



Australian Government

Defence Honours and Awards Appeals Tribunal

Holloway and the Department of Defence [2026] DHAAT 10 (15 June 2026)

File Number(s) 2025/032

Re **The Hon Professor Ian Carl Holloway PC CD KC PhD
LLD**
Applicant

And **The Department of Defence**
Respondent

Tribunal Commodore Vicki McConachie CSC RAN (Presiding Member)
Major Gary Mychael OAM CSM (Retd)

Hearing Date 1 April 2026

Attendances

Applicant **Professor Ian Holloway**

For the Respondent **Mrs Allison Augustine** – Acting Assistant Secretary HR Services,
Department of Defence

Mrs Andrea Patel, Manager, Veterans and Families,
Directorate of Honours and Awards,
Department of Defence

Miss Melissa Jones, Special Counsel,
Defence People Group, Department of Defence

DECISION

On 15 June 2026, the Tribunal decided:

- a. to affirm the decision that Dr Holloway not be recommended for the Australian Defence Medal, and
- b. not to recommend to the Minister that the eligibility criteria for the Australian Defence Medal be amended.

CATCHWORDS

*DEFENCE AWARD – Australian Defence Medal – Royal Australian Naval Reserve service - eligibility criteria – initial enlistment conditions not met – no discretion – beneficial legislation – treatment of service on attachment from a foreign Defence Force – Visiting Forces – application of *Acts Interpretation Act* 1901 to Letters Patent to Australian Defence Medal*

LEGISLATION

Defence Act 1903 – Part VIII C – Sections 110T, 110V(1), 110VB(2), 110VB(6)

Defence Regulation 2016, Regulation 36

Australian Defence Medal Regulations Letters Patent, Commonwealth of Australia Gazette S48, dated 30 March 2006

Australian Defence Medal, Chief of the Defence Force Determination, dated 6 February 2013

Australian Defence Medal Regulations Amendments of Letters Patent Commonwealth of Australia Gazette G00629, dated 5 August 2020

Australian Defence Medal Regulations Determination 2021, dated 16 March 2021

Acts Interpretation Act 1901

Introduction

1. The Applicant, The Hon Dr Ian Holloway KC, seeks review of a decision of 16 February 2024 by Defence to refuse to recommend him for the Australian Defence Medal in recognition of his service in the Royal Australian Naval Reserve and his service on attachment with the Royal Australian Navy while serving in the Royal Canadian Navy.

Decision under review

2. On 24 October 2023, Dr Holloway applied to Defence for an assessment of his eligibility for the Australian Defence Medal. On 16 February 2024, Defence wrote to Dr Holloway to advise that he was not eligible for the Australian Defence Medal. Defence advised Dr Holloway that, while he served for a total of five years, five months and two days in the Royal Australian Naval Reserve, he had only two years of qualifying service in respect of his eligibility for the Australian Defence Medal.

3. On 26 September 2025, following a further chain of correspondence with Defence, including with the Chief of the Defence Force, Dr Holloway made application to the Tribunal seeking review of the above decision.¹

Tribunal jurisdiction

4. Pursuant to s110VB(2) of the *Defence Act 1903* the Tribunal has jurisdiction to review a reviewable decision if an application is properly made to the Tribunal. The term *reviewable decision* is defined in s110V(1) and includes a decision made by a person within the Department of Defence to refuse to recommend a person for a defence award in response to an application. Regulation 36 of the *Defence Regulation 2016* lists the defence awards that may be the subject of a reviewable decision. Included in the defence awards listed in Regulation 36 is the Australian Defence Medal. Therefore, the Tribunal has jurisdiction to review decisions in relation to this award.

Dr Holloway's service

5. Dr Holloway enlisted in the Royal Australian Naval Reserve on 2 July 1998 on an open-ended enlistment period. He was discharged on 3 December 2003, under Regulation 70 of the *Defence (Personnel) Regulations 2002*, having served for a period of five years, five months and two days.²

6. Dr Holloway had previously served in the Royal Canadian Navy. He told Defence and the Tribunal that in 1993, he moved to Australia to complete his PhD at the Australian National University, and that upon arriving in Canberra arrangements were made for him to parade with the local Naval Control of Shipping team at HMAS *Harman*. He said that he later began the process of attempting to transfer to the Royal Australian Navy and while this took a few years, in the meantime he continued to be *a completely embedded member of the RAN Naval Control of Shipping Organization*. He stated that

¹ Application for review, Dr Ian Holloway, dated 26 September 2025.

² Defence report service record.

he had a security clearance, and that he performed the same duties as every other member of the team. He stated that he was also subject to the *Defence Force Discipline Act 1982*. He told the Tribunal that while he served in the Royal Australian Navy from 7 July 1998 to 3 December 2003, he unexpectedly had to move back to Canada in July 2000, and thus he could not complete the required qualifying days of service as a Royal Australian Navy member for the Australian Defence Medal.

7. Dr Holloway has not received any awards for his service in the Royal Australian Navy.³

The Australian Defence Medal

8. The eligibility criteria for awarding the Australian Defence Medal is contained in paragraph 4(1) of the *Australian Defence Medal Regulations 2006*⁴ as amended in 2020,⁵ which states:

4 Award of the Medal

- (1) *The Medal may be awarded to a member, or former member, of the Australian Defence Force who after 3 September 1945 has given qualifying service that is efficient service:*
 - a) *by completing an initial enlistment or appointment period; or*
 - b) *for a period of not less than 4 years service; or*
 - c) *for periods that total not less than 4 years; or*
 - d) *for a period or periods that total less than 4 years, being service that the member was unable to continue for one or more of the following reasons:*
 - (i) *the death of the member during service;*
 - (ii) *the discharge or termination of the member as medically unfit;*
 - (iii) *the discharge or termination of the member due to a prevailing discriminatory Defence policy, as determined by the Chief of the Defence Force;*
 - (iv) *the member ceased service in the Permanent Force or Reserves of the Defence Force and mistreatment by a member of the Defence Force or an employee in the Department of Defence was a significant factor.* "[...]"

³ Refusal letter from Defence dated 16 February 2024, as submitted with application for review.
Australian Defence Medal Regulations 2006, Commonwealth of Australia Gazette, S48, dated 30 March 2006.

⁵ *Australian Defence Medal Regulations, Commonwealth of Australia Gazette, G00629, dated 4 August 2020.*

9. On 13 July 2020, the Regulations were amended to provide a definition of year, being:

*Year means the 12 month period ending on the anniversary of the member's enlistment or appointment.*⁶

10. The *Australian Defence Medal Determination 2021*, dated 16 March 2021, provides specific details of prevailing discriminatory policy for the purpose of subparagraph 4(1)(d)(iii) of the Regulations as follows:

A member who for a period or periods that total less than four years, being service that the member was unable to continue for one or more of the following reasons:

- i) the death of the member during service;*
- ii) the discharge or termination of the member as medically unfit;*
- iii) the discharge of the member due to a prevailing discriminatory Defence policy, as determined by the Chief of the Defence Force; or*
- iv) the member ceased service in the Permanent Force or the Reserves of the Defence Force and mistreatment by a member of the Defence Force or an employee of the Department of Defence was a significant contributing factor.*

11. The Determination confirms in Schedule 1 'Minimum periods of annual qualifying service' that the minimum required period is 20 days service from 20 April 2000 inclusive per enlistment year.⁷

Dr Holloway's application to Defence and its initial refusals

12. On 24 October 2023, Dr Holloway applied to Defence for an assessment of his eligibility for the Australian Defence Medal. On 16 February 2024, Defence wrote to Dr Holloway advising him that he was not eligible for the Australian Defence Medal as he had only two years of qualifying service in respect of his eligibility for the award.⁸

13. On 25 May 2024, Dr Holloway wrote to Defence providing additional information to support his application for the Australian Defence Medal. He outlined his service as a member of the Royal Canadian Navy from 1994 to 1998 and submitted that, in every way, he was considered an *effective and contributing member of the RAN team*. He submitted that having regard to this service, he served for much longer as a de facto member of the Royal Australian Navy than his service record would suggest. He argued that 'service' was not formally defined in the Australian Defence Medal Regulations, but that there could be no doubt that the work that he did with and for the Royal Australian Navy constituted 'service' in Australia's interests.⁹

⁶ Ibid.

⁷ The *Australian Defence Medal Determination 2021*, *Chief of the Defence Force Determination*, dated 16 March 2021.

⁸ Application for review, Dr Ian Holloway, dated 26 September 2025. Pg 5-8/36

⁹ Application for review, Dr Ian Holloway, dated 26 September 2025.

