



**Australian Government**

---

Defence Honours and Awards Appeals Tribunal

**INQUIRY INTO THE REFUSAL TO ISSUE  
ENTITLEMENTS TO, WITHHOLDING AND  
FORFEITURE OF  
DEFENCE HONOURS AND AWARDS**

## TABLE OF CONTENTS

TABLE OF CONTENTS.....	2
LETTER OF TRANSMISSION .....	5
TERMS OF REFERENCE .....	6
EXECUTIVE SUMMARY .....	7
Background .....	7
Identification of the Applicable Legal Provisions .....	7
Approaches of the Services and the Defence Department.....	9
Inconsistencies between Approach and the Law .....	10
Restoration .....	10
Psychosocial Considerations.....	10
Conclusions.....	10
RECOMMENDATIONS .....	11
REPORT OF THE TRIBUNAL .....	14
Preliminary Matters .....	14
Conduct of the Inquiry .....	14
Conflict of Interest .....	14
Steps taken in the inquiry.....	14
Public Hearings.....	15
Tribunal Research .....	15
Definition of Terms.....	15
Acknowledgements.....	16
CHAPTER 1 .....	17
General Issues .....	17
Approach Taken by the Tribunal .....	17
Background to the Inquiry .....	17
History of the Boyes' Review.....	17
Key Points in the Boyes Review.....	18
Introduction.....	20
A Brief History of Medallic Recognition .....	20
Honours and Awards to the Australian Armed Forces .....	20
A Brief History of Australia's Armed Forces.....	21
A Brief History of Australia at War.....	23
CHAPTER 2 .....	25
The Legal Provisions Applicable to Withholding and Forfeiture of Defence Honours and Awards.....	25
Summary .....	28
The Army .....	30
The Defence Act .....	30
The Imperial Army Act.....	35
Australian Military Regulations.....	39
Australian Military Regulations and Orders .....	42
Military Board Instructions and Defence Instructions.....	42
Conclusion .....	48
The Navy.....	50
Naval Defence Act 1910.....	50
The Naval Discipline Act.....	51
Naval Regulations.....	53

King's/Queen's Regulations and Admiralty Instructions .....	54
The Air Force .....	60
The Air Force Act 1923 .....	60
Imperial Air Force Act .....	60
Air Force Regulations .....	60
Air Force Orders .....	62
Medals .....	64
Imperial Honours .....	64
Imperial Awards .....	65
Australian Honours .....	65
Australian Awards .....	66
CHAPTER 3 .....	67
Approaches of the Services and the Defence Department .....	67
The Department of Defence .....	67
Army .....	69
Navy .....	71
Air Force .....	73
Submissions to the Tribunal .....	74
Case Studies .....	79
CHAPTER 4 .....	88
Inconsistencies between Approach and Law .....	88
Army .....	88
Navy .....	92
Air Force .....	93
Royal Warrants and Letters Patent .....	94
Conclusion .....	94
CHAPTER 5 .....	96
Restoration .....	96
CHAPTER 6 .....	98
Psychosocial considerations in the withholding and forfeiture of medals .....	98
Introduction .....	98
Understanding Post-Traumatic Stress Disorder .....	98
Families and their reactions to withholding and forfeiture .....	100
Conclusions .....	101
CHAPTER 7 .....	102
Tribunal Consideration .....	102
Rationale / Findings .....	104
CHAPTER 8 .....	110
Conclusions and Recommendations .....	110
APPENDICES .....	113
APPENDIX 1 - List of Persons and Organisations from whom information was sought .....	114
APPENDIX 2 - Individuals and organisations who provided submissions to the Inquiry .....	116
APPENDIX 3 - Tribunal Hearing Days and Sitting Days .....	117
APPENDIX 4 - Additional Material Examined by the Tribunal .....	119
APPENDIX 5 – Extract from <i>Kenneth Stephens and the Department of Defence [2012] DHAAT (18 October 2013)</i> .....	122

APPENDIX 6 – DPS Staff Instruction of 9 July 1946 – War Medals (in Commemoration of a Campaign): Withholding of Grant: Forfeiture and Restoration, and the 1948 Amendment .....	124
APPENDIX 7A – Hierarchy of Army Legislation .....	131
APPENDIX 7B – Hierarchy of Navy Legislation .....	132
APPENDIX 7C – Hierarchy of Royal Australian Air Force Legislation .....	133
APPENDIX 8 - Tables of Imperial and Australian Honours And Awards with the Authority to Withhold, Forfeit and Restore.....	134

## LETTER OF TRANSMISSION

### **Inquiry into the Refusal to Issue Entitlements to, Withholding and Forfeiture of Defence Honours and Awards**

The Hon Darren Chester MP  
Parliamentary Secretary for Defence  
Parliament House  
Canberra ACT 2600

Dear Parliamentary Secretary,

I am pleased to present the report of the Defence Honours and Awards Appeals Tribunal on the Inquiry into the refusal to issue entitlements to, withholding and forfeiture of Defence honours and awards.

The inquiry was conducted in accordance with the Terms of Reference approved by the Government in January 2014.

In accordance with the Defence Honours and Awards Appeals Tribunal Procedural Rules 2011, as amended, a copy of this report will be published on the Tribunal's website – [www.defence-honours-tribunal.gov.au](http://www.defence-honours-tribunal.gov.au) – 20 working days after the day this report is provided to you.

I would be grateful for advice on your response to this report when available.

Yours sincerely



**Mr Mark Sullivan**  
Chair  
Defence Honours and Awards Appeals Tribunal

7 September 2015

## **TERMS OF REFERENCE**

The Defence Honours and Awards Appeals Tribunal (the Tribunal) is directed to inquire into and report on the refusal to issue entitlements to, withholding and forfeiture of defence honours and awards for service with the Australian defence forces since 1939.

Specifically, the Tribunal is to:

- identify the legal provisions applicable to the refusal to issue entitlements to, withholding and forfeiture of such defence honours and awards;
- investigate the approaches adopted over time by the Royal Australian Navