



# Australian Government

## Defence Honours and Awards Appeals Tribunal

### **██████████ and the Department of Defence [2026] DHAAT 2 (7 March 2026)**

File Number 2025/011

Re **Mr ██████████**  
Applicant

And **The Department of Defence**  
Respondent

Tribunal Mr Stephen Skehill (Presiding Member)  
Major General Mark Kelly AO DSC (Retd)  
Commodore Vicki McConachie CSC RAN (Retd)

Hearing Date 24 November 2025

Attendances Mr ██████████  
Applicant

Mr ██████████  
For the Applicant

Ms Allison Augustine, Director Honours and Awards  
Defence  
For the Respondent

Ms Catherine Morris,  
Assistant Director, Defence Honours and Awards Policy  
Defence  
For the Respondent

Protected Identity Witness A  
For the Respondent

### **DECISION**

On 7 March 2026 the Tribunal decided that it did not have jurisdiction to review the decision of the Department of Defence of 17 December 2024 to refuse to recommend that members of Australian Police Tactical Groups be awarded the Australian Operational Service Medal (Civilian).

## **CATCHWORDS**

*JURISDICTION* – Australian Operational Service Medal (Civilian) - Civilian Service – Police Tactical Groups (PTG) – eligible service – definition

## **LEGISLATION**

*Defence Act 1903* – Section 110V, Section 110T

## Introduction

1. In 2024 Mr ██████ applied to the Department of Defence (Defence) seeking the award of the Australian Operational Service Medal (Civilian) (the AOSM (Civilian)) for members of Australian Police Tactical Groups (PTGs).
2. On 17 December 2024, Defence advised Mr ██████ that it would not recommend the award of that medal to Western Australian PTG members.
3. On 22 April 2025, Mr ██████ lodged an application for review with the Tribunal seeking review of that Defence decision *on behalf of Australian Police Tactical Groups*.
4. Division 3 of Part VIII C of the *Defence Act 1903* (the Defence Act) sets out the Tribunal's jurisdiction in respect of applications for review. Along with other parameters, section 110V of the Defence Act provides that the Tribunal has jurisdiction to review a decision refusing an application for a defence award where that decision relates to 'eligible service'.
5. Section 110T defines 'eligible service' to mean:
  - (a) *service in the Defence Force; or*
  - (b) *service under the control, or at the direction, of the Defence Force or a member of the Defence Force.*
6. If the service to which Mr ██████ application relates is not 'eligible service', the Tribunal does not have jurisdiction to conduct a review of the Defence decision to which Mr ██████ application of 22 April 2025 relates.
7. As it was not clear to the Tribunal that service as a PTG member was 'eligible service', the Tribunal resolved to convene a hearing for the specific purpose of addressing that preliminary issue. Accordingly, it invited submissions from Mr ██████ and Defence on the question of whether or not the Tribunal had jurisdiction to review the Defence decision refusing to recommend award of the AOSM (Civilian) to PTG members.
8. Defence provided a submission on 12 June 2025 in which it argued that PTG service was not "eligible service". Defence did not confine the reasoning set out in that submission to just the Western Australian PTG and the Tribunal consideration proceeded on the basis that the question of Tribunal jurisdiction was of equal relevance to all Australian PTGs.
9. Mr ██████ provided detailed submissions on 4 July, 5 October, 15 October, 26 November, and 1 and 2 December 2025, in which he claimed that PTG service was 'eligible service'. While the Defence decision was confined to members of the Western Australian PTG, Mr ██████ said that his original application to Defence related to all Australian PTGs and not just those of Western Australia.

## **Tribunal hearing**

10. The Tribunal hearing was held on 24 November 2025. Mr [REDACTED] was accompanied by Mr [REDACTED]. Defence representation included a protected-identity Lieutenant Colonel with detailed and current experience of the operations of the Australian Defence Force (ADF) Tactical Assault Groups (TAGs) and their interrelationship with the Australian PTGs (referred to in this document as Witness A).

11. The discussion then held between the Tribunal and the parties related to PTGs generally, and not just those of Western Australia.

12. At the commencement of the hearing, the Chair of the Tribunal declared that he had been a Deputy Secretary of the Commonwealth Attorney-General's Department between 1988 and 1994 and Secretary of that Department between 1994 and 1997. During those periods, the Department had responsibility for the Standing Advisory Committee on Protection Against Violence (SAC-PAV) which played a role in the relationship between PTGs and TAGs. He said that, while a Deputy Secretary, the Department's national security responsibility lay with another Deputy Secretary rather than himself; and, while Secretary, he had not personally involved himself in the performance of that Deputy Secretary's functions. He said that he had nevertheless considered whether these facts constituted any reasonably perceived conflict of interest that should preclude his involvement on the Tribunal's consideration of the present application. He said that he had concluded, subject to any contrary view of the parties, that his responsibility for and involvement in SAC-PAV was so minor and remote in time that it did not. Neither party raised any objection to the Chair's involvement in the Tribunal's consideration of the matter then before it.