14. On 27 May 2024, Defence wrote to Dr Holloway referring to Regulation 2 of the Australian Defence Medal Regulations, which defines ‘Defence Force’ as *the Defence Force constituted under the Defence Act 1903*. Defence then referred to Section 30 of that Act which states that *the Defence Force consists of 3 arms, namely the Australian Navy, the Australian Army and the Australian Air Force*. Defence stated that to be a member of the Defence Force, a member must be either enlisted or appointed into one of the three service arms. Defence’s view was that, as Dr Holloway was not a member of the Royal Australian Navy until 2 July 1998, any prior service undertaken with Australian units (while a member of the Royal Canadian Navy) could not be counted as qualifying service towards the Australian Defence Medal.¹⁰

15. On 7 June 2024, Dr Holloway again wrote to Defence, and referred to section 116B of the Defence Act which states:

Attachment to the Defence Force of members of the forces of another country and vice versa

(1) The Chief of the Defence Force may, by order in writing:

(a) attach temporarily to any part of the Defence Force a specified member, or a member included in a specified class of members, of the forces of a country in relation to which this section applies who is placed at his or her disposal by the service authorities of that country for the purpose of being so attached; and

(b) subject to anything to the contrary in the conditions applicable to his or her service, place a specified member, or a member included in a specified class of members, of any part of the Defence Force at the disposal of the service authorities of a country in relation to which this section applies in order that he or she may be attached temporarily by those authorities to the forces of that country.

(2) Where a member of the forces of a country in relation to which this section applies is attached temporarily to a part of the Defence Force, he or she shall, for the period for which he or she is so attached, be regarded as a member of that part of the Defence Force, as holding the rank in that part of the Defence Force that corresponds with the rank that he or she holds in those forces and as having, for the purposes of command and discipline, the same status and powers, including the power to arrest and to impose punishments, as:

(a) a member of that rank in that part of the Defence Force; and

(b) if he or she is given an appointment in that part of the Defence Force--a member of that part of the Defence Force holding the like appointment.

(3) The application of the law governing the Defence Force to a person to whom subsection (2) applies is subject to such exceptions, modifications and adaptations as are specified by the Minister by order in writing.

¹⁰ Ibid.

(4) A member of the Defence Force referred to in paragraph (1)(b) does not cease to be subject to the law governing that part of the Defence Force to which he or she belongs by reason only of his or her being temporarily attached as provided by that paragraph.

(5) This section applies to and in relation to a part of the Defence Force serving either within or beyond the territorial limits of Australia.

16. Dr Holloway submitted that between 1994 and 1998, he was attached to the Royal Australian Navy and, as confirmed by his performance reports, he exercised authority concomitant with his rank as a senior sailor, and that he was given the authority to act as the official voice of the Royal Australian Navy to the merchant shipping community. He acknowledged that attachments under section 116B(1) are issued in writing by the Chief of the Defence Force, but argued the impracticality of the Chief of the Defence Force issuing such orders personally and that such matters could be delegated. He argued that the fact he was given formal appointments served as evidence that he was covered by the provisions of section 116B.¹¹

17. On 12 June 2024, Defence responded to Dr Holloway, reiterating its view that he was, at the relevant time, a member of the Royal Canadian Navy embedded in or attached to the Royal Australian Navy, and that application of S116B(2) did not make an attached individual an enlisted or appointed member of the Australian Defence Force *but ensures incumbent authority of a rank held is maintained*.¹²

18. After writing to Defence to acknowledge and thank it for its consideration of his applications,¹³ on 21 January 2025 Dr Holloway wrote to Chief of the Defence Force concerning his application. Along with restating much of his previous submissions, Dr Holloway referred to the *Acts Interpretation Act 1901*, which he submitted provides that *an interpretation that best achieves the purpose or object of legislation is to be preferred to any other interpretation*. He submitted that *in light of the objectives underlying the Australian Defence Medal, ie honouring service in Australia's defence, my four years of efficient pre-RAN Australian service should count towards my eligibility for the Medal*.¹⁴

19. On 8 April 2025, the Chief of the Defence Force, Admiral David Johnston AC RAN, wrote to Dr Holloway reiterating that the advice provided in Defence's letter of 16 February 2024 was correct. In respect of the issue of an order under section 116B, Admiral Johnston stated:

*I am mindful that you were a Canadian citizen and thus ineligible at that time to be an ADF member. Irrespective, it remains the case that you were a serving member of the Royal Canadian Naval Reserve. The Australian Defence Medal Regulations 2006 contains no provision permitting the service a foreign defence force as qualifying service for the Australian Defence Medal.*¹⁵

¹¹ Application for review.

¹² Defence report.

¹³ Dr Holloway letter to Defence dated 22 October 2024, Defence report.

¹⁴ Defence report.

¹⁵ Defence report.

Dr Holloway's application to the Tribunal

20. In his application to the Tribunal, Dr Holloway reiterated much of the submissions he had made to Defence and provided the Tribunal with evidentiary material referred to in earlier correspondence. He stated that he did not meet what he referred to as the *ordinary requirement* of four years of effective service as a Commissioned Officer. He argued that his time serving with the Royal Australian Navy while still a member of the Royal Canadian Navy could and should, in his particular circumstances, be counted towards his eligibility for the Australian Defence Medal.

21. Dr Holloway submitted that section 15AA of the *Acts Interpretation Act 1901* makes it clear that one must adopt a purposive approach to the interpretation of the Australian Defence Medal Regulations and associated legislation. He submitted that:

*[i]n 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. In a case called IW v City of Perth, the High Court refined this by saying that "the principle [is] that legislation with a beneficial or remedial purpose will be construed according to that purpose, giving the legislation a 'fair, large and liberal' interpretation, rather than one which is 'literal or technical' "*¹⁶

The Australian Defence Medal Regulations are precisely this kind of "beneficial" legislation, in that they created a benefit – a benefit for those who had served in the defence of Australia.

22. Dr Holloway referred to his understanding of the intended purpose of the Australian Defence Medal and submitted that the term 'service' is not actually defined in the Regulations. He stated that *formal uniformed service alone is not the sole criteria for award of the Australian Defence Medal*. Regulation 5 provides that it may be awarded to persons who provide philanthropic service to the Australian Defence Force. He argued that regulation buttressed the notion that the Medal is intended to acknowledge service in Australia's interests, and that there was no doubt that his service between 1994 and 1998 was such service.

23. Dr Holloway again outlined the provisions of section 116B of the Act and highlighted sub-sections 116B(1)(a) and 116B(2) as being especially relevant. He submitted that according to a plain reading of these provisions, he was regarded as a member of the Royal Australian Navy, and that it followed that his service constituted service for the Australian Defence Medal. He again referred to the Acts Interpretation Act and urged the Tribunal to take a purposive approach to the interpretation of the Defence Act and the eligibility criteria.

24. Dr Holloway also submitted that his circumstances were distinctive and unique and that the award of the Australian Defence Medal to him *would not open any floodgates for a barrage of other claims*.¹⁷

¹⁶ *IW v City of Perth, HCA (1997) 191 CLR 1, at 12 per Brennan CJ and McHugh J; at 39 per Gummow J).*

¹⁷ Application for review.

The Defence Report

25. In its report to the Tribunal of 20 November 2025 Defence submitted that, following Dr Holloway's application, Defence conducted a reassessment of his eligibility for the Australian Defence Medal, which affirmed its decision not to recommend him for the medal.

26. Defence referred to the terms of the Regulations and submitted that:

*The Australian Defence Medal Letters Patent, as amended on 20 March 2006, stated 'WHEREAS by Letters Patent dated 8 September 2005 We instituted an Australian medal, designated and styled the Australian Defence Medal, for the purpose of according recognition to **Australian Defence Force personnel** who have served for a minimum of six years since the end of World War II'. In accordance with the Australian Defence Medal Regulations, as amended in 2020, this six year period was subsequently amended to 'a minimum period of service'. (Emphasis added)*

*Paragraph 4 of the Australian Defence Medal Regulations provides the conditions for the award stating that 'The Medal may be awarded to a member, or former member, of the **Australian Defence Force who after 3 September 1945 has given qualifying service that is efficient service...**'*

*The Australian Defence Medal Regulations, as amended in 2020, defines efficient service as 'Efficient service means any service **in the Permanent Force or the Reserves of the Defence Force as determined under paragraph 4(2)(a)**'. (Emphasis added to show 'in', rather than 'with' the ADF)*

Defence emphasises that the Australian Defence Medal was instituted for the purpose of according recognition to ADF personnel who have given qualifying service that is efficient service in the Permanent Force or the Reserves of the Defence Force.

27. Defence submitted that it had not obtained Dr Holloway's Royal Canadian Navy service record and had relied exclusively on Dr Holloway's statements and supporting information. However, Defence stated that it was not 'in receipt of' documentation indicating that he was subject to the *Defence Force Discipline Act 1982* while he was serving in the Royal Canadian Navy. It reiterated its position that Dr Holloway was not formally enlisted, or appointed, as a member of the Australian Defence Force between 1994 and 1998.

