



## Australian Government

### Defence Honours and Awards Appeals Tribunal

## Hawkins and the Department of Defence re: Townsend DHAAT 5 (17 April 2025)

File Number	2024/003
Re	Mr Richard Hawkins MG on behalf of Mr Dennis Townsend Applicant
And	The Department of Defence Respondent
Tribunal	Mr Stephen Skehill (Presiding Member) Major Gary Mychael OAM CSM (Retd) Major General Mark Kelly AO DSC (Retd)
Appearances	Mr Richard Hawkins MG – Applicant  Mr Dennis Townsend  Mrs Allison Augustine, Director Honours and Awards Department of Defence  Mr Tyson Pan, Assistant Director Defence Honours and Recognition Team Department of Defence
Hearing Date	8 April 2025

### DECISION

On 17 April 2025, the Tribunal decided to recommend to the Minister that the decision of the Department of Defence to refuse to recommend Mr Dennis Townsend for the Commendation for Distinguished Service be set aside and that the Minister should instead recommend to the Governor-General that Mr Townsend be awarded the Commendation for Distinguished Service.

## **CATCHWORDS**

*DEFENCE HONOUR* Distinguished Service Decorations - Commendation for Distinguished Service – eligibility criteria - Vietnam – 2 RAR – Machine Gun Number Two – Courtenay Rubber Plantation

## **LEGISLATION**

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

### **Commendation for Gallantry**

*Commonwealth of Australia Gazette S382 of 20 December 1993, Commendation for Distinguished Service, Governor General Determination*, dated 17 December 1993

*Commonwealth of Australia Gazette S219 of 17 October 2008, Commendation for Distinguished Service, Governor General Determination*, dated 1 September 2008

*Commonwealth of Australia Gazette S18 of 22 Feb 2012, Commendation for Distinguished Service, amendment of Letters Patent*, dated 13 December 2011

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

## Introduction

1. The Applicant, Mr Richard Hawkins MG, seeks review of a decision of the Department of Defence that Mr Dennis Townsend not be recommended for the Commendation for Distinguished Service for his service during an engagement with the enemy while on patrol in the Courtenay Rubber Plantation, Phuoc Tuy Province, South Vietnam on 15 December 1970.<sup>1</sup>

## Decision under review

2. On 17 August 2022, the Tribunal completed a review of Mr Townsend's eligibility for the Commendation for Gallantry for his actions in the above engagement.<sup>2</sup> While recommending that a prior Defence decision to refuse to recommend Mr Townsend for that honour should be affirmed, the Tribunal also recommended that the Minister direct Defence to consider Mr Townsend's eligibility for award of the Commendation for Distinguished Service. Both recommendations were accepted by the Minister.

3. Defence conducted a review of Mr Townsend's eligibility for the Commendation for Distinguished Service and, on 30 October 2023, wrote to Mr Hawkins advising that it had assessed Mr Townsend's actions on 15 December 1970 against the conditions for the Commendation for Distinguished Service and concluded that his actions did not meet those conditions.<sup>3</sup>

4. On 27 April 2024, Mr Hawkins made application to the Tribunal seeking review of this decision.

## 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 Defence Force 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. That list includes the Commendation for Distinguished Service. Therefore, the Tribunal has jurisdiction to review decisions in relation to this defence honour.

6. As required by s110VB(6) of the Act, the Tribunal is bound by the eligibility criteria that governed the making of the reviewable decision at the time it was made. 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 reviewable decision, but may make any recommendations to the Minister that it considers appropriate.

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<sup>1</sup> Application for review, dated 27 April 2024.

<sup>2</sup> *Hawkins and the Department of Defence re: Townsend DHAAT 13 (17 August 2022)*, decision report, Folio 233

<sup>3</sup> Application for review, dated 27 April 2024.

## **Conduct of the review**

7. In accordance with its Procedural Rules, on 6 May 2024 the Tribunal wrote to the Secretary of the Department of Defence informing him of Mr Hawkins' application for review on behalf of Mr Townsend. The Tribunal requested a merits-based assessment of Mr Townsend's actions against the eligibility criteria for the Commendation for Distinguished Service, a report on the material questions of fact, and reasons for the decision to refuse to recommend Mr Townsend for the honour. The Tribunal also requested that the Secretary provide copies of documentation relied upon in reaching the decision and any other relevant documents.

8. On 25 July 2024, the Acting Director of Honours and Awards in the Department of Defence provided a submission on behalf of Defence.<sup>4</sup> The Defence submission included several relevant documents, including a research report and a merit-based assessment of Mr Townsend's actions.

9. The Defence submission was provided to Mr Hawkins for comment on 29 July 2024.<sup>5</sup> Mr Hawkins responded with his comments on 23 September 2024.<sup>6</sup> The Tribunal heard the matter on 8 April 2025.

## **Private Townsend's service records**

10. Private Townsend was called up for National Service in 1969 and completed recruit training before being posted to the 2<sup>nd</sup> Battalion, The Royal Australian Regiment (2 RAR) to complete his Infantry Corps training. He deployed to Vietnam on 15 May 1970, as part of the 2<sup>nd</sup> Battalion, the Royal Australian Regiment (ANZAC) (2 RAR), where he served as the Number Two Machine Gunner in 9 Section, 6 Platoon B Company. He left Vietnam with the strength of his Battalion on 1 June 1971. For his service, he was awarded the:

- a. Australian Active Service Medal 1945-75 with Clasp 'VIETNAM';
- b. Vietnam Medal;
- c. Australian Defence Medal;
- d. Anniversary of National Service 1951-1972 Medal; and
- e. the Republic of Vietnam Campaign Medal.

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

11. 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*

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<sup>4</sup> Defence report, dated 25 July 2024

<sup>5</sup> Letter, Tribunal to Mr Hawkins, dated 29 July 2024

<sup>6</sup> Mr Hawkins' comments on the Defence report, dated 23 September 2024

*distinguished command and leadership in action or distinguished leadership in action or distinguished performance of their duties in warlike operations.*<sup>7</sup>

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

13. The words ‘in action’, 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.*<sup>8</sup>

### **Background to this review**

14. In mid-2019, Mr Hawkins wrote to the then Chief of Army, Lieutenant General Rick Burr AO DSC MVO, seeking recognition for the service of Mr Townsend as the Number Two on the machine gun manned by Mr Hawkins during the Courtenay Rubber Plantation engagement on 15 December 1970. In his application, Mr Hawkins stated that Mr Townsend ‘*deserved to be awarded a bravery award at the time of his service and now deserves to be recognised at least with being awarded a Commendation for Gallantry*’<sup>9</sup>

15. On 25 October 2021, Lieutenant General Burr replied to Mr Hawkins refusing the application. Lieutenant General Burr stated that while there was no doubt that Mr Townsend was in a dangerous situation during the engagement, he could not be reasonably satisfied that Mr Townsend performed acts of gallantry.<sup>10</sup>

16. On 26 November 2021, Mr Hawkins made application to the Tribunal seeking review of Lieutenant General Burr’s decision, arguing that Mr Townsend should have received one of the three (Australian) gallantry awards awarded for service in the action.

17. The matter proceeded to hearing on 23 June 2022. On 17 August 2022, the Tribunal recommended that the decision of Lieutenant General Burr to refuse to recommend Mr Townsend for the Commendation for Gallantry be affirmed, but also that the Minister direct

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<sup>7</sup> Commonwealth of Australia Gazette No. S25 of 4 February 1991 (*Letters Patent and regulations for the Distinguished Service Decoration*)

<sup>8</sup> Commonwealth of Australia Gazette No. S18 of 22 February 2012 (*Amendment of the Distinguished Service Decorations Regulations*)

<sup>9</sup> Correspondence to Chief of Army (undated), Mr Hawkins obo Mr Townsend, as supplied with the application for review, dated 27 April 2024