## **Contextual background**

13. On 22 December 2009 the Chair of the former Defence Honours and Awards Tribunal submitted to the Minister a report of that Tribunal on its inquiry into recognition of Australian Defence Force service for Special Air Service Regiment counter terrorist and special recovery duties. The terms of reference issued by the Minister for that inquiry had stated that:

*The Defence Honours and Awards Tribunal will inquire into and report on recognition of Special Air Service Regiment (SASR) Counter Terrorist (CT) and Special Recovery (SR) Duties.*

*In conducting its inquiry the Tribunal shall:*

*(a) consider existing Australian Defence honours and awards that may be available to provide recognition for CT and SR service;*

*(b) examine relevant material and submissions and make findings on whether any changes should be made to the eligibility criteria of such honours and awards;*

*(c) consider the appropriateness of establishing other recognition for CT and SR military service; and*

*(d) consider the impact of such findings on recognition for other Australian Defence Force service.<sup>1</sup>*

14. The Tribunal was not required to, and did not, consider the issue of medallic recognition for State and Territory PTGs undertaking similar CT and SR duties. The only mention made in the report of any relevance to those PTGs was as follows:

*32. To refine [its] skills and concepts, and to ensure that higher-level coordinating arrangements were in place, the TAG took part in National CT exercises at various locations around Australia, in conjunction with Federal and State police forces and other government agencies.<sup>2</sup>*

15. The report included the following observations:

*5. The inquiry was concerned with personnel on CT/SR duties who served full-time 'online' with the Tactical Assault Group (TAG). The TAG was formed in 1980 to deal with siege-hostage situations as a result of terrorist action.*

*6. Most submissions argued that service in the TAG was extremely hazardous, and that, in effect, members of the TAG were continually on operations for the entire period in which they served online in the TAG.*

*7. The Tribunal noted that previous attempts by former TAG members to gain recognition have been rejected on the grounds that medals are not awarded for training, even if it was exceptionally hazardous training. The Tribunal agrees with that view.*

*8. The Tribunal, however, heard evidence that that once CT/SR operators completed their individual training they were posted to an online TAG, and that service online had most of the characteristics of operational service.*

- The TAG had been raised at the direction of the Government which believed that 'the threat of terrorist attack was real and potentially highly dangerous'.*
- TAG members needed to complete all necessary individual and collective training to an operational level before they joined the online squadron.*
- Because of the very short notice to move, all preparation for operations, such as issuing rules of engagement, needed to be completed.*
- Live ammunition needed to be carried to all exercise deployments in case an actual operation arose while deployed.*
- Rehearsals for all possible eventualities needed to be completed.*

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<sup>1</sup> Report, *Inquiry into recognition of Australian Defence Force Service for Special Air Service Counter Terrorist and Special Recovery Duties, Defence Honours and Awards Tribunal, Canberra, 22 December 2009*, p.4

<sup>2</sup> *Ibid*, p.10.

- *While the exact enemy was not always identified, a terrorist enemy was clearly identified by the Government as a threat to the nation and its interests. TAG members received periodic intelligence briefs from government agencies on terrorists groups and methods of operation.*
- *The commitment to the online squadron was for a specified period.*
- *The soldiers were told and believed that they were on an operational footing.*
- *When soldiers were injured and were not fit enough to remain in the TAG they were immediately replaced to ensure that the CT capability was maintained.*
- *Operational deployments were directed by the Government.*

9. *Since the TAG was formed in 1980 it, or elements of it, have been deployed on at least twelve activities (such as the 2000 Olympics and the capture of MV Pong Su) on which the TAG would use armed force to resolve a situation had it arisen. These activities would now be given the name of an operation, and could well have been formally prescribed as 'Security Operations'.*

10. *The Tribunal accepts the view that service online in a TAG should be considered to be a continuous operation. The Tribunal noted that the Acting Chief of Army has stated that with the benefit of hindsight 'the CT/SR capability should have been couched as an ongoing and enduring operation since its inception'.*

11. *The Tribunal also notes that the Acting Chief of Army and the Chief of Navy, both support medallic recognition in their combined submission.<sup>3</sup>*

16. After a detailed consideration of the submissions made to the Tribunal and of issues arising from them, the Tribunal recommended that:

***Recommendation 1:*** *Service in an online Tactical Assault Group (TAG) since its inception in 1980 (as well as service in the Interim TAG in 1979) should be recognised by the award of the Australian Service Medal with a new clasp, to be entitled Clasp 'CT/SR'.*

***Recommendation 2:*** *To be eligible for a medal, recipients should:*

- *Have served in the online TAG for a minimum of 60 days continuous.*
- *Have been a member of the TAG, which comprises a Special Operations Command and Control Element, signalers, intelligence staff and other specialists.*

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<sup>3</sup> Ibid, pp 5-6.

- *Have been a specialist member of the Australian Defence Force (eg Special Operations aviation personnel in support of the TAG), but only so long as they meet the requirement to serve continuously online for 60 days.*<sup>4</sup>

17. The Tribunal recommendations were accepted by the Government. This was announced in a media release dated 15 July 2010 issued by the then Parliamentary Secretary for Defence Support, the Hon Dr Mike Kelly AM MP, in which he said:

*From the raising of this unique TAG capability to the present, those involved have maintained a world-class capability ready for all situations in support of Australia's interests.*

18. On 24 March 2011 the then Governor-General issued a declaration and determination under the *Australian Service Medal Regulations 1988* that service of 60 days in a TAG (or in the Recovery Force) after 31 August 1979 qualified for the Australian Service Medal with Clasp Counter Terrorism/Special Recovery.<sup>5</sup>

19. Subsequently, some years after the introduction of the AOSM to replace both the Australian Active Service Medal and the Australian Service Medal, the declaration of 24 March 2011 was revoked by the Governor-General and replaced by new instruments that:

- a) terminated eligibility for the Australian Service Medal with Clasp Counter Terrorism/Special Recovery from 31 October 2020;<sup>6</sup> and
- b) created eligibility for the AOSM with Clasp Counter Terrorism/Special Recovery from 1 November 2020.<sup>7</sup>

20. The new (and current)<sup>8</sup> AOSM eligibility criteria were different from those that had applied to the ASM. The period of 60 days continuous service was reduced to a continuous period of 30 days, and expanded to allow award for lesser periods that cumulatively totalled 30 days or more.

21. As a result, all TAG members have been awarded the Australian Service Medal or, after 1 November 2020, the AOSM with Clasps Counter Terrorism/Special Recovery after the applicable qualifying period of service in recognition of their TAG membership without any requirement for having been deployed in response to any particular incident warranting such deployment.

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<sup>4</sup> Ibid.

<sup>5</sup> *Declaration and Determination under the Australian Service Medal Regulations*, Commonwealth of Australia Gazette S50, 30 March 2011.

<sup>6</sup> *Australian Service Medal Regulations (Clasp 'CT/SR') Declaration and Determination 2020*

<sup>7</sup> *Australian Operational Service Medal (Counter Terrorism/Special Recovery) Instrument 2020*, 3 September 2020

<sup>8</sup> *Australian Operational Service Medal (Counter Terrorism/Special Recovery) Instrument 2023*

## The AOSM (Civilian)

22. The AOSM was created by Letters Patent, dated 22 May 2012 and published in the *Commonwealth of Australia Gazette S67* of 6 June 2012.<sup>9</sup> It was created to replace the Australian Active Service Medal and the Australian Service Medal for future ADF operations. As per the Letters Patent, the award is governed by regulations. The regulations established with the Letters Patent on 6 June 2012 were updated in 2015 as notified in *Commonwealth of Australia Gazette G00827* dated 1 June 2015.<sup>10</sup> The regulations were further updated in 2019, notified in *Commonwealth of Australia Gazette G00629* dated 5 August 2020.<sup>11</sup>

23. The *Australian Operational Service Medal Regulation 2012* (the AOSM Regulation) as amended states:

### 3 Declared operation

(1) *The Governor-General may declare, in writing, on the recommendation of the Minister, that an operation is a declared operation.*

(2) *In making a recommendation to the Governor-General, the Minister must have regard to the recommendation of the Chief of the Defence Force.*

(3) *The Governor-General must not make a declaration about an operation unless:*

(a) *The operation is, or was, carried out in conditions that are, or were, hazardous; and*

(b) *The operation is not an operation for which recognition for an award (other than an award under this regulation) already exists; and*

(c) *The operation meets the conditions (if any) determined, in writing, by the Governor-General.*

...

(4) *A declaration under this section must include the following matters:*

(a) *the name by which the operation is known or a description of the operation; and*

(b) *the area in which the operation occurs or occurred; and*

(c) *either:*

(i) *the dates or period during which the operation occurred or*

(ii) *if the operation is continuing – the date on which the operation commenced.*

...

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<sup>9</sup> *Australian Operational Service Medal Regulation 2012, Commonwealth of Australia Gazette S67, Letters Patent and Regulations*, 6 June 2012.

<sup>10</sup> *Australian Operational Service Medal Regulation 2012, Amendment 2015, Commonwealth of Australia Gazette G00827*, 1 June 2015.

<sup>11</sup> *Australian Operational Service Medal Regulations 2012 Amendment to Letters Patent 2020, Commonwealth of Australia Gazette G00629*, 5 August 2020.

7 **Civilians – award of the medal, standard civilian ribbon and clasp**

*The Governor General may, on the recommendation of the Chief of the Defence Force, award to a civilian who has given eligible service during a declared operation:*

- (a) The medal; and*
- (b) A standard civilian ribbon; and*
- (c) A clasp denoting the declared operation.<sup>12</sup>*

24. A civilian is defined in the *Australian Operational Service Medal Regulation – Amendments 2015* dated 30 April 2015 as a person who:

*(a) is employed or contracted by the Commonwealth to support, in a civilian capacity, the operations of a Defence Force deployed force; and*

*(b) is:*

*(i) subject to the Defence Force Discipline Act 1982; or*

*(ii) included in a class of persons determined, in writing, by the Chief of the Defence Force for the purposes of this definition.<sup>13</sup>*

25. A class of persons is specified in the *Determination by the Chief of the Defence Force* dated 24 November 2015, made under the *Australian Operational Service Medal Regulations 2012*, as a person who is:

*(i) Employed by the Commonwealth to support the operations of the Australian Defence Force deployed force in a civilian capacity; and*

*(ii) Deployed under the Department of Defence or the Department of Foreign Affairs and Trade portfolios and were not subject to the Defence Force Discipline Act 1982.*

*(b) An individual classed as a class of person by this determination must also satisfy the other requirements of the Australian Operational Service Medal Regulation in order to qualify for the award of the medal and/or Clasp.<sup>14</sup>*

26. The instruments that confer the AOSM on ADF TAG members are confined to that membership and have no application to PTG members. It is clear that, to be eligible to be awarded the AOSM (Civilian) which is now sought by Mr [REDACTED] a PTG member must have served for the required period on an operation declared for the purposes of that award. There is no operation currently declared under the AOSM Regulation that is applicable to PTG service. Moreover, to be eligible for the AOSM (Civilian), a PTG member would also need to be either:

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<sup>12</sup> *Australian Operational Service Medal Regulation 2012 Commonwealth of Australia Gazette G00827 1 June 2015.*

<sup>13</sup> *Australian Operational Service Medal Regulations – Amendments 2015, 30 April 2015.*

<sup>14</sup> *Commonwealth of Australia, Australian Operational Service Medal Regulation 2012, Determination by the Chief of the Defence Force.*

*employed or contracted by the Commonwealth to support, in a civilian capacity, the operations of a Defence Force deployed force; and subject to the Defence Force Discipline Act 1982*

or

*employed by the Commonwealth to support the operations of the Australian Defence Force deployed force in a civilian capacity; and deployed under the Department of Defence or the Department of Foreign Affairs and Trade portfolios and were not subject to the Defence Force Discipline Act 1982.*

27. If the Tribunal had jurisdiction to entertain and deal with the application for review lodged by Mr ██████ the fact that there is currently no relevant declared operation would mean that the Tribunal would be obliged to affirm the Defence decision refusing to recommend that PTG members be awarded the AOSM (Civilian). It would be legally unable to set aside that decision and substitute for it a recommendation to the Governor-General that the AOSM (Civilian) be awarded because such an award could not be made in the absence of a separate instrument by the Governor-General declaring a relevant operation.

28. In those circumstances, the only potentially relevant power of the Tribunal would be that under section 110VB(3) of the Defence Act, which would allow it to make a recommendation to the Minister that he should recommend to the Governor-General that a relevantly-defined operation be declared so as to allow PTG service on that operation to be eligible for consideration for the AOSM (Civilian). If the Tribunal were to consider making such a section 110VB(3) recommendation, it would need to consider in detail whether the additional eligibility criteria quoted above were met.

29. However, whether the Tribunal has jurisdiction turns upon the quite separate question of whether or not PTG service is 'eligible service'. If it is not, the Tribunal cannot act to seek a resolution of the disagreement between Defence and Mr ██████ about whether or not PTG members meet, or should meet, the AOSM (Civilian) eligibility criteria.

30. It would not be appropriate for the Tribunal to speculate on how that disagreement might otherwise be resolved. However, the Tribunal did note that Defence had advised Mr ██████ that, while it would not support recognition of PTG service by award of the AOSM (Civilian), it would be happy to assist him in exploring with the Department of the Prime Minister and Cabinet the possibility of alternative recognition under the national honours system. In a submission to the Tribunal, Defence said *Defence remains committed to supporting Mr ██████ to make a submission on behalf of Police Tactical Groups, should they seek whole of Government recognition through the Australian honours system for service on counter-terrorism operations.*

### **Tribunal consideration of jurisdiction**

31. At the hearing on 24 November 2025 the Tribunal noted that, in Mr ██████ submissions on the question of Tribunal jurisdiction, some of the material put forward had extended into consideration of a number of issues that related to whether or not PTG service met the AOSM (Civilian) eligibility criteria, such as whether or not PTG members were employed or contracted by the Commonwealth. The Tribunal made it clear that its deliberation

would, at that time, be confined to the quite separate issue of whether or not PTG service was ‘eligible service’. The Tribunal would only consider whether such eligibility criteria were met at a later hearing, which would be convened only if it concluded that PTG service was ‘eligible service’ with the effect that the Tribunal had jurisdiction to entertain, consider and resolve the application for review lodged by Mr [REDACTED]

32. Under section 110V of the Defence Act, the Tribunal has jurisdiction to review a reviewable decision, which is relevantly a decision by Defence refusing to recommend the issue of a defence award specified in the *Defence Regulation 2016* in recognition of ‘eligible service’. The Australian Operational Service Medal is specified in that Regulation and thus the Tribunal would have jurisdiction to review a Defence decision refusing to recommend the issue of an AOSM (Civilian) if the service in question was ‘eligible service’.

**‘eligible service’**

33. As noted above, section 110T of the Defence Act defines ‘eligible service’ to mean:

(a) *service in the Defence Force; or*

(b) *service under the control, or at the direction, of the Defence Force or a member of the Defence Force.*

34. PTG service is clearly not service in the Defence Force. Accordingly, the fundamental question for consideration was whether PTG service was *under the control, or at the direction, of the Defence Force or a member of the Defence Force*. There was no question that the relevant interaction of PTGs was with *the Defence Force or a member of the Defence Force*. Accordingly, the issue was whether or not that interaction was *under the control, or at the direction, of the ADF*.

35. Mr [REDACTED] argued that section 110T did not require that eligible service had to be under the ‘command’ of the ADF and that the power of control and direction could derive from sources other than the power of command. The Tribunal agreed with that argument. It noted that the power of control and direction would be an inherent consequence of having the power of command, but it considered that a capacity to control or direct could arise from relationships other than command. In its written submission to the Tribunal, Defence had expressed its view that the Tribunal did not have jurisdiction because PTGs were not subject to the ‘command, control and direction’ of the ADF. Defence’s references to ‘command’ were clearly incorrect and would have placed an impermissible gloss on the definition of ‘eligible service’. Accordingly, the Tribunal ignored the Defence arguments to the extent that they turned upon the concept of ‘command’.

36. Mr [REDACTED] based his argument that PTG members were subject to ADF control and direction on what he termed ‘three pillars’:

a) PTG/TAG training funded and conducted by the ADF;

b) PTG/TAG policy and procedure development coordinated and mandated by the ADF; and

- c) what happens when a TAG is called out under Part IIIAAA of the Defence Act in response to a request from a PTG.

37. The Tribunal was not convinced that either PTG/TAG training or PTG/TAG policy and procedure development would be relevant service even if the ADF exercised control or direction in either of those respects. As is clear from the materials quoted above in relation to conferral of the Australian Service Medal/AOSM on TAG members, undertaking even hazardous TAG training was not considered sufficient to warrant award of the Australian Service Medal/AOSM and it seems clear that participation in TAG policy and procedure development would similarly have been regarded as insufficient. It is clear that the decision to award the AOSM for TAG membership was made to allow the award to be conferred only where TAG members were ‘online’ – that is, where for the applicable qualifying period they were fully trained and ready to be immediately and continuously deployed in response to a terrorism incident in accordance with already promulgated policy and procedure. That distinction is of course consistent with the fact that the AOSM was established to recognise ‘operational service’.