28. Defence argued that the purpose of the Australian Defence Medal Regulations is clear. It said that purpose is *to accord recognition to Australian Defence Force personnel*, and that the Regulations further specify clear administrative boundaries for eligibility, specifically in Regulations 4 and 5. Defence further submitted that *Regulation 5 provides a distinct pathway for recognition of philanthropic services for the Defence Force, limited to members of recognised philanthropic organisations.*

29. Defence also submitted that, in Dr Holloway's case, there was no evidence that his Royal Canadian Navy service alongside the Royal Australian Navy was conducted under a recognised philanthropic organisation or through formal Australian Defence Force enlistment prior to his enlistment in the Royal Australian Navy Reserve on 2 July 1998. Defence submitted that as such it does not meet the conditions required set out in the *Australian Defence Medal Regulations*.

30. Defence referred to Dr Holloway's arguments in respect of section 116B of the *Defence Act 1903*, in relation to his service between 1994 and 1998. Defence submitted that provision allows for members of a foreign defence force to be temporarily attached to the Australian Defence Force and, for the duration of such an attachment, to be regarded as members of the Australian Defence Force for the purposes of command and discipline. Defence emphasised that while section 116B provides a legal framework for operational integration, it does not extend to eligibility for honours and awards under the Australian Defence Medal Regulations. Furthermore, Defence stated that section 116B does not grant enlistment status, nor does it result in the creation of a formal service record within the Australian Defence Force's personnel management system.

31. Defence recommended to the Tribunal that the decision to not recommend Dr Holloway for the Australian Defence Medal be affirmed, but submitted that he may be entitled to apply to the Australian Department of Veterans' Affairs for the Defence Veterans' Covenant, which may entitle him to a Veteran Card, a Lapel Pin and Oath.

Dr Holloway's comments on the Defence report

32. In his comments on the Defence Report, provided on 27 November 2025, Dr Holloway again submitted that a purposive approach should be taken in respect of his application for the Australian Defence Medal. He stated:

The issue here is largely one of legislative interpretation. Defence has adopted what is traditionally known as the "literal approach" to interpreting the Australian Defence Medal Regulations. According to this approach, since the regulations do not specifically cover someone in my situation, then I am ipso facto ineligible for the Medal. The reference in Regulation 5 to charity supporters as being eligible, according to this approach, provides further support to the view that I am excluded. Had they wanted someone like me to be eligible for the Medal, the implicit point is, they would have said so directly.

Literalism in legislative interpretation is no longer the proper approach under Australian law, however. Instead, what is known as the "purpose approach" is mandated. That is the clear direction in s 15AA of the Acts Interpretation Act 1901: "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."

*In an important case from 1997, called *CIC Insurance Ltd v Bankstown Football Club Ltd*,¹⁸ the High Court of Australia amplified this in describing what it called the "modern approach to statutory interpretation":*

¹⁸ *CIC Insurance Ltd v Bankstown Football Club Ltd*, [1997] HCA 2; (1997) 187 CLR 384 4 February 1997, Goudron J; (1997) 141 ALR 818-PDF.

[T]he modern approach to statutory interpretation (a) insists that the context [of the legislation in question] be considered in the first instance, not merely at some later stage when ambiguity might be thought to arise, and (b) uses 'context' in its widest sense to include such things as the existing state of the law and the mischief which, by legitimate means such as those just mentioned, one may discern the statute was intended to remedy.

This is an important point: in principle, a legislative regime such as that governing Australia's defence, including the recognition of those who serve in the defence of Australia, should be interpreted so that there is an internal and logical consistency to it. It would be wrong to adopt an interpretation of the Australian Defence Medal Regulations which undercuts other legislation, especially an Act of Parliament which governs Australia's national defence. Yet, that what I think Defence is inadvertently doing here.

*This is the nub of my argument: I held appointments in the Australian defence establishment; I had a security clearance; I represented the Royal Australian Navy to the public; I exercised authority over subordinate RAN personnel; and I was subject to the Australian Defence Force disciplinary code. Given all of this, Section 116B(2) of the Defence Act makes it quite clear that during that time, I was regarded as a serving member of the Australian Defence Force: "where a member of the forces of a country in relation to which this section applies is attached temporarily to a part of the Defence Force, **he or she shall, for the period for which he or she is so attached, be regarded as a member of that part of the Defence Force ...**" (my emphasis). And if I was according to the Defence Act deemed to be a member of the RAN, then it must logically follow that my time amounted to "service" within the meaning of the Australian Defence Medal Regulations.*

A provision like s 116B makes perfect sense. To the extent that the defence of the nation requires that we be able to rely on every link in the chain, Australia needs to know that every link is solid and dependable. And throughout my time in Australia, I did my utmost to show that (as I hope the reports on my service make plain). I wasn't forced to work with the RAN; I did so because I wanted to. I was a volunteer – I was a volunteer because I wanted to serve the country that had allowed me to make it my home.

Implicitly, the position taken by Defence in my case seems to be that s 116B should say, "... shall be regarded as a member of the Defence Force except for purposes of calculating eligibility for the Australian Defence Medal". But that is not what Parliament said. On the contrary, it says in clear and unambiguous terms that I was regarded as a member of the Defence Force, with all the responsibilities that went along with that. To adopt the approach taken in my case by Defence would seem to undermine the proper import of the Defence Act.

Hearing

Dr Holloway's Submission

33. During the hearing Dr Holloway submitted that the issue of whether he should be awarded the Australian Defence Medal was largely an issue of statutory interpretation.

34. He noted that he had spent 26 years in uniform and a third of that period was in Australia's service. He submitted that the Australian Defence Medal was initiated to commemorate, honour and denote those who served in the Australian Defence Force for a minimum period. He submitted that the effect of the correct legal interpretation of section 116B of the Defence Act is that his pre-Australian Defence Force time serving under Royal Australian Navy Command as a member of the Royal Canadian Navy should count towards his eligible service in the Australian Defence Force. He noted that his supplementary comments set out briefly why he believed that to be the case.

35. Dr Holloway reiterated that legislation has to be interpreted as a whole so that as a body it makes sense. He submitted that the regulations have to be interpreted in terms of the governing statute, which in this case he submitted was the Defence Act. He argued that section 116B of the Defence Act means that he was regarded as a member of the Australian Defence Force for that period during which he was attached to the Royal Australian Navy. Dr Holloway noted that he had recently learned that members of the British SAS regiment and the British Military Police, who were attached to the Australian Forces during the Vietnam War, were awarded the Vietnam Medal. He said that this was pertinent because of his view that the letters patent for the Vietnam Medal closely mirror the wording of the Australian Defence Medal.

Defence Submission

36. Defence acknowledged Dr Holloway's service.

37. Defence stated that Dr Holloway had two years' of qualifying service towards the Australian Defence Medal while serving as a member of the Australian Defence Force. Defence asked Dr Holloway to explain how his service with the Royal Australian Navy came about. Dr Holloway responded that when he arrived in Australia, the Canadian Defence Liaison Officer, whom he already knew, contacted him and asked if he would like to serve with the Royal Australian Navy. Dr Holloway agreed and said he was attached to HMAS *Harman* Naval Control of Shipping team and that he paraded regularly. Dr Holloway said he did two or three exercises and exercised the authority of the Australian Defence Force in those exercises where he represented Australia interacting with the Merchant Shipping Community. He said that he also exercised direct command authority over a member of the Australian Defence Force and had a security clearance. He said he was a part of the Defence team doing what any other Australian senior rating would have done.

38. Dr Holloway said that while the Canadian Defence Force paid him, the Australian Defence Force provided him with rations and quarters. He noted that he was a Chief Petty Officer so that, while there must have been paperwork underlying his work with the Royal Australian Navy, that was not his responsibility.

39. Defence noted that members of other countries' Defence Forces often come to Australia on secondment or exchange and that, while working with the Australian Defence Force, they are paid by their own countries. During their exchange or

secondment they have the same authorities and are embedded into the Australian Defence Force, but are not eligible for the Australian Defence Medal because the Regulations state that service must be as a member of the Australian Defence Force. Defence put to Dr Holloway that he was paid by Canada and remained part of the Canadian Defence Force and not the Australian Defence Force. Defence submitted that it was not until he transitioned that he became a member of the Australian Defence Force and rendered two years of qualifying service towards the Australian Defence Medal. He did not achieve four years of qualifying service because he had to return to Canada for personal reasons and was discharged.

Tribunal Questions

40. The Tribunal asked Dr Holloway whether he had considered the 1981 Explanatory Memorandum in relation to the amendments which inserted section 116B into the Defence Act. The Tribunal noted that the explanatory memorandum deals with the status of a member of the Australian Defence Force and, in effect, a person becomes subject to the relevant Australian disciplinary law. It states:

Sub-section (2) is based on sub-sec 24(2) of the existing Act [Defence (Visiting Force) Act 1963] and deals with the status of a member of the forces of another country who is attached to a part of the Australian Defence Force. In effect, the person becomes subject to the relevant Australian disciplinary law, etc. For practical reasons, he must be able to exercise the powers of command and arrest appropriate to his rank and appointment and, where he holds an appointment, the power (if any) conferred on such an appointee to impose punishments, and provision is made accordingly.

41. The Tribunal noted that this appeared to indicate that section 116B is narrower than Dr Holloway was proposing. Dr Holloway submitted that the Explanatory Memorandum is not law, but marginal notes of a public servant on the law. He pointed to the precedent of the British personnel being awarded the Vietnam Medal where the regulations are almost identical.

42. The Tribunal asked Defence about the Vietnam Medal possibly being presented to British Service members. Defence advised that it was unaware of the circumstances cited by Dr Holloway. The Tribunal asked Defence to confirm whether Dr Holloway was correct in his understanding of what had occurred and, if so, how it came about.

43. The Tribunal then turned to the Regulations. The Tribunal noted that the Australian Defence Medal may be awarded to a member or former member of the Australian Defence Force who fulfilled qualifying service for four years. The Tribunal noted there are some exceptions in relation to the period of qualifying service for personnel discharged for certain reasons. Dr Holloway agreed these exceptions are not relevant in his case.

44. The Tribunal then referred to the *Defence Long Service Medal Regulations*. Regulation 7 states:

7. Service in the Defence Force by a person who is a member of the naval, military or air forces of another country while on secondment to, or exchange with, the Defence Force may be qualifying service if the person:

(a) becomes a member of the Defence Force; and . . .

(b) gives efficient service as a member of the Defence Force.

45. The Tribunal noted that those Regulations expressly deal with prior service in the naval forces of another country, but that the Australian Defence Medal Regulations do not. As the Defence Long Service Medal regulations predate the Australian Defence Medal Regulations, the Tribunal put to Dr Holloway that the non-inclusion of foreign personnel in the Australian Defence Medal may have been deliberate. Dr Holloway responded that this was not conclusive because of the precedent in relation to the Vietnam Medal he had cited earlier.

46. The Tribunal noted that a number of other medals have provision for foreign personnel to be eligible to be awarded those medals. The Tribunal raised the recent decision in *Juniper*, which examined the eligibility of a British Naval Senior Sailor for the Australia Service Medal 1939-45. In *Juniper* a British service member, who served with the Royal Australian Navy for four years in HMAS *Australia*, was not eligible for the Australia Service Medal 1939-1945. This was in contrast to the Australian Service Medal awarded for service after 14 February 1975. Members of foreign forces, who render service, may be awarded the Australian Service Medal for service after 1975 because the Minister had made specific a determination pursuant to paragraphs 2 and 4(b) of the Australian Service Medal Regulations set out in the Schedule of the Letters Patent on 13 September 1988. The Determination declares:

*that members of foreign defence forces who render service with the Australian Defence Force in prescribed operations to be persons eligible for the award of the Australian Service Medal.*¹⁹

47. The Tribunal also noted that in 2009, a previous Tribunal, headed by Dr Dennis Pearce AO FAAL, had conducted an inquiry into eligibility for the Australian Defence Medal. As part of that review, the 2009 Tribunal examined 76 submissions. It determined that four of those submissions fell within the Australian Defence Medal framework. It examined various categories that the 2009 Tribunal said at that time were not eligible for the Australian Defence Medal. One of those categories was *Members of the British services on exchange duties with Australian Defence services*. There were three cases in that category. The previous Tribunal said they were cases that did not fit within the Australian Defence Medal framework. It noted:

There have been periods when British servicemen have made a major contribution to the ADF through their unit being based in Australia, secondments to Australian units or by way of exchanges with Australian servicemen and women.

48. The 2009 Tribunal noted that, despite their valuable service, these people remained members of the British Services. The 2009 Tribunal was not persuaded by the submissions that there should be any change in to the rule limiting the Australian Defence Medal to service in the Australian Defence Force.

49. Dr Holloway asked whether the submissions that were made to the 2009 inquiry were made in the context of section 116B of the *Defence Act*. The Tribunal noted that the

¹⁹ Ministerial Determination of 11 May 1992 made pursuant to paragraphs 2 and 4(b) of the Australian Service Medal Regulations set out in the Schedule of the Letters Patent on 13 September 1988

review report did not give detailed reasons or deal in detail with the submissions to the review.

50. The Tribunal put to Dr Holloway that section 116B of the Defence Act appears to be about command and discipline. Dr Holloway again noted that the Explanatory Memorandum was not the law and repeated his view that, in light of section 15AA of the Acts Interpretation Act and the precedent he cited, his time with the Royal Australian Navy while serving in the Royal Canadian Navy should count as qualifying service for the Australian Defence Medal.

51. The Tribunal noted Dr Holloway had said that the legislation establishing the Australian Defence Medal was beneficial legislation. The Tribunal put to him that it was not convinced that this was the case, particularly noting that normally such legislation confers a benefit or corrects a social injustice. While Dr Holloway agreed that beneficial legislation is often directed at welfare, he submitted that the regulations establishing the Australian Defence Medal, combined with section 116B of the *Defence Act*, provide a benefit and celebrate a social contribution by recognising service to Australia.

52. The Tribunal noted that Dr Holloway's service on exchange while a member of the Royal Canadian Navy would have counted towards his eligibility for a clasp to the Canadian Forces Decoration for long service, notwithstanding that he did not reach the period of service required for a clasp to be awarded because he left the Royal Canadian Navy. It said that one of the reasons why the Australia Service Medal in *Juniper* was not awarded to British Service members was the concept that two medals should not be received for the same service.

53. Defence submitted its view that section 116B(2) of the *Defence Act* refers to discipline and not to a broader concept as submitted by Dr Holloway. Defence further noted the *Acts Interpretation Act* section 15AA concerns the purpose of legislation and that the purpose of the Australian Defence Medal is to recognise Australian Defence Force members.

54. The Tribunal noted that the Letters Patent state:

Whereas by Letters Patent dated 8 September 2005 We instituted an Australian medal, designated and styled the Australian Defence Medal, for the purpose of according recognition to Australian Defence Force personnel who have served for a minimum of six years since the end of World War II.

55. The Tribunal asked Dr Holloway whether he had anything more to add in relation to purpose. He submitted that the purpose set out in the Letters Patent supported his argument that the legislation was beneficial legislation as its objective is to celebrate those who were part of the Australian Defence Force. He submitted that that leads to who was part of the Australian Defence Force, and that section 116B says those personnel attached to a part of the Australian Defence Force should *be regarded as a member of that part of the Defence Force*. Dr Holloway further submitted that the argument that section 116B is only about discipline is incorrect. He noted that as he could get into trouble under section 116B if he did something bad, there was no reason why should he not benefit if he did something good.

56. The Tribunal asked Defence whether they were aware of any case law concerning section 116B. Defence said it would come back to the Tribunal on this point. Defence noted that it was not 'in receipt of' documentation indicating that Dr Holloway

was subject to the *Defence Force Discipline Act 1982* while he was serving in the Royal Canadian Navy. It reiterated its position that Dr Holloway was not formally enlisted or appointed as a member of the Australian Defence Force between 1994 and 1998.

57. The Tribunal asked Dr Holloway about the determination which sets out qualifying service as a certain number of days remunerated at Defence rates of salary, noting he was remunerated by the Royal Canadian Navy and not Defence. He responded that it would be wrong to frustrate the intention of the creation of the Australian Defence Medal by placing undue emphasis on that issue. He submitted that if Parliament deems those attached to the Defence Force from foreign services to be part of the Defence Force and reserves the right to punish, it inferentially must also reserve the right to celebrate.

58. Defence reiterated that the Australian Defence Medal was created to recognise Australian Defence Force personnel for their service the Australian Defence Force.

59. Defence was asked about Dr Holloway's understanding that the Vietnam Medal was awarded to British service personnel by Australia. Defence said they did not have that information to hand but would come back within a fortnight on both section 116B of the Defence Act and on the Vietnam Medal issue. The Tribunal said that it would like to know whether the Vietnam Medal awarded to others who were serving with Australia and, if so the circumstances in which it occurred.

60. In closing, the Tribunal acknowledged how proud Dr Holloway remained about his service in support of the Australian Defence Force. The Tribunal noted that his service was valued as he brought a different perspective as a Canadian and taught those around him.

Post Hearing Submissions

Defence Submission

61. Following the hearing Defence provided the following, which was forwarded to Dr Holloway for his consideration:

Question One

Information on any examples / cases on law with regards to Section 116B of the Defence Act 1903, and Section 15AA of the Acts Interpretation Act 1901.

