I.(2008), *Tiger Territory, the Untold Story of the Royal Australian Navy in Southeast Asia from 1948 to 1971*, (First edition), Dural, NSW, Rosenberg Publishing, page 193.

41. He was keen for the Tribunal to consider his state of mind at the time of the *Yarra* incident, in particular what he thought and felt at the time about saving his ship. His grandmother had told him never to volunteer, whereas his father had encouraged him to stand to the front, which he did. He strongly believed that he needed to help save his captain's ship, understanding that if the captain failed, all was lost. All these years later, he still felt the same sense of pride and commitment.

42. Mr Gordon told the Tribunal that he left the ship at around 3 or 4 pm on the day in question. At the time, there were nine other ships alongside. He proceeded to the local village in Sembawang, where some time later a naval shore patrol approached him and took him back to his ship. From his recollection, it was still light when he returned to *Yarra*, although he distinctly remembers that the festoon lights were on, and that lights were illuminating the outboard side of the ship down to the waterline. He also recalled that there were divers on the quarterdeck when he went onboard.

43. While mustered on the wharf adjacent to *Yarra* together with most of the ship's company, the Chief Mechanician had, according to Mr Gordon, told him that he had 'got lucky' and that he had 'got the boiler room'. This had pleased Mr Gordon who was committed to doing more and had worked hard to know his ship, so that if things did go wrong, he was ready to save it. He had been encouraged to get to know his ship by the ship's Marine Engineering Officer.

44. Once on board, he was escorted directly to the boiler room. He clearly remembers seeing no one in the normally busy main passageway, which ran the full length of 1 deck from the mortar well aft all the way forward. Once he had entered the boiler room on his own, the hatch above him was shut and dogged-down to maintain watertight integrity. He agreed that the hatch was not locked, and that despite the hatch being dogged-down, he could have exited the compartment in an emergency, although this did not occur to him at the time. He said that he was not frightened and that he undertook some maintenance work thinking that the boilers might need to be flashed-up to move the ship, but that as events transpired, this was not required. He also recalled hearing numerous explosions around the ship.

Defence submissions before the Tribunal

45. Defence had nothing further to add to its report to the Tribunal. It did not dispute Mr Gordon's recollection of events nor his actions. Captain Fothergill emphasised that the only person in the room that was there that night, was Mr Gordon.

Tribunal analysis and consideration

46. The Tribunal accepts and does not doubt Mr Gordon's recollection of what occurred on the night of 4 June 1965. Despite some initial confusion surrounding dates and times in his submissions and communication with Defence and the Tribunal, his recollection largely correlates with the official record for the period 4-5 June 1965. Regardless of whether Mr Gordon volunteered, or was directed to proceed to the boiler room, the Tribunal recognises that he performed his duties with a commendable sense of responsibility, pride, dedication and commitment, in what would have been fearful,

concerning and daunting conditions for a young sailor. This commitment to saving his ‘Captain’s ship’ still clearly shines through after all the intervening years.

47. In considering and reviewing Mr Gordon’s application, the Tribunal is, however, bound by the eligibility criteria that were applicable to the honour or award in dispute at the time of the reviewable decision being made. It, therefore, has no discretion to recommend an honour or award if the terms and conditions laid down in the applicable regulations and other legal determinations are not met.

48. As Mr Gordon’s service in HMAS *Yarra* during Confrontation in 1965 was on a prescribed, warlike operation at the time of the incident, the Tribunal determined that he does not meet the criteria for the award of a Conspicuous Service Decoration, which provides recognition for outstanding or meritorious achievement or devotion to duty in non-warlike situations.

49. Having determined that Mr Gordon did not meet the criteria for the award of a Conspicuous Service Medal because of the nature of his service at the time, the Tribunal went on to consider whether he might instead be eligible for the award of a Distinguished Service Decoration. Such a decoration could be awarded for distinguished command or leadership in action, distinguished leadership in action or distinguished performance of duties in a warlike operation.

50. In considering the applicability of this award, the Tribunal did not consider that Mr Gordon was acting in either a command or a leadership role at the time. Therefore, his actions could only be considered against the eligibility criteria for the award of a Commendation for Distinguished Service.

51. Defence had considered the applicability of this award as part of its merit-based assessment and review, concluding that the conditions for the award of the Commendation for Distinguished Service to Mr Gordon were not met. Defence stated in its report to the Tribunal that because of the subjective nature of honours and awards, it does not define or provide guidance on what constitutes ‘distinguished performance of duties’, preferring to rely on the judgement of the chain of command during the nomination process. It also advised that there was no record of any previous decision to recommend or refuse to recommend Mr Gordon, or any other member of HMAS *Yarra*, an honour for their actions during 4-5 June 1965.⁴³

52. In the absence of Defence guidance, the Tribunal has previously determined that for service to be considered ‘distinguished’, an individual would have successfully discharged their duties in a manner that was superior to those normally pertaining to the individual’s rank and appointment. Moreover, that their performance of duty was demonstrably additional to or superior to others with similar rank and experience or the expectations of the role.⁴⁴

53. The key question for the Tribunal, therefore, turned on whether Mr Gordon’s performance of his duties during the incident on 4-5 June 1965 amounted to distinguished service, and if so, whether or not it met the threshold for the award of a Commendation

⁴³ Defence report, dated 28 November 2023.