38. The Tribunal considered that it would be highly unexpected if PTG service was to be recognised by the AOSM (Civilian) for training and policy duties that would not be recognised if those same duties were undertaken by TAG members.

39. The Tribunal further noted that, when PTG members were similarly ‘online’ – that is, when they were fully trained and ready to be immediately and continuously deployed in response to a terrorism incident in accordance with already promulgated policy and procedure – they had no necessary operational interaction with the TAG in responding to an active incident of terrorism. Such an operational interaction would arise only when and if a State or Territory sought, and the Commonwealth agreed to, a Part IIIAAA ADF call-out to respond to a particular incident. Absent a Part IIIAAA ADF call-out, the ‘online’ status of PTG personnel was operationally unrelated to the ‘online’ status of TAG personnel. TAG and PTG interactions for training and development of policy and procedure were for the purposes of ensuring preparedness for operational interaction in responding to an incident of terrorism in which both had operational involvement by reason of a Part IIIAAA call-out.

40. The Tribunal considered that it would be highly unexpected if PTG service was to be recognised by the AOSM (Civilian) during periods when there was no operational interaction with the ADF arising from a Part IIIAAA call-out, and that recognising PTG service only during the period of such interaction on a call-out incident would be on a markedly different basis to current AOSM recognition of TAG service.

41. The Tribunal nevertheless considered whether the ADF could be said to exercise control or direction in either of those circumstances.

42. The Commonwealth, through the Department of Defence, provides not-insignificant funding to the States and Territories for the engagement and continued employment of their PTGs. In doing so, it requires that PTG members engage in inter-active training conducted by the TAGs, and that the PTGs assist the TAGs in the development of, and comply with, uniform policies and procedures to govern the interoperability of the PTGs and the TAGs.

43. In his submissions to the Tribunal, Mr ██████ acknowledged that these activities were mandated by the Intergovernmental Agreement on Australia’s National Counter-Terrorism

Arrangements. He said at various points in his written submissions to the Tribunal and to Defence:

*Since 1979, Australia's national counter terrorism arrangements have required PTGs and the ADF TAG to collectively maintain a 24/7 'Use of Force' capability to 'prepare for' and 'respond to' a terrorist incident.<sup>15</sup>*

...

- *... obligations exist by agreement in a series of formal and informal Commonwealth led IGAs with the states/territories;*

- *the IGAs establish a series of successive Commonwealth national CT Committees, being ANZCTC, NCTC & SAC-PAV that PTGs worked under since 1979;*

- *the CT Committees are permanently co-chaired, administered and funded by the Commonwealth;*

- *the CT Committees establish national CT doctrine framework, strategy, plans, handbooks, policy and procedure that detail how the ADF TAG, state/territory PTGs will 'prepare for' and 'respond to' a terrorist incident; and*

- *the national CT framework is underpinned with a doctrine of interoperability between PTGs and the TAG for a consistent application of the 'Use of Force' principles.<sup>16</sup>*

...

*To highlight the Commonwealth nature of the IGA and current ANZCTC Committee, the Commonwealth permanently co-chairs the current ANZCTC. The membership of the ANZCTC comprises state/territory representatives and multiple Commonwealth Ministerial portfolios, including Defence and Foreign Affairs & Trade Portfolios.<sup>17</sup>*

...

*Whilst remunerated by their respective agencies, PTG and ADF TAG groups receive Commonwealth funding needed to achieve the collective skills, equipment and doctrine to employ a high level of national interoperability to meet their ongoing 24/7 'Use of Force' obligations under the national arrangements.<sup>18</sup>*

...

*Since 1979, the 'Defence Portfolio' has been a member of the various national CT committees. Through its membership, 'Defence Portfolio' directly contributes to the development and updating of the national CT Doctrine, CT strategy, CT plan and CT*

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<sup>15</sup> Submission, Mr [REDACTED] to Defence, 2024, p.1 (also see submission to Tribunal).

<sup>16</sup> Ibid, p.4.

<sup>17</sup> Ibid.

<sup>18</sup> Ibid, p.5

*handbook. In particular, the 'Defence Portfolio' contributes to the 'Use of Force' Doctrine contained in those documents.*<sup>19</sup>

...

*There are numerous ADF policy, procedures and standing orders that 'Control' and 'Direct' the manner PTGs undertake training on ADF establishments.*<sup>20</sup>

...

*This submission proposes that the IGA is a non-legally binding contract between the Commonwealth and the States/Territories; in other words, the States/Territories have a contracted arrangement with the Commonwealth to provide a 24/7 'Use of Force' capability, that provides a benefit to the Commonwealth itself. In return the Commonwealth provides funding, weapons and equipment to the State/Territories and administers the national counter terrorism arrangements through the ANZCTC (and previous NCTC & SACPA).*<sup>21</sup>

44. The Tribunal concluded that, while the ADF and Defence clearly play a role in Australia's national counter-terrorism arrangements, they do so simply as one of a number of Commonwealth agencies that have a relevant role. Undoubtedly, they are influential in the formulation of the Commonwealth's requirements for continued funding of the States and Territories, and particularly in relation to joint PTG/TAG training and development of policy and procedure for joint interoperability, but they are not finally determinative of those requirements.

45. The participation of a PTG member on an ADF-run training exercise or with TAG members on policy or practice development occurs at the direction of their PTG, which can be withdrawn at any time. The fact that they may be required to comply with TAG directions while on ADF property does not stem from any inherent power of control or direction of the ADF over that person, and is more in the nature of the usual rights of a property owner in respect of invitees on their property.

46. The Tribunal considered that this non-exclusive role and the degree of ADF/Defence influence does not mean that the ADF thereby acquired a degree of control or direction over PTG members sufficient to meet the threshold test for 'eligible service'. It is always open to the States and Territories to decline to accept Commonwealth funding on the conditions required by the Commonwealth, and to "go their own way" on training and policy/procedural development. The fact that doing so might be imprudent and jeopardise PTG/TAG interoperability in the event that a State or Territory felt the need to request call-out of the ADF in response to an incident otherwise within the primary responsibility of its PTG, did not, in the view of the Tribunal, amount to subjecting PTGs to ADF control or direction.

47. The Tribunal considered however that the argument in relation to Mr ████████ third "pillar" - what happens when a TAG is called out under Part IIIAAA of the Defence Act in response to a request from a PTG – was of a very different nature. When such a call-out occurs, the service rendered by PTG and TAG members is quite different from that in the first two

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<sup>19</sup> Ibid, p.7

<sup>20</sup> Ibid, p. 16

<sup>21</sup> Ibid, p.36.

“pillars” – the surrounding circumstances are clearly “operational” and require active interoperability between the relevant PTG and TAG. It is no longer a matter of undertaking training or developing policy and procedure for the possibility of such an event.

48. Consistent with what is sometimes referred to as the ‘independence of the constable’, primary responsibility for any terrorism event rests and remains throughout with the relevant State or Territory police. The PTG meets that responsibility under its own authority and exclusive of any role of the TAG unless and until a request is made by the State or Territory and agreed by the Commonwealth for an ADF call-out under the provisions of Part IIIAAA of the Defence Act. That Part provides that, when the ADF is called out to protect Commonwealth interests and those of the States and self-governing Territories, the Chief of the Defence Force must ‘assist and cooperate with’ the relevant State and Territory police.

49. Mr █████ described what happened in such circumstances in his submissions to the Tribunal, where he variously said:

*... even though PTG are the lead agency for a domestic terrorist incident, they provide crucial support to the ADF operation, when the TAG prepare for and take statutory responsibility for the ‘Use of Force’ at the request of police.<sup>22</sup>*

...

*there exists a mandatory symbiotic relationship based on mutual interoperability between the PTG and TAG that is well established by national CT doctrine, policy, plans and exercises since the 1979.<sup>23</sup>*

...

*Under the Australian national counter terrorism arrangements, the states, territories and Commonwealth agree to maintain a national 24/7 ‘Use of Force’ capability that can respond to a terrorist incident. It is only the civilian PTG and military TAG that have the statutory responsibility for the ‘Use of Force’ under the national CT arrangements.<sup>24</sup>*

...

*Irrespective of which assault group ends up with the ‘Use of Force’ responsibility during a terrorist incident, the nature of their interoperability means they constantly remain in support of each other in the preparation for and the duration of the incident. Irrespective of whether it is the civilian PTG or the ADF TAG who have final responsibility to apply a ‘Use of Force’ to rescue the hostages, they both are preparing to face the same terrorist enemy in a combative environment.<sup>25</sup>*

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<sup>22</sup> Ibid, p.2.

<sup>23</sup> Ibid, p.3.

<sup>24</sup> Ibid, pp.4-5.

<sup>25</sup> Ibid, p.5

*Under the national arrangements the PTG and TAG are required through interoperability to support each other in respect to the 'Use of Force' continuum, which includes the handover/handback of 'Use of Force' responsibility.<sup>26</sup>*

...

*The PTG are first responders, contain the incident<sup>25</sup>, hold the emergency action and establish the forward command resources.<sup>26</sup> Through ADF liaison officers at the incident site, the PTG work with TAG as the terrorist incident escalates. This directly enables the ADF TAG to prepare for a possible Part IIIAAA handover.<sup>27</sup>*

...

*Recognising that as a terrorist incident escalates there is a 'Use of Force' continuum involving Part IIIAAA of the Defence Act, where PTGs transition the 'Use of Force' responsibility to the ADF TAG Operation, who are the last resort for the 'Use of Force'<sup>28</sup>*

...

*In the event responsibility for the 'Use of Force' is handed over to the ADF TAG, the PTG Commander retains 'Authority' for the terrorist incident.<sup>29</sup>*

...

*The 'Control' and/or 'Direction' for the way in which the 'Use of Force' continuum escalates with a Statutory handover of responsibility from the PTG to the ADF, is contained within the national CT strategy, plan and handbook.<sup>30</sup>*

...

*As a terrorist situation escalates, the PTG can handover 'Responsibility' for the 'Use of Force' to the ADF TAG. Once a Statutory Pt IIIAAA handover occurs, the ADF TAG Commander assumes 'Responsibility' for securing the stronghold and saving the lives of the hostages.*

*45. This does not displace the 'Authority' of the PTG Commander overall, rather the PTG Commander has handed over or sub-contracted out the 'Responsibility' for the 'Use of Force'.<sup>31</sup>*

...

*When the ADF TAG take over responsibility for the 'Use of Force', the resources of the PTGs remain at the TAG Commanders disposal. This may include a request*

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<sup>26</sup> Ibid, p.6.

<sup>27</sup> Ibid.

<sup>28</sup> Ibid, p.9.

<sup>29</sup> Ibid.

<sup>30</sup> Ibid.