Defence has undertaken a search and cannot identify any case law discussing Section 116B of the *Defence Act 1903* (the Act).

For clarification about the intent of the section, Defence initially refers to the Explanatory Memorandum to the Defence Acts Amendment Bill 1981 which states:

*New Section 116B _ Attachment to the Defence Force of members of the forces of another country and vice versa
This section provides for temporary attachments to and from forces of other countries to which the section applies. Attachments may take place for a variety of reasons, but the most common in peacetime are where members are exchanged for the purpose of gaining experience by serving for a time in the other country's force or where members undergo training with the other force.*

Sub-section (1) is based on sub-sec 24(1) of the existing Act and empowers a chief of staff to attach members of the forces of other countries to the relevant arm of the Defence Force and to place a member of the relevant arm of the Defence Force at the disposal of the service authorities of another country. The attachment of members of Australian forces to the forces of another country is expressed to be subject to anything to the contrary in the conditions applicable to his service. This would, for example, prevent a reservist being so attached for a period in excess of the prescribed period of service that he is liable to render.

A reference to a specified class of members has been included to clarify that members do not have to be individually attached.

Sub-section (2) is based on sub-sec 24(2) of the existing Act and deals with the status of a member of the forces of another country who is attached to a part of the Australian Defence Force. In effect, the person becomes subject to the relevant Australian disciplinary law, etc. For practical reasons, he must be able to exercise the powers of command and arrest appropriate to his rank and appointment and, where he holds an appointment, the power (if any) conferred on such an appointee to impose punishments, and provision is made accordingly. The reference to arrest is new.

Sub-section (3) is based on sub-sec 24(3) of the existing Act and empowers the Minister to modify the application of the relevant Australian disciplinary law, etc. For example, it may be necessary to impose certain limits on the powers that such a member is to be permitted to exercise, or to impose certain restrictions on the disciplinary action that the Australian Defence Force may exercise in relation to that member. This sub-clause has been redrafted to clarify its operation.

Sub-sections (4) and (5) are based on sub-secs 24(4) and (5) of the existing Act and merely ensure that a member of the Defence Force attached to the forces of another country remains subject to the law applicable to his part of the Defence Force, and that new Section 116B has extra-territorial operation. There are no changes of substance from existing law.

Defence acknowledges that Section 116B(2) of the Act states that a member of a foreign force can be temporarily attached to the Defence Force. However, we refer to the Explanatory Memorandum (above) which highlights that the intent of Section 116B(2) was to assist with the practicalities of having a member of a foreign force exercise the powers of command for disciplinary purposes, commensurate with their position, while attached to the Defence Force. There was no stated intent to suggest that those members were members of the Defence Force for any other purpose (such as pay and remuneration, and potential medallic recognition).

More broadly, we note that section 15AA of the *Acts Interpretation Act 1901* states that:

In interpreting a provision of an Act, the interpretation that would best achieve the purpose of 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.

We also note the decision of McHugh, Gummow, Kirby and Hayne JJ in *Project Blue Sky Inc & Ors v Australian Broadcasting Authority* [1998] HCA 28 where (at [78]) it was stated:

[T]he duty of a court is to give the words of a statutory provision the meaning that the legislature is taken to have intended them to have. Ordinarily, that meaning (the legal meaning) will correspond with the grammatical meaning

of the provision. But not always. The context of the words, the consequences of a literal or grammatical construction, the purpose of the statute or the canons of construction may require the words of a legislative provision to be read in a way that does not correspond with the literal or grammatical meaning.

Defence, therefore, contends that both legislation and case law supports consideration of the Explanatory Memorandum (alongside the Act) in clarifying the intended scope of Section 116B of the Act. 3

Question Two

Information on the Vietnam Medal being awarded to Royal Military Police and the British SAS Regiment (as per Dr Holloway's email dated 23 March 2026).

Additionally, the Tribunal panel members sought further clarification to question two.

a. In addition to any comments on the email, we would be grateful if Defence could confirm whether it is aware of members of the Royal Military Police and the British SAS Regiment who were embedded with the Australian Army in Vietnam being awarded the Vietnam Medal referred to in both Professor Holloway's emails and, if so, could it explain the rationale on which this occurred and the circumstances around it. Further, if the medal was awarded to members of the Royal Military Police and the British SAS Regiment who were embedded with the Australian Army in Vietnam what does Defence say in relation to this and Professor Holloway's argument?

b. If Defence cannot answer the question of whether British personnel were awarded the medal, can it please advise what steps it took to do so and why it cannot be answered. In this instance the Tribunal would like its answer on whether Defence considers British personnel were eligible.

Defence is not aware of, and has not identified, any members of the Royal Military Police or British Special Air Service Regiment who served in Vietnam as British personnel, were embedded with the Australian Army in that capacity; and were subsequently awarded the Vietnam Medal on that basis.

Defence undertook extensive inquiries to determine whether such awards were made. These steps were reasonable and proportionate, and included searches across the following sources:

Source	Description of search	Outcome
Personnel Management Key Solution (PMKeyS)	PMKeyS is the Defence HR and payroll system, including honours and awards data. Royal Military Police and British SAS Regiment personnel from the 1960s-1970s do not have a PMKeyS number.	No evidence identified

Complete Online Medals Processing and Awards System (COMPAS)	COMPAS is the Defence honours and awards management system, including foreign recipients of Australian awards. Keyword searches were conducted, key words being <i>Vietnam Medal</i> and <i>other civilians</i> and <i>Vietnam Medal</i> and <i>foreign Defence force members</i> .	No evidence identified
Archived Files	Review of files relating to the Vietnam Medal policy, allied service and historical reviews. Files reviewed: 67/1189 - Vietnam Campaign Medal Issued to Allied Servicemen Serving in Vietnam 86/41999/1 - Australian Defence Force Awards for Gallantry in Action - DGSP Aspects 86/41999/2 - Australian Defence Force Awards for Gallantry in Action - DGSP Aspects 91/09366/1 - Review of Vietnam Medal 1990-1992 91/09366/2 - Review of Vietnam Medal 1990-1992 91/09366/3 - Review of Vietnam Medal 1990-1992 97/30856/1 - Vietnam Medal - Conditions of Eligibility 98/24157/1 - Honours and Awards - Introduction of Original Vietnam Medals - Historical Aspects	No evidence identified
Australian - Special Air Service Regiment	The Special Air Service Regiment History and Research Unit were asked if they were aware of any members of the British Special Air Service Regiment embedded with the Australian Army in Vietnam. Historical records were searched and six Australian Special Air Service Regiment Vietnam veterans were consulted.	No records or recollections of British SAS Regiment personnel embedded
UK - Special Air Service Regiment	The Deputy Head of the Army Historical Branch at the Ministry of Defence United Kingdom was	Advised no mechanism exists to identify embedded individuals; suggested regimental associations

consulted: seeking
information if any Royal
Military Police or British
Special Air Service
Regiment personnel were
embedded with the
Australian Army in Vietnam.

During the Vietnam War period, the Australian Army accepted lateral recruits from British forces, including individuals who had formerly served in the Royal Military Police or the British Special Air Service Regiment. Once formally enlisted in the Australian Army, those individuals ceased to serve as British personnel. They became Australian Service members for all relevant legal purposes, and any deployment to Vietnam occurred solely as Australian soldiers. Any Australian campaign medals awarded, including the Vietnam Medal, were granted on the basis of Australian service, not British service.

It is Defence's view that references to former British service may have contributed to the mistaken belief that British personnel served in Vietnam as embedded allied members and were awarded Australian medals in that capacity. Details of several known lateral recruits who later served in Vietnam as Australian soldiers are set out at Enclosure 1.²⁰

Defence has found no evidence that members of the Royal Military Police or British Special Air Service Regiment served in Vietnam as British personnel embedded with the Australian Army, or that any such personnel were awarded the Vietnam Medal. Extensive searches of Defence systems, archival records, Australian and UK historical authorities, and veteran recollections identified no such cases.

Defence therefore finds no basis to substantiate Dr Holloway's claim that British forces were embedded with Australian forces during the Vietnam War or that any such personnel received the Vietnam Medal. Defence's position is that the Vietnam Medal's Royal Warrant of 8 June 1986 sets out the eligibility criteria for the award and restricts entitlement to members of the Australian Armed Forces and accredited members of approved philanthropic organisations.

Applicant's Response

62. Dr Holloway responded to the above Defence Submission as follows:

Regarding the assertion that the Explanatory Memorandum settles the interpretation of s 116B of the *Defence Act*, the courts have made two things clear over the years: first, that explanatory memoranda are **not** conclusive regarding legislative intent, and, secondly, that it is not permissible to ignore words in a statute because they do not accord with what a government official **thinks** a statute should mean.