<sup>10</sup> Correspondence from Chief of Army to Mr Richard Hawkins, dated 25 October 2021, as supplied with application for review, Mr Richard Hawkins on behalf of Mr Dennis Townsend, dated 26 November 2021, *Hawkins and the Department of Defence: re Townsend DHAAT 13 (17 August 2022)*

the Department of Defence to give consideration to otherwise recognising that service with the award of the Commendation for Distinguished Service.<sup>11</sup> Both recommendations were accepted by the Minister. However, following a subsequent assessment of Mr Townsend's service, Defence refused to recommend him for the Commendation for Distinguished Service.<sup>12</sup>

### **Mr Hawkins' current application to the Tribunal**

18. In Mr Hawkins' current application to the Tribunal, he disputed the view of Defence that Mr Townsend should not be awarded the Commendation for Distinguished Service, reiterating the danger that Mr Townsend was in as a member of the Machine Gun group, during the engagement at the Courtenay Rubber Plantation on 15 December 1970.

19. Mr Hawkins stated that in making its decision, Defence had placed considerable weight *on the idea that the Machine Gun group was in the same danger as the remainder of the patrol.*<sup>13</sup> Mr Hawkins said that this view, and like statements in the Tribunal's 2022 *Townsend review report*,<sup>14</sup> were incorrect and did not accurately reflect the level of danger the Machine Gun group faced.

20. Mr Hawkins stated:

[...]

*It appears the main reason for rejecting the Award was the belief that Dennis Townsend was in the same degree of danger as the remainder of the Patrol during the firefight.*

*I have always strenuously rejected that allegation made first by Lt. Gen. Burr and then again stated in a letter from [Defence].*

*Firstly the remainder of the Patrol did not have a grenade land and explode at their feet which was the initial enemy action. When the grenade landed we both heard it as the gun battle had not started at this stage but immediately after. Shrapnel from this grenade was what struck Corporal Ken Johnstone and seriously damaged his foot As the Machine Gun Group were actually beside each other and probably touching. Townsend was subjected to this grenade blast that the remainder of the Patrol except the Gun Group of course was not.*

*I emphasised the amount of heavy enemy fire that went on for most of the fire fight was directed at the Machine Gun Group. Although it was pitch black at the time it was very easy for the enemy to target the Gun Group by directing their fire at the muzzle flashes from the M60 Machine Gun. It was established we only had one Machine Gun in the Patrol and because of the way the Patrol was situated on the ground and the direction the enemy approached from that for most of the firefight only the gun group and maybe one other pit to the south were able to bring effective fire on the enemy.*

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<sup>11</sup> *Hawkins and the Department of Defence re: Townsend DHAAT 13 (17 August 2022)*, decision report, Folio 204

<sup>12</sup> Correspondence from the Department of Defence to Mr Richard Hawkins, dated 30 October 2023, as supplied with the application for review, dated 27 April 2024

<sup>13</sup> Correspondence to the Tribunal dated 1 March 2024 as submitted with Mr Hawkins' application for review on behalf of Mr Townsend, dated 27 April 2024

<sup>14</sup> *Hawkins and the Department of Defence re: Townsend DHAAT 13 (17 August 2022)*, decision report

*It was stated during hearings that the rubber tree we were partially protected by was riddled with bullets and almost cut in half and rubber sap was oozing out of the tree and had splattered all over us. The height of the bullets hitting the tree was probably less than a meter. That is how much enemy fire was directed at the Gun Group.*

*Along with having to keep the ammo belts up to the Machine Gun throughout the firefight Townsend was trying to restrain Johnstone who was obviously in much pain and trying to sit up during the event. This was explained in the report produced after the review by myself and Townsend.*

*[...]*

*I have said on previous occasions that if this action on the 15th December 1970 was worthy of 3 gallantry awards, which is what happened, I surely should have gone to Townsend.<sup>15</sup>*

21. On 12 June 2024, Mr Hawkins also provided a subsequent letter to the Tribunal that emphasised points he had previously made to the Tribunal, and covered a statement previously provided to it from Private Alan Baglin.