<sup>31</sup> Ibid, p.16

*'Directing' additional PTG support through intelligence updates, staff for hostage reception, outer cordons, shutdown of certain utilities or utilising PAGs to supplement his tactical operation... The TAG Commander who has accepted Command responsibility for the 'Use of Force' can request PTG resources be 'Directed' to meet the operational needs of the ADF ... If the ADF TAG Commander requested the PTG to re-direct some resources, then the PTG would consider/respond to that request.<sup>32</sup>*

*Once the ADF TAG have responsibility for the 'Use of Force', then the PTG don't just pack up and go home, they are a resource available to the ADF TAG Commander and remain at a heightened level of operational readiness to respond to any requests directed by the ADF TAG Commander, to assist him fulfill his Military operation.<sup>33</sup>*

...

*From the witness statements obtained for this submission (and other documentary evidence), examples of PTG support available (and regularly utilised) to the ADF TAG military operation includes, but is not limited to;*

- *Maintaining situational awareness through the PFCP;*
- *Ongoing police intelligence updates;*
- *Cordon and containment of the incident site;*
- *Tactical resources to help support the Military operation as required (eg use of*
- *PTG snipers, secondary EA/DA etc);*
- *Coordinate hostage reception;*
- *Maintain/move inner perimeter locations;*
- *Updates on the negotiation strategy; and*
- *Stronghold familiarisation and reconnaissance.<sup>34</sup>*

50. Witness A gave evidence that was essentially consistent with Mr [REDACTED] submissions, confirming that the TAG commander could request ongoing involvement by PTG members which could be agreed at the discretion of the PTG commander.

51. Relevantly, the Defence submission stated that:

*During a counter terrorism operation, the ADF military commander and the PTG commander work together, however, they have exclusive command, control and direction of their own personnel. PTG's are not under the command, control or direction of the ADF.*

*Members of a PTG are not assigned to a Defence operation, Special Operations Command or listed on an 'Operational Staffing Document', which is used to allocate an individual to an operation.*

*The ANZCTC National Counter Terrorism Plan, referenced by Mr [REDACTED] states the following regarding Defence's involvement in counter-terrorism efforts:*

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<sup>32</sup> Ibid, p.17

<sup>33</sup> Ibid, p.18.

<sup>34</sup> Ibid, p.33.

### **Operational Arrangements**

*183. State and territory police and emergency response agencies have primary responsibility for responding to terrorist incidents within their jurisdictions, consistent with their statutory responsibilities and in accordance with arrangements established under the Handbook and state and territory plans.*

### **Annex A – Agency Roles**

**Department of Defence** (including ADF, AGO, DIO and DSTG) contributes directly to Australia's counter-terrorism efforts in support of the Australian Government's comprehensive whole-of-government approach to counter-terrorism – PPRR. Defence supports domestic counter-terrorism efforts by assisting civil authorities, including but not limited to:

- providing specialist ADF capabilities to assist in the resolution of a terrorist act;
- intelligence support to decision makers;
- participating in exercises and training; and
- undertaking scientific research.

*The Defence Act 1903 (Cth) allows Defence to be called on to assist civil authorities in emergencies during or following a terrorist incident, and may apply when a specific emergency is beyond the capabilities of the civil authorities to resolve, or where the ADF would be likely to enhance the civil authorities' response.*

*There are no references in the ANZCTC National Counter Terrorism Plan that determine PTG's are subject to the control or direction of the ADF.*

*With regards to Mr [REDACTED] reference to interoperability between the PTGs and the ADF, 'interoperability' – across human, technical and procedural matters – enables relevant agencies to conduct operations effectively. However, interoperability is not a command status, and is only a series of processes, procedures, standards and training that support an outcome.*

*Additionally, Part IIIAAA of the Defence Act 1903 enables the ADF to be called out, under a call out order, to assist civilian authorities such as the police in response to 'domestic violence' in the States and Territories, as well as to protect Commonwealth interests.*

*Part IIIAAA of the Defence Act is substantially underpinned by section 119 of the Commonwealth Constitution. Part III emphasises the important of ADF cooperating with police and other relevant authorities in the States and Territories, and there is no provision under this section of the Defence Act for ADF personnel to assume command and control responsibility for non-ADF personnel during counter terrorism operations.<sup>35</sup>*

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<sup>35</sup> Letter, Defence to the Tribunal, Application for Review, Mr [REDACTED] DH&A/OUT/2025/033, pp.2-3.

52. As noted earlier, Defence references to ‘command’ in the above passage are incorrect in the context of Tribunal jurisdiction, but the balance of the Defence text is relevant and largely confirms the position stated by Mr ██████ as quoted earlier.

53. Even though a PTG commander may agree to a TAG request for ongoing PTG involvement and support for TAG action and may direct their personnel to comply with ‘directions’ from the TAG, the Tribunal concluded that this did not amount to conferring on the TAG ‘control or direction’ over PTG personnel of the type to which section 110T of the Defence Act refers because agreeing to a request was always discretionary and that agreement was always inherently capable of revocation.

54. The Tribunal further concluded that, where there was a Part IIIAAA call out, the statutory limitation on the role of the TAG to assisting and cooperating with the PTG was inconsistent with the TAG being on a position of control or direction.

55. The Tribunal noted that the Defence Act provides that, in providing assistance and cooperation, the Chief of the Defence Force cannot transfer command of the ADF to any extent. The Tribunal considered that, notwithstanding that Part IIIAAA did not expressly state that the Chief of the Defence Force could not accept a transfer of command or control or direction from State or Territory Police when the ADF was called out, such an outcome would be inconsistent with the clear ADF role which was statutorily limited to assisting and cooperating with State and Territory police.

56. Mr ██████ sought to raise a number of additional arguments in support of his argument that the Tribunal had jurisdiction.