For example, in *Mondelez Australia Pty Ltd v Automotive, Food, Metals, Engineering, Printing* 2020 [HCA] 29, Gaegler J noted that Explanatory Memoranda cannot supplant the plain words of a statute. He also noted that "notoriously, explanatory memoranda sometimes get the law wrong".

²⁰ Not included in this decision, though considered

Similarly, in *Re Bolton; Ex parte Beane* (1987) 162 CLR 514 Gummow J emphasised that “[t]he words of a Minister must not be substituted for the text of the law”.

To offer another example, in *Plaintiff M70/2011 v Minister for Immigration and Citizenship* [2011] HCA 32, French CJ dismissed the Commonwealth’s argument that words used in certain amending legislation should have the meaning described in the explanatory memorandum. This was not accepted by the High Court, with French CJ stating that the words “plainly do not and cannot bear” the meaning given in the explanatory memorandum.

In my case, if the interpretation of s 116B of the *Defence Act* that Defence is arguing for had been the correct one, then the portion of sub-section (2) in red below would have been unnecessary and superfluous. In other words, if the only issue that Parliament was trying to address was the ability to be subject to and to enforce discipline, then only the portion which follows it would have been required. But Parliament chose to include the portion in red, and it must be given meaning.

Where a member of the forces of a country in relation to which this section applies is attached temporarily to a part of the Defence Force, he or she shall, for the period for which he or she is so attached, be regarded as a member of that part of the Defence Force, as holding the rank in that part of the Defence Force that corresponds with the rank that he or she holds in those forces and as having, for the purposes of command and discipline, the same status and powers, including the power to arrest and to impose punishments, as:

What other meaning could those words in red be given other than what they clearly indicate? In my case, during the years in which I was assigned to the RANR, ***I was regarded as a member of the Royal Australian Navy***. With respect, there is no other interpretation that could be given without either straining the words of s 116B, or ignoring them completely.

2. Re the award of the Australian Viet Nam Medal to members of the British Forces. I very much appreciate all the work done by Defence to research this. But I infer from the wording of their note that gaps exist in the records, and that their research cannot be said to be conclusive. I have attached another screen shot regarding this. Of course, “anecdote isn’t evidence”, but I don’t think that we can say for certain that I am wrong in my assertion.

3. This may seem a bit contradictory, since I’m the one who raised a 116B, but I’d note that it post-dates the Second World War, which makes the *Juniper* case distinguishable.

4. I’m not sure that much turns on this, but in our hearing, the Chair referred to a presumption against double-counting time for decorations. In other words, if my time with the Royal Australian Navy also was credited towards a Clasp for the Canadian Forces Decoration, that was another reason why I ought not to be eligible for the Australian Defence Medal. I should not be able to “double-dip”, as the saying has it. I would simply note that in fact time *is* double-counted in the Australian awards system. That is because the time counted towards the Australian Defence Medal is also counted for eligibility for the Defence Long Service Medal.

Tribunal Consideration

63. The Australian Defence Medal was instituted by Letters Patent *for the purpose of according recognition to members of the Defence Force who have provided a minimum period of Service since the end of World War II.*²¹ The Australian Defence Medal Regulations,²² as amended, provide that the Australian Defence Medal:

may be awarded to a member or former member of the Defence Force who after 3 September 1945 has given qualifying service that is efficient service:

(a) By completing an initial enlistment period; or

(b) For a period of not less than 4 Years service; or

(c) For periods that total not less than 4 years....

64. There are some exceptions to the four-year service period that are not relevant in this matter.

65. Schedule 1 to the *Australian Defence Medal Determination 2021* specifies the minimum annual periods of service to be completed by a member for a year of qualifying service. The period may consist of one or a combination of *Days remunerated at Defence rates of salary or sessional fees*, days on which the member is eligible for a Reserve service payment, and days of approved voluntary unpaid Reserve service. Relevantly, in the instance of Royal Australian Naval Reserve service, the annual period was one day per enlistment year until 19 April 2000 and 20 days per enlistment year from 20 April 2000 onward.

66. The facts of this matter were largely not in dispute. The Tribunal was satisfied that Dr Holloway enlisted in the Royal Australian Navy on 2 July 1998 on an open-ended enlistment and discharged on 3 December 2003. During his time in the Royal Australian Navy he achieved two years of qualifying service towards the award of the Australian Defence Medal. The Tribunal was also satisfied that Dr Holloway was a member of the Royal Canadian Navy during the period from 1994 to 1997 when the Canadian Defence Attaché may be viewed as having placed Dr Holloway at the disposal of the Royal Australian Navy Naval Control of Shipping cell at HMAS *Harman*. He remained a member of the Royal Canadian Navy and was ultimately under the command and control of his Canadian superiors. He was reported on by Canadian superiors,²³ remained subject to their orders, and could have been withdrawn from his role with the Royal Australian Navy at any time on their direction.

67. The Tribunal was satisfied that this arrangement would likely have been covered by an order in writing from the Chief of the Defence Force (or his delegate) attaching Dr Holloway, or a class of persons that included him, to a part of the Defence Force. Dr Holloway participated in a number of Naval Control of Shipping exercises

²¹ Australian Defence Medal Letters Patent of 20 March 2006

²² Schedule to Australian Defence Medal Letters Patent of 13 July 2020 Australian Defence Medal Regulations 2006

²³ Letter Lieutenant Command R. Sproge RANR to Captain S. Foldesi CD RCN, 20 April 1994.

with the Royal Australian Navy. Dr Holloway was treated as being attached to the Naval Control of Shipping Cell – a part of the Defence Force – and the Director of Sailors Career Management in Navy Office was aware of this arrangement. In correspondence, Lieutenant Commander Burton RANR, Senior Officer Naval Control of Shipping Canberra Reserves noted that:

*Since coming to Australia, CPO Holloway has had approval from the Canadian Reserves and Director of Sailors Career Management to train with the NCS Cell in Canberra and participate in NCS exercises.*²⁴

68. In relation to the legal framework governing the award of the Australian Defence Medal, Dr Holloway submitted that:

- a. in construing the legislation establishing the Australian Defence Medal a ‘purposive approach’ was required under section 15AA the *Acts Interpretation Act 1901*;
- b. the purpose of the Australian Defence Medal regulations is ‘to acknowledge service in Australia’s interests’²⁵ and to honour and commemorate those who served in the Australian Defence Force for a minimum period of time;
- c. the regulations establishing the Australian Defence Medal are in the nature of beneficial legislation and therefore should be construed in a fair, large and liberal interpretation;
- d. section 116B of the Defence Act should be read beneficially, in that if he was subject to the detriment of being able to be punished as if he was a member of the Australian Defence Force, he should also receive the benefits of being part of the Australian Defence Force;
- e. his service in working with the Royal Australian Navy while he was a member of the Royal Canadian Navy should be regarded as service within the Australian Defence Force for the purpose of determining his eligibility for the Australian Defence Medal, noting section 116B(2) of the Defence Act.

69. **Purposive Approach.** Dr Holloway submitted that, in accordance with section 15AA the *Acts Interpretation Act 1901*, a purposive approach should be taken towards construing the instruments establishing the Australian Defence Medal. The Tribunal noted that the provisions of the *Acts Interpretation Act 1901* apply to Acts of the Commonwealth Parliament and, because of the *Legislation Act 2003*, to statutory instruments made under those Acts. The Letters Patent instituting the Australian Defence Medal and the *Australian Defence Medal Regulations 2006* attached as the schedule to the Letters Patent are not Acts of the Commonwealth Parliament or statutory instruments made under such Acts. The provisions of the *Acts Interpretation Act* therefore do not apply in interpreting the Regulations under consideration in this case. Notwithstanding, the Tribunal has considered the purpose laid down in the Letters Patent establishing the Australian Defence Medal in interpreting those instruments.

²⁴ Letter Lieutenant Commander M. Burton RANR Senior Officer Naval Control of Shipping Canberra Reserves, 26 March 1997

²⁵ Dr Holloway-Application to Tribunal-justification for application, dated 26 September 2025.

70. **Purpose of Legislation.** Dr Holloway submitted the purpose of the *Australian Defence Medal Regulations* is *to acknowledge service in Australia's interests*.²⁶ The purpose set out in the Australian Defence Medal Letters Patent is, however, for *according recognition to Australian Defence Force personnel who have served for a minimum period since the end of the Second World War*. The Tribunal's considerations were accordingly informed by this clear statement of purpose and not by the alternative statement argued by Dr Holloway.

71. **Beneficial Approach to Letters Patent and Regulations.** Dr Holloway submitted that a beneficial approach should be taken to interpreting the Letters Patent and Regulations at the Schedule. While the Letters Patent institute a medal, neither they nor the attached Regulations confer any entitlement to receipt of that medal and do not correct a social injustice or provide relief to a vulnerable population. They are thus not beneficial legislation as that term is usually defined. Rather, the Warrant and Regulations confer on the Governor-General a discretionary power to confer awards in recognition of military service.