⁴⁴ Hulse and the Department of Defence re: Hughes, Johnson and Walker [2021] DHAAT 04

for Distinguished Service for the distinguished performance of duties in warlike operations.

54. As Mr Gordon's service was warlike, the Tribunal considered whether the performance of duties by Mr Gordon during this service was distinguished. The first step in determining whether service is distinguished is to define the service itself. While the Tribunal considers 'service' in warlike operations may relate to an individual's appointment, role and posting, in the absence of any guidance to the contrary the Tribunal does not consider that there is any requirement under the regulations to restrict the concept of 'service' in this manner.

55. In assessing Mr Gordon's service and performance of his duties, the Tribunal took into account that Mr Gordon, who had been serving in *Yarra* as an Able Seaman ERA3 for almost five months at the time of the incident, had completed his Artificer training and was in the final year of his five-year Artificer apprenticeship. With his apprentice training, rank and level of gained on the job artificer experience in *Yarra*, the Tribunal considered that he would have been technically competent at the ERA3 level. This view is consistent with the Defence merits review and reinforced by the confidence shown in him by the Chief Mechanician who detailed him off to close up in the boiler room on his own without supervision. Mr Gordon being promoted to Acting Leading Seaman ERA2 not long afterwards in October 1965 further reinforces this view.⁴⁵

56. While it is not known what was communicated to Mr Gordon before or during the incident, his narrative confirms that there was a sound powered telephone at the control position in the boiler room which would have provided communication with the Engine Room, Damage Control Headquarters and other key areas of the ship. He would also have had access to the ship's main broadcast system to keep him abreast of developments. Communication would therefore have been possible, although apparently not required for Mr Gordon to perform his duties from the time he entered the space until he was stood down from the boiler room some hours later when the ship reverted to Modified Awkward State 3 later that night.

57. The Awkward state essentially refers to measures to secure the ship and scare off unfriendly divers attempting to place a mine on the hull of the vessel. The more likely the threat, the higher the Awkward state and associated watertight integrity condition assumed throughout the ship. Awkward drills had been regularly carried out on a number of occasions since Mr Gordon had joined *Yarra*, and the ship had been closed up at a precautionary Modified Awkward State each night while alongside in Singapore. He, therefore, would have had an understanding and familiarity with what was happening at the time.

58. With speculation rife amongst the mustered ship's company on the wharf before boarding *Yarra*, it is understandable that Mr Gordon and others assigned duties on board in the engine room and other spaces and stations, and particularly the ship's divers directly exposed to risk, would have been concerned that there may have been potentially hostile divers around the ship. Hearing hand grenades and scare charges exploding around the ship to deter enemy divers would have further increased their anxiety and fears for their own safety. This would particularly have been the case of Mr Gordon, closed up on

⁴⁵ Record of Service – GORDON, Patrick James R42444.

his own in the large expanse of the boiler room, and his counterpart in the engine room, with only the ship's thin hull plating separating them from the surrounding water. The Tribunal accepted that, while an attack did not ultimately occur, Mr Gordon was genuinely fearful of the threat of attack as he headed into the boiler room. Neither Defence nor the Tribunal dismissed Mr Gordon's fear as simply perceived danger. The fact that no attack occurred did not remove the objective danger that he felt at the time.

59. Mr Gordon, who was unable to provide any witness statements to attest to the service he performed at the time of the incident, does not appear to have undertaken any tasks that were not part of his duties as a relatively experienced fifth year apprentice, although he did refer to himself as 'unqualified'. Moreover, his narrative did not raise any concerns that he had any difficulty with any task, only that he was busy with maintenance and possible preparations to move ship. Indeed, in his appearance before the Tribunal, Mr Gordon stated that he had worked hard to know his ship, so that if things did go wrong, he was ready to save it.

60. Having considered all the documentation and evidence provided, the Tribunal did not believe that the necessary threshold and conditions have been met for the award of the Commendation for Distinguished Service to Mr Gordon. Moreover, the Tribunal found no substantive evidence that Mr Gordon's performance of his duties on 4-5 June 1965 was demonstrably superior or additional to others of similar rank or employment, or what might have been expected of him based on his training, rank and employment.

61. In conclusion, the Tribunal determined that as Mr Gordon's service in HMAS *Yarra* during Confrontation in 1965 was on a prescribed, warlike operation, he does not meet the criteria for the award of a Conspicuous Service decoration, which provides recognition for outstanding or meritorious achievement or devotion to duty in non-warlike situations. Moreover, while Mr Gordon displayed a commendable sense of responsibility, pride, dedication and commitment, in what would have been fearful and concerning operational conditions for a young sailor, the Tribunal did not believe that the necessary threshold and conditions had been met for the award of the Commendation for Distinguished Service for the distinguished performance of duties in a warlike operation.

TRIBUNAL DECISION

62. The Tribunal decided to recommend to the Minister to affirm the decision of the Department of Defence that Mr Gordon not be recommended for the Conspicuous Service Medal for his actions in 1965 while serving in HMAS *Yarra*, and that Mr Gordon should also not be recommended for a Distinguished Service Decoration for that service.