### **Defence report**

22. The Defence report was provided under copy of a letter to the Tribunal from the acting Director of Honours and Awards, signed on 25 July 2024. The report stated that in response to Mr Hawkins' application, Defence had reviewed the initial decision of the former Director of Honours and Awards, and had also undertaken a fresh review of Mr Townsend's service. It further stated that Defence had reviewed all information provided in support of the original application and the additional information provided in Mr Hawkins' 2024 Tribunal submission. Based on its review, Defence stood by its decision to not recommend the award of the Commendation for Distinguished Service to Mr Townsend.<sup>16</sup>

23. In its report, Defence referenced what it considered to be key outcomes from the 2022 Tribunal review that it considered were also relevant to an assessment against the Commendation for Distinguished Service. These included that Mr Townsend was doing what was expected of him and that he was in no more danger than other members of the platoon. Defence stated:

*[...]*

*b. The evidence suggests that Mr Townsend, like all of his colleagues, was acting in accordance with their infantry training and was doing what was expected of him as part of his role as the Number Two on the machine gun.*

*c. By the applicant's own submission; Mr Townsend was doing what was expected – laying out and preparing ammunition and setting up claymore mines. There is no evidence that Mr Townsend did anything other than his job, albeit done effectively and in a warlike operation.*

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<sup>15</sup> Correspondence to the Tribunal, dated 4 April 2024 as submitted with Mr Hawkins' application for review on behalf of Mr Townsend, dated 27 April 2024

<sup>16</sup> Defence report, dated 25 July 2024

*d. There is no doubt that Mr Townsend was, in the applicant's words, 'in extreme danger' however the evidence and the material in the Tribunal report into Mr Hawkins' own actions indicates that everyone in the engagement 'was exposed to the same degree of danger'.*

*e. While Mr Hawkins was of the view that the machine gun group were in 'considerably more danger than everyone else in the patrol' the Tribunal report actually records the evidence provided by the Platoon Commander who said:*

*... whilst it could be argued that as a result he [Hawkins] was in greater danger than the rest of the platoon the reality was that those close to him, for example the Number Two on the gun [Townsend], were exposed to the same degree of danger as were the remainder of the platoon due to their proximity in the ambush site.<sup>17</sup>*

24. Additionally, Defence noted that its original 2022 merit based assessment did not support the award of the Commendation for Distinguished Service for Mr Townsend, stating that *it concluded that Mr Townsend's overall performance of his duties as a Number Two on the machine gun during his deployment was not demonstrably superior to others with similar employment, responsibility and rank. There is no evidence that his performance of duty was superior for the duration of the deployment and he therefore does not satisfy the criteria for the award of the Commendation for Distinguished Service.<sup>18</sup>*

25. Defence advised that it had asked Brigadier Mark Bornholt AM (Retd) to reconsider his 2022 merit assessment against the available evidence and the additional information from Mr Hawkins. Brigadier Bornholt affirmed his original decision to not recommend the award of the Commendation for Distinguished Service.<sup>19</sup> In doing so, Brigadier Bornholt stated:

*There is no evidence before Defence regarding Mr Townsend's performance of his duties during his deployment to Vietnam other than what he did during the action on 15 December 1970. It would appear self-evident that he was not required to discharge duties which were additional or superior to those normally pertaining to the Number Two on a machine gun throughout the deployment. There is no evidence that his overall performance of his duties was demonstrably superior to others with similar employment, responsibility and rank. There is no evidence that his performance of duty as a Number Two on the machine gun was superior for the duration of the deployment.*

*While the Tribunal has opined that Mr Townsend's actions in seeking to protect his Section Commander extended beyond the skills in which he was trained and what would ordinarily be expected of him because he had 'placed himself in danger by raising himself above the ground in an effort to physically restrain his wounded Section Commander and thereby prevent further injury to him'; Defence does not agree that this can in any way constitute 'distinguished performance of his duties'. Everybody in that platoon on that night were in danger and all were exposed to fire not just Mr Townsend.*