72. A beneficial approach to interpreting the Letters Patent and Regulations cannot be used to rewrite their purpose in a manner that denies the specific wording. Dr Holloway seeks to change the purpose of the Letters Patent from recognition of Australian Defence Force personnel to recognition of a broader group of those who serve in Australia's interests.

73. Dr Holloway has pointed to the potential for recognition of those who perform philanthropic services for the Defence Force while a member of a philanthropic organisation in Regulation 5, to argue that the Letters Patent are not merely about recognising Australian Defence Force personnel. Dr Holloway submitted that this *buttressed the notion that the Medal is intended to acknowledge service in Australia's interests*. The Tribunal does not agree.

74. The Tribunal noted that this additional recognition is for a narrow class, being persons *who performed philanthropic services for the Defence Force while a member of a philanthropic organisation*. Recognition of this particular class is included in the Letters Patent establishing a number of awards. Examples include the Defence Long Service Medal, the Vietnam Medal and the Australia Service Medal 1939-45. The doctrine of *expressio unius est exclusio alterius* (the explicit mention of one thing implies the exclusion of others) weighs against Dr Holloway's argument that the inclusion of this class broadens the group of eligible medal recipients to include a further ill-defined broader group. The Tribunal did not agree that the inclusion of members of philanthropic organisations, who performed philanthropic services for the Defence Force, somehow impliedly broadens the class of eligible recipients or changes the purpose in Letters Patent establishing the Australian Defence Medal.

75. The Letters Patent are clear that the Australian Defence Medal is *for the purpose of according recognition to Australia Defence force personnel...* Further the Regulations are clear that the Australian Defence Medal *may be awarded to a member, or former member, of the Defence Force who... has given qualifying service... for a period not less than 4 years service*. The attached Regulations set out one clear exception for those *who performed philanthropic services for the Defence Force while a member of a*

²⁶ Dr Holloway-Application to Tribunal-justification for application, dated 26 September 2025.

philanthropic organisation.... This does not justify the implied addition of other exceptions.

76. **Section 116B of the Defence Act.** Dr Holloway further submitted that section 116B of the Defence Act means that he should be regarded a member of the Australian Defence Force for medallic purposes while he was attached to the Royal Australian Navy as a serving member of the Royal Canadian Navy. In making this submission, he argued that section 116B of the Defence Act should be read beneficially. The Tribunal did not agree that section 116B of the Defence Act is beneficial legislation. In *A and the Department of Defence [2026] DHAAT 2 (7 March 2026)* the Tribunal noted:

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.

77. Moreover, the Tribunal noted that, even if a beneficial approach is taken, it does not lead to the conclusions sought by Dr Holloway as there is nothing in section 116B, or indeed in the Act more generally, that deals with the conferring of eligibility for Defence honours or awards.

78. **Member of the Defence Force.** The Regulations in the schedule to the Letters Patent establishing the Australian Defence Medal state that it:

may be awarded to a member or former member of the Defence Force...who has given qualifying service that is efficient service...for a period of 4 years...

79. Dr Holloway urged the Tribunal to find that he should be treated as *a member or former member of the Defence Force*. Dr Holloway stated that the Defence Act is the governing statute for the Australian Defence Medal regulations. He submitted that for the period he provided reserve service as a member of the Royal Canadian Navy, section 116B of the Defence Act means that he was regarded as a member of the Australian Defence Force. Consequently, his service as a Canadian Reserve member, working with the Royal Australian Navy, should be regarded as service within the Australian Defence Force for the purpose of determining eligibility for the Australian Defence Medal. He quoted part of section 116B (2) as supporting his argument:

Where a member of the forces of a country in relation to which this section applies is attached temporarily to a part of the Defence Force, he or she shall for the period for which he or she is so attached, be regarded as a member of that part of the Defence Force...

80. He said that this means that for medallic purposes, not just for the purposes of command and discipline, he should be regarded as a member of the Australian Defence Force.

81. Against that, Defence maintains a position that there is *no stated intent to suggest that those members* [personnel on attachment from foreign Defence Forces] *were members of the Defence Force for any other purpose (such as pay and remuneration, and potential medallic recognition).*

82. The Tribunal noted that the Regulations governing the Australian Defence Medal are not made under the Defence Act. Dr Holloway's assertion that the Defence Act is the governing statute for the Australian Defence Medal is simply incorrect. The only applicable legislation is the Regulations contained in the Schedule to the Letters Patent. Notwithstanding, the Tribunal considered whether section 116B of the Defence Act had the effect of requiring Dr Holloway to be regarded as a member of the Australian Defence Force for medallic purposes.

83. **History of Section 116B.** The Tribunal noted that section 116B was inserted into the *Defence Act* by the *Defence Acts Amendment Act 1981*. Provisions which were substantially the same as those inserted had previously been contained in section 24 of the *Defence (Visiting Forces) Act 1963*. The Defence (Visiting Forces) Act made provision with respect to Naval, Military and Air Forces of other countries visiting Australia, and for other purposes...

84. The Explanatory Memorandum to the Defence Acts Amendment Act says that the Act:

deals with a number of unrelated matters, by way of amendments to the Defence Act 1903 and by the removal of certain matters from the Defence (Visiting Forces) Act 1963. The amendments to the Defence Act...

generally revise, and transfer from the Defence (Visiting Forces) Act, provisions that are not restricted to visiting forces, namely, provisions relating to attachments between the Australian Defence Force and the armed forces of other countries, mutual powers of command between such forces and the arrest and disposal of illegal absentees from the armed forces of other countries...

85. Arrangements for exchange of personnel are common among Defence Forces with which Australia operates. They provide a framework for foreign Defence Force personnel to interact with Australian Defence Force personnel while working with the Australian Defence Force or Australian Defence Force assets.

86. **Canadian Visiting Forces Act.** The Tribunal notes that Canada also has a *Visiting Forces Act*. Section 27(2) of the *Visiting Forces Act* provides similar arrangements to the *Defence Act*. It focuses on powers of command, punishment and arrest for those attached temporarily to the Canadian Forces. It also provides for members of the Canadian Forces to be placed at the *disposal of the service authorities of another country for the purpose of being attached temporarily by those authorities to a force to which this section applies*.

87. It states:

(2) The Governor in Council

(a) *may attach temporarily to the Canadian Forces a member of another force to which this section applies who is placed at his disposal for the purpose by the service authorities of the country to which the other force belongs; and*

(b) *subject to anything to the contrary in the conditions applicable to his service, may place any member of the Canadian Forces at the*

disposal of the service authorities of another country for the purpose of being attached temporarily by those authorities to a force to which this section applies.

Marginal note: Law applicable to member of force attached to Canadian Forces

(3) While a member of another force is by virtue of this section attached temporarily to the Canadian Forces, the member is subject to the law relating to the Canadian Forces in like manner as if he were a member of the Canadian Forces, and shall be treated and have the like powers of command, punishment and, notwithstanding subsection 12(1), arrest over members of the Canadian Forces as if he were a member thereof of relative rank.

Marginal note: Application of Canadian statutes

(4) The Governor in Council may direct that, in relation to members of another force to which this section applies, the statutes relating to the Canadian Forces shall apply with such exceptions and subject to such adaptations and modifications as may be specified by the Governor in Council.

Marginal note: Mutual power of command

(5) When the Canadian Forces and another force to which this section applies are serving together, whether alone or not,

(a) any member of the other force shall be treated and shall have over members of the Canadian Forces the like powers of command as if he were a member of the Canadian Forces of relative rank; and

(b) if the forces are acting in combination, any officer of the other force appointed, by agreement between Her Majesty in right of Canada and the government of the country to which that force belongs, to command the combined force, or any part thereof, shall be treated and shall have over members of the Canadian Forces the like powers of command, punishment and arrest, and may be invested with the like authority as if he were an officer of the Canadian Forces of relative rank and holding the same command

88. **Focus of *Defence Act*.** Like its Canadian counterpart, the *Defence Act* is focused on command and discipline, being the practicalities of how military or naval forces operate. Section 116B of the *Defence Act* is headed:

Division 2—Attachment of personnel and mutual powers of command

116B Attachment to the Defence Force of members of the forces of another country and vice versa

89. Section 116B continues on from the wording quoted by Dr Holloway in his original submission to say:

as holding the rank in that part of the Defence Force that corresponds with the rank that he or she holds in those forces and as having, for

the purposes of command and discipline the same status and powers, including the power to arrest and to impose punishments, as:

- (a) a member of that rank in that part of the Defence force; and*
- (b) if he or she is given an appointment in that part of the Defence Force—a member of that part of the Defence Force holding the like appointment.*
- (c) The application of the law governing the Defence Force to a person to whom subsection (2) applies is subject to such exceptions, modifications and adaptations as are specified by the Minister by order in writing.*
- (d) A member of the Defence Force referred to in paragraph (1)(b) does not cease to be subject to the law governing that part of the Defence Force to which he or she belongs by reason only of his or her being temporarily attached as provided by that paragraph.*

90. The face of the legislation is clear that the attachment is not for all purposes or unlimited reasons. The attachment provides the person attached with the status and powers commensurate with their rank and position for the purposes of command and discipline, including the power to arrest and to impose punishments. The person who is attached does not cease to be a member of their country's Defence Force and, in accordance with section 116B(1)(b), the attachments are subject to anything to the contrary in conditions applicable to their service. The attachment does not make a person a member of the Australian Defence Force. They are not paid by the Australian Defence Force and are subject to directions from the Defence Force of their country of origin. Their conditions of service are not dictated by the Australian Defence Force but by their own Defence Force. The attachment of a member of the Canadian Defence Force is subject to anything to the contrary in the conditions applicable to his or her service, by virtue of section 27(2)(b) of the *Visiting Forces Act* of Canada. It is not an unlimited or unqualified transfer of a person during the period of their attachment.