57. First, he argued that

*There is no definition in the Defence Act or the Interpretation Act of ‘under the control’ or ‘at the direction’. Similarly, there is no apparent guidance as to whether the ‘Control’ or ‘Direction’ is to be;*

- a. express or implied;*
- b. continuous or occasional;*
- c. organisational or individual;*
- d. verbal or written; or*
- e. direct or indirect?*

*Any ambiguity in statutory interpretation, in this case the definition of ‘under the control’ or ‘at the direction’, the Courts have historically applied a ‘fairness test’ and are prepared to depart from literal interpretation. In the case of Bull v. The Attorney-General for New South Wales, Issacs J stated that:*

*"... if any ambiguity existed, like all such Acts should be construed beneficially. This means, of course, not that the true signification of the provision should be strained or exceeded, but that it should be construed so as to give the fullest relief which the fair meaning of its language will allow. "*

*Accordingly, section 15AA of the Acts Interpretation Act 1901, provides statutory justification for departing from any stringent literal interpretation.*

*“In interpreting a provision of an Act, the interpretation that would best achieve the purpose or object of the Act (whether or not that purpose or object is expressly stated in the Act) is to be preferred to each other interpretation.”<sup>36</sup>*

*Furthermore, where there is any ambiguity in the statutory definition of s110T(b), then it should be construed beneficially toward the PTG, “so as to give the fullest relief which the fair meaning of its language will allow”.<sup>37</sup>*

58. The Tribunal acknowledged the concepts that beneficial legislation should be construed beneficially and that, where there is an ambiguity in statutory expression, such should be resolved in a manner that would promote the purpose or object of the legislation. However, it considered that those concepts were of no application in the present circumstances. There was no relevant ambiguity in the Defence Act – it simply declared that the Tribunal did not have jurisdiction where service is not at the control or direction of the ADF, and ADF control or direction was inconsistent with the unambiguous limitation of Part IIIAAA call-out to assistance and cooperation with a PTG that retained primary responsibility for the relevant terrorist incident. Moreover, the Defence Act is not beneficial legislation of the type to which courts adopt a beneficial interpretation - it does not confer beneficial entitlements on any individual, such as may be found in social security or veterans’ entitlements legislation.

59. Mr ██████ also argued that the Tribunal decisions in the cases of *Ryder*<sup>38</sup> and *Wilson*<sup>39</sup> as providing precedents for the conferral of the AOSM (Civilian) on PTG members. The Tribunal concluded, however, that neither of these cases provided any precedent support for resolution of the present matter. In each case, it was clear that the individual concerned was under the control or direction of the ADF and the question of jurisdiction simply did not arise. In *Ryder*, the question for the Tribunal was whether he was relevantly employed by the Commonwealth. And in *Wilson*, the question was whether or not proper consideration had been given to specifying a class of civilians upon whom the Iraq Medal or the Afghanistan Medal might be conferred. To the extent that the Tribunal may have been viewed as adopting a ‘flexible’ approach to the meaning of employed by the Commonwealth in *Ryder*, as was asserted by Mr ██████ the capacity to do so arose only because the Tribunal had jurisdiction due to the clear existence of ADF control or direction, which the Tribunal considered to be absent in the present case.

60. Mr ██████ also sought to rely on a large number of letters he had amassed from an impressive array of people who supported his cause of seeking medallic recognition for PTG service. These people included serving or former high officials of State and Territory bodies, former Commonwealth Ministers, and numerous serving and former members of PTGs and TAGs. Most of these letters spoke in glowing terms of the effective interoperability of PTG/TAG actions, but no matter how persuasive they were in that regard they were essentially

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<sup>36</sup> Submission, Mr ██████ to the Tribunal, p.3

<sup>37</sup> Ibid, p.13.

<sup>38</sup> See *Ryder* and the Department of Defence [2023] DHAAT 17

<sup>39</sup> See *Wilson* and the Department of Defence [2021] DHAAT 13

irrelevant in the present limited context of the Tribunal's current consideration in that they did not relate to the issue of Tribunal jurisdiction. Had the Tribunal concluded that it did have jurisdiction to deal with the application lodged by Mr [REDACTED] these letters may have been highly relevant and the Tribunal may have been assisted by hearing direct evidence from some of the authors of them. However, to the extent that any of these letters did touch upon the issue of jurisdiction, the Tribunal found their argument unconvincing because of the statutory limitation of TAG interaction to assistance and cooperation.

61. In light of the above analysis, the Tribunal concluded that it did not have jurisdiction to further consider the application for review lodged by Mr [REDACTED] because PTG members are not relevantly subject to ADF control or direction when they interact with TAG members.

62. In saying that, however, the Tribunal stressed that nothing in its reasoning should be taken to reflect adversely on the nature or value to society of PTG service, which the Tribunal holds in the highest regard. The Tribunal conclusion goes solely to whether or not it has any role to play in resolving the question of whether PTG service should receive medallic recognition and, if so, how.

63. The decision reached by the Tribunal does not, of itself finally resolve that question. Clearly, other paths are potentially open:

- a) While unlikely, Defence could change its mind and recommend to the Minister that he recommend the declaration of a relevant operation under the AOSM Regulation;
- b) The Minister could reject Defence advice and make such a recommendation to the Governor-General;
- c) The option raised by Defence of seeking whole of Government recognition through the Australian honours system for service on counter-terrorism operations, outside the defence honours and awards system, could be pursued; or
- d) Individual State or Territory governments, or their Police Forces, could create suitable medallic recognition for PTG service.

These are of course matters for others, and not for the Tribunal.

## **DECISION**

64. Fort the above reasons, the Tribunal decided that it did not have jurisdiction to review the decision of the Department of Defence of 17 December 2024 to refuse to recommend that members of Australian Police Tactical Groups be awarded the Australian Operational Service Medal (Civilian).