*All soldiers are trained to administer basic first aid and it is a reasonable expectation that anyone proximate to a wounded colleague would render aid and seek to protect the*

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<sup>17</sup> Defence report, dated 25 July 2024

<sup>18</sup> Ibid

<sup>19</sup> Ibid



wounded. That Mr Townsend may have been exposed to greater danger because of his actions is arguable. If he were it was only for a very short time. Indeed, relying on the oral evidence of the platoon commander, the Tribunal had previously found that the machine gun group were exposed to the same degree of danger as were the remainder of the platoon due to their proximity in the ambush site.<sup>1</sup>

Mr Townsend's actions under fire on 15 December 1970 were either gallant or not – the Tribunal and Defence have found that Mr Townsend was not gallant. The Tribunal's implication that because Mr Townsend took action to protect his wounded section commander, he should be considered for the Commendation for Distinguished Service is without merit and cannot be sustained.

**Conclusion.** There is no dispute that the evidence indicates that Mr Townsend did his job as the Number Two on the machine gun with great skill and in extremely hazardous circumstances. However, the Defence position remains that he was bravely doing what was expected of him and what he was trained to do as part of his role and responsibility. He was in danger as were the rest of the platoon on 15 December 1970 however his actions were not gallant.

Mr Townsend's overall performance of his duties as a Number Two on the machine gun during his deployment was not demonstrably superior to others with similar employment, responsibility and rank. There is no evidence that his performance of duty was superior for the duration of the deployment and he therefore does not satisfy the criteria for the award of the Commendation for Distinguished Service.

## Mr Hawkins' response to the Defence report

26. On 29 July 2024, Mr Hawkins was provided with a copy of the Defence report and asked to provide his comments on that report. Mr Hawkins replied via email on 23 September 2024, again disputing the claims that Mr Townsend was in the same amount of danger as the rest of the platoon during the battle on 15 December 1970.

[...]

*...How could Townsend have been in less danger and therefore subject to less enemy fire than me (machine gun) given he was lying right beside almost touching. He was no more than 6 inches to my left to provide belts of ammunition for the machine gun. Corporal Johnston at the start of the incident was just as close on my right hand side.*

*The Platoon Commander also said as quoted and is in Item 23 (c) of the Defence report **"without the calm steady reaction of myself and my No 2 machine gunner under heavy enemy fire, after casualties had been sustained around us, it was highly likely that our small and outnumbered patrol would have been overrun"** Other than Johnston being wounded, the only other person wounded was Lance Corporal Poulton who was at some stages stupidly standing up and moving around and obviously was hit by crossfire.*

*Item 23(d) of the Defence report also says that in Item 63 of the Townsend report it states **"The platoon and in particular the machine gun was under heavy and intense fire throughout the engagement"** This obviously must include the Gun Group. If this statement is correct then it contradicts the other statement. They can't both be right. As I*

*have stated Townsend, Johnston and me were all together, almost touching. Most enemy fire that threatened the remainder of the patrol would have been mainly crossfire rather than that being targeted at the machine gun muzzle flashes and of Townsend firing his SLR and Johnston indiscriminately firing his M16 mainly into the air. He was at this stage in severe pain. So I still maintain that the gun group were in far greater danger than most of the remainder of the Patrol.*<sup>20</sup>

27. Mr Hawkins further referenced extracts from the Tribunal report for his own 2017 review<sup>21</sup> that resulted in the award to him of the Medal for Gallantry for his actions on 15 December 1970, and from the 2022 review for Mr Townsend<sup>22</sup> that he believed supported his claim. He said:

*[...]*

*The report produced for the Hawkins review also quoted the Platoon Commander as saying. “Private Hawkins continued to provide the mainstay of our response with calm, effective and accurate fire under heavy enemy attack” and “Without the calm, steady reaction of myself (gunner) and my No 2 machine gunner ( Townsend) under heavy enemy fire, after casualties had been sustained around us (Johnston) it was likely that our small and outnumbered patrol would have been overrun” The implications of that would have been disastrous and Dennis Townsend had a huge influence on the successful and relatively safe outcome.*

*Item 63 (c) of the Townsend report states “The platoon and in particular the machine gun was under heavy and intense fire throughout the engagement” Once again I reiterate Townsend was right beside the Gun.*

*With regards to the opinion given about Townsend trying to protect Johnston as being speculative and not supported by evidence, the evidence was in fact given by the only 2 people able to accurately comment and the Tribunal gave greater creditability to the 2 eyewitnesses (myself and Townsend)....*

*Townsend put himself considerable danger to try to keep Johnston from sitting up and endangering himself, had to expose himself as Johnston was initially on my right side and Townsend on my left side.*

*One other comment I should make again is that I have never claimed that Townsend was nominated for any award at the time and the evidence that I say was lost were the hand written accounts all the patrol members were asked to provide following the event. That is the maladministration I refer to. If these accounts were available and seen by those making recommendations, then there may have been a different outcome with regards to award recommendations but I still say if this action deserved 3 bravery awards as it actually did, then one should have gone to Townsend.*<sup>23</sup>

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<sup>20</sup> Mr Hawkins’ comments on the Defence report (emphasis added by applicant), dated 23 September 2024

<sup>21</sup> *Hawkins and the Department of Defence [2017] DHAAT 20 (30 November 2017)*, decision report

<sup>22</sup> *Hawkins and the Department of Defence re: Townsend DHAAT 13 (17 August 2022)*, decision report

<sup>23</sup> Mr Hawkins’ comments on the Defence report (emphasis added by applicant), dated 23 September 2024

## **Tribunal analysis**

28. The events of 15 December 1970 have been canvassed in detail by the Tribunal on three previous occasions – in 2017 and 2018 in relation to the applications for review that resulted in the award of the Medal for Gallantry to Mr Hawkins; and in 2022 in relation to the application he made on behalf of Mr Townsend seeking a Commendation for Gallantry, which led to the present consideration of his eligibility to receive the Commendation for Distinguished Service).

29. The facts of those actions, to the extent relevant to the matter currently under consideration, were not in dispute. Because they are set out in considerable detail in the earlier Tribunal reports of 2017, 2018 and 2022, they are not repeated to any great extent here. Rather, it is sufficient to summarise the situation, which was discussed and further explored at some length during the hearing of the present matter, as follows:

- a. Mr Townsend was the Number Two on the only machine-gun in a half platoon ambush position on the night of 15 December 1970;
- b. Mr Townsend's Section Commander, Corporal Johnston, and second-in-command, Lance Corporal Poulton, were both wounded and immobilised in the first exchanges of fire after the enemy launched an attack against the position, and took no further part in the action;
- c. Mr Hawkins, the machine gunner, assumed a leadership position after Corporal Johnston was immobilised;
- d. Mr Townsend, as Number Two, had laid out claymore mines in anticipation of the ambush and, after prior consultation initially with Corporal Johnston and, as the enemy attacked, with Mr Hawkins, he detonated them.
- e. Thereafter, Mr Townsend fulfilled his Number Two role of ensuring a steady supply of ammunition to the machine gun, advising Mr Hawkins of enemy movements observed by him, and engaging directly with the enemy using his personal SLR, in the course of which he expended approximately five and a half magazines;
- f. In addition to these duties as Number Two, on three to five occasions Mr Townsend raised his head, shoulders and torso above the level required for those duties in order to wrestle to the ground Corporal Johnston who periodically sat up and fired his own rifle into the air while yelling at the enemy, apparently in a state of delirium induced by the acute pain he endured from the wound inflicted on him in the earliest phase of the engagement.;
- g. In so doing, Mr Townsend placed himself at greater risk of wounding or death than he would have been, had he not done so and had instead just dedicated himself to supporting Mr Hawkins.
- h. Had Mr Townsend not done this, there was considered to be a high likelihood that Corporal Johnston could have been either further wounded or potentially killed, given the ferocity of the enemy assault on the machine gun position where he was co-located with Mr Hawkins and Mr Townsend.;

- i. The platoon, and in particular the machine-gun, was under heavy and intense fire throughout the engagement which lasted for around 45 minutes;
- j. In the view of the Platoon Commander, Lieutenant Gibson, there was a real possibility that the entire section could have been overrun by the enemy were it not for the efficiency and accuracy of Mr Hawkins and Mr Townsend as the machine gun group; and
- k. Multiple enemy dead were found proximate to the machine-gun position after the contact.

30. The question before the Tribunal was whether or not the above actions of Mr Townsend met the eligibility criteria for the Commendation for Distinguished Service - *distinguished performance of duties in warlike operations*. It being self-evident that those actions were in warlike operations, the essential issue was whether or not they were ‘distinguished’.

31. In the Defence report, the Defence position was that, both in support of Mr Hawkins on the machine gun and in seeking to protect and safeguard Corporal Johnston, Mr Townsend was simply doing what he was trained and expected to do, albeit doing so with efficiency and bravery, and that his actions were thereby not ‘distinguished’.

32. The Tribunal, in 2022 and again in the present matter, agreed with that assessment of Mr Townsend’s actions insofar as they related to support of Mr Hawkins.

33. However, the Tribunal in the 2022 decision was not prepared to accept that proposition in relation to the steps taken to safeguard Corporal Johnston without further consideration. It said:

*... the Tribunal believes that Mr Townsend’s actions in seeking to protect the Section Commander extended beyond the skills in which he was trained and what would ordinarily be expected of him and thus warrant further consideration.*

*The Tribunal understands that the Number Two in a Machine Gun Group, whose task is adjusting fire, feeding the gun and setting up and firing claymores, is not taught or expected to do that duty and at the same time to render assistance to a wounded and distressed Section Commander in the manner described. It could thus be the case that the support provided by Mr Townsend to the wounded Section Commander should be assessed as warranting recognition in that moving to restrain him on at least four or five occasions by raising his head and shoulders above the ground to do so increased the risk of being fired upon by the attacking enemy force (or by his fellow soldiers in the ambush position). He could have ignored Corporal Johnston and would still have been regarded as “doing his job.”*

34. Given that the Defence decision under review did not accept that position, it became necessary for the Tribunal to reach a concluded view on the issue of how far a member of the Australian Defence Force was required to go in the performance of their ordinary duty to protect and safeguard a comrade in danger from the enemy.

35. In the matter of *Conlon and the Department of Defence [2024] DHAAT 1*, the Tribunal said:

*88. The Tribunal now turns its attention to the central issue of assessing whether or not Mr Conlon's actions on 9 August 2009 warrant recognition by the Commendation for Distinguished Service.*

*89. At the heart of this assessment is the meaning to be attributed to the term 'distinguished'. That adjective applies to each of the three Distinguished Service Decorations, the difference between them being the specified actions or qualities that are required to be 'distinguished'. The Regulations contain no definition of the term, and Defence has never promulgated any internal guidelines to assist its own decision-making. Instead, as Brigadier Bornholt stated, Defence has relied on the position adopted by the Tribunal over time, and has not adopted any higher standard than the Tribunal. In these circumstances, it is appropriate to review the position that has been previously adopted by the Tribunal in ascertaining the meaning of 'distinguished' in the eligibility criteria for the various Distinguished Service Decorations.*

36. And, after reviewing those previous cases, it said:

*98. Accordingly, the Tribunal considered it appropriate to set out the following guidelines in amplification of the concepts of duties or responsibilities which were additional or superior to those normally pertaining to their rank, appointment, employment or position variously used in the previous cases, and it adopted those guidelines to assist it in the conduct of the present review:*

*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;*

*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.*

37. At the hearing in this matter the Tribunal asked the Defence representatives whether there was any submission they wished to make about those guidelines. In response, Mrs Augustine advised that Defence did not wish to dispute or oppose adoption of those guidelines.

38. Accordingly, in application of the guideline set out at paragraph c)(i), the question became whether Mr Townsend, in his endeavors to protect Corporal Johnston, significantly exceeded the reasonable expectations of someone of his rank in the same or similar circumstances.

39. The Tribunal accepted that, as a broad proposition, a member of the Australian Defence Force has a duty to seek to protect a comrade in circumstances of risk from an enemy where they have a capacity to do so, but considered that the real question was how far it was reasonable to expect a member of the Australian Defence Force to go in the same or similar circumstances. It cannot be said that the broadly-stated duty requires everything that could humanly be done to be done – were it so, the Victoria Cross for Australia could not have been awarded in cases such as those of Teddy Sheean or Richard Norden.

40. In the circumstances in which he found himself, Mr Townsend was Number Two on a machine gun and faced the real prospect that the entire section of around 17 men could be overrun by the enemy. The machine gun represented by far the greatest prospect of safeguarding those 17 men, both by reason of its rate of fire and the fact that other members armed with less potent semi-automatic rifles had limited capacity and line of sight to safely fire against the enemy. In these circumstances the Tribunal concluded that it was by performance of his duties as Number Two that Mr Townsend could best safeguard the entire section and meet his duty to do so.

41. The Tribunal further considered that doing more than that could not reasonably have been expected of Mr Townsend in the circumstances, given the number of enemy forces being confronted and the ferocity of their attack. That he managed to perform his Number Two duties as efficiently as he did, and still took steps on multiple occasions to wrestle Corporal Johnston to the ground, clearly indicated in the view of the Tribunal that Mr Townsend did more than could

reasonably have been expected of him in the prevailing circumstances. And, given the substantial risk to his own safety to which he exposed himself by raising his upper body to wrestle Corporal Johnston to the ground, the Tribunal concluded that Mr Townsend not only exceeded reasonable expectations but did so to a significant extent.

42. The Tribunal thereby concluded that Mr Townsend's actions met guideline c)(i) and that his actions should therefore be accepted as 'distinguished'. Given that his actions were undoubtedly in warlike operations and given that he was not in a position of command or leadership, the Tribunal concluded that he clearly met the eligibility criteria for award of the Commendation for Distinguished Service.

43. The Tribunal was pleased to note that as the discussion of Mr Townsend's actions progressed at the hearing, Mrs Augustine accepted that he had clearly exceeded what could reasonably have been expected of him and did not argue that the requirements of guideline c)(i) were not met. The Tribunal considered that this concession on her part was entirely appropriate.

44. Finally, the Tribunal noted that on the previous occasions involving consideration of the events of 15 December 1970 and again at the hearing of this matter, there was considerable discussion and debate about whether the machine gun group was at greater or the same degree of risk as the balance of the platoon. The Tribunal on this occasion considered that the question was largely irrelevant – whatever the comparative degree of risk, the question was simply whether Mr Townsend's actions in seeking to safeguard Corporal Johnston in all the circumstances significantly exceeded what could reasonably have been expected of him. Nevertheless, the Tribunal noted that, had it been required to reach a firm view on that question, it would have been minded to conclude that the machine gun group was, at least at certain stages during the engagement, at greater risk than the balance of the platoon. In making this observation, the Tribunal had regard to the comparative intensity of their muzzle flashes on an otherwise sightless night and the risk that other platoon members might have hit the group had they fired at the enemy at various times as the enemy moved from the west to the south.

## **TRIBUNAL DECISION**

45. On 17 April 2025, the Tribunal decided to recommend to the Minister that the decision of the Department of Defence to refuse to recommend Mr Dennis Townsend for the Commendation for Distinguished Service be set aside and that the Minister should recommend to the Governor-General that Mr Townsend be awarded the Commendation for Distinguished Service.