91. Under section 15AB of the Acts Interpretation Act, regard may be had to extraneous materials such as an Explanatory Memorandum, but only for strictly limited purposes. Regard may be had to extraneous material to confirm that the meaning of a provision is the ordinary meaning conveyed by the provision taking into account the context of the Act in which it appears and the purposes or object underlying the Act. Beyond that, regard may be had to extraneous materials to 'determine' the meaning of a provision, but only where the provision is ambiguous or obscure, or where the ordinary meaning leads to a result that is manifestly absurd or is unreasonable.

92. In the view of the Tribunal, the Explanatory Memorandum confirms the ordinary meaning conveyed by the text of section 116B of the Defence Act. While, as noted by Dr Holloway, some Explanatory Memorandum are not helpful or are incorrect, in this instance the Explanatory Memorandum does not suffer from that defect. The Explanatory Memorandum to the 1981 Defence Acts Amendment confirms that section 116B means that an attached person is regarded as a member of the Australian Defence Force for the purposes of discipline and command, not more broadly. The relevant part of the Explanatory Memorandum says:

Deals with the status of a member of the forces of another country who is attached to a part of the Australian Defence Force. In effect

the person becomes subject to the relevant Australian disciplinary law, etc. For practical reasons, he must be able to exercise the powers of command and arrest appropriate to his rank and appointment and, where he holds an appointment, the power (if any) conferred on such an appointee to impose punishments, and provision is made accordingly...

93. The Tribunal concluded that there is nothing ambiguous or obscure in the ordinary meaning conveyed by section 116B, and that there is nothing manifestly absurd or unreasonable in its effect being confined to discipline and command, especially as the Defence Act does not itself make provision for the conferral of defence honours and awards which are created by Royal Warrants and administered under their attached Regulations.

94. **Ordinary meaning of ‘regarded’.** The Tribunal also considered the ordinary meaning of the word *regarded*. The Macquarie Dictionary²⁷ notes that the verb *regard* means *to look upon or think of with a particular feeling, opinion, etc...* In this instance it means that the person is looked upon *as a member of that part of the Defence Force* for a particular purpose. It does not mean that the person becomes, or is treated as, a member of the Australian Defence Force for all purposes.

95. The Tribunal found that the purpose of section 116B of the *Defence Act* was directed at those arrangements necessary to accommodate personnel working together in a military environment - command and discipline arrangements. It does not mean a person is considered a member of the Australian Defence Force for all purposes; indeed, attachments are subject to contrary conditions in the person’s own country’s defence service.

96. **Other medal provisions which include foreign personnel.** The Tribunal also examined the arrangements for other medals granted for length of service. The *Defence Long Service Medal Regulations*, unlike the *Australian Defence Medal Regulations* which they predate, has specific provision at Regulation 7 for taking into account:

7. Service in the Defence Force by a person who is a member of the naval, military or air forces of another country while on secondment to, or exchange with, the Defence Force may be qualifying service if the person:

(a) becomes a member of the Defence Force; and . . .

(b) gives efficient service as a member of the Defence Force.

97. The Tribunal noted the express eligibility for foreign personnel to be awarded Australian medals occurs in a number of other medals. For example, the Australian Service Medal for service after 14 February 1975 may be awarded to members of foreign forces who render service with the Australian Defence Force in prescribed operations. In short, when the Letters Patent and Regulations were made, there were precedents for permitting personnel of foreign services, who were serving with the Australian Defence Force, to qualify for Australian awards. These precedents were not followed; rather the Letters Patent and Regulations restricted the award to members of

²⁷ Macquarie Dictionary Publishers © Pan Macmillan Australia 2026

the Australian Defence Force and members of philanthropic organisations who performed philanthropic services for the Defence Force.

98. **2009 Inquiry into eligibility for the Australian Defence Medal.** The Tribunal also noted that in 2009 a previous Tribunal, headed by Professor Denis Pearce AO FAAL, conducted an inquiry into the Australian Defence Medal. The 2009 inquiry examined various categories of possible recipients that the Tribunal found at that time were not eligible for the Australian Defence Medal and one of the categories was *Members of the British services on exchange duties with Australian Defence services*. That Tribunal stated:

There have been periods when British servicemen have made a major contribution to the Australian Defence Force through their unit being based in Australia, secondments to Australian units or by way of exchanges with Australian servicemen and women.

99. The 2009 Tribunal noted that, despite their valuable service, these people remained members of the British Services. The Tribunal in 2009 was not persuaded by the submissions that there should be any change in the present rule limiting the Australian Defence Medal to service in the Australian Defence Force. The 2009 inquiry took into account that the intent of the Australian Defence Medal was for it to be awarded to Australian Defence Force members only and that British service personnel remained eligible for Imperial awards. During his service assisting the Royal Australian Navy, Dr Holloway remained eligible for Canadian awards.

100. **Previous Awards Made to Foreign Personnel.** To support his submission Dr Holloway also pointed to his understanding (through a Google search) that members of the British SAS regiment and the British Military Police who were attached to the Australian Forces during the Vietnam War were awarded the Australian Vietnam Service Medal, noting that the wording in the letters patent are similar. While Defence made extensive searches of its records, it did not find evidence to support that any British personnel embedded with the Australian Army were awarded the Vietnam Medal.

101. The Tribunal was not satisfied that members of foreign forces were awarded the Vietnam Medal. The Tribunal noted, however, that even if this was the case, some medals have been erroneously awarded. Indeed one of the matters considered by the 2009 Tribunal inquiry into the Australian Defence Medal concerned a British serviceman who had been ‘awarded’ the medal erroneously and who was directed to return it.

102. **Conclusion.** The Letters Patent establishing the Australian Defence Medal clearly state the medal is established to accord recognition to Australian Defence Force personnel who have served a minimum period of four years since the end of the Second World War. The Regulations specify that it *may be awarded to a member, or former member, of the Defence Force who...has given qualifying service that is efficient service...for periods that total not less than 4 years...*

103. Dr Holloway served in the Royal Australian Navy from 7 July 1998 until 3 December 2003. During that time he accrued two years of qualifying service. From 1994 to 1998 he was a member of the Royal Canadian Navy attached to the Royal Australian Navy. He was not a member of the Australian Defence Force. While during this service he had certain powers and obligations relating to command and discipline by virtue of section 116B of the Defence Act, he was not a member of the Australian Defence

Force and this service was not qualifying service for the purposes of the Australian Defence Medal.

104. **Consideration of Recommendation.** The Tribunal considered whether it should make a recommendation to the Minister under section 110VB of the Defence Act in relation to service by members of foreign services attached to the Australian Defence Force being counted towards the Australian Defence Medal. It decided not to do so, noting the thorough consideration given to this issue through the 2009 Inquiry.

Tribunal findings

105. The Australian Defence Medal was instituted for the purpose of according recognition to Australian Defence Force personnel who have served a minimum period of four years since the end of the Second World War. It may be awarded to a member or former member of the Australian Defence Force who, after 3 September 1945, has given qualifying service that is efficient for four years. The Regulations do not provide for it to be awarded to members of foreign Defence Forces who serve with the Australian Defence Force.

106. Dr Holloway was a member of the Australian Defence Force from 2 July 1998 until 3 December 2003. During his service in the Royal Australian Navy, he had two years of qualifying service towards the award of the Australian Defence Medal. He was not a member of the Australian Defence Force before 2 July 1998; he was a member of the Royal Canadian Navy. He has not provided four years qualifying service that is effective as a member of the Australian Defence Force for the purposes of the award of the Australian Defence Medal.

Decision

107. For the above reasons, the Tribunal decided to affirm the decision that Dr Holloway not be recommended for the Australian Defence Medal, and not to recommend to the Minister that the eligibility criteria for the Australian Defence Medal be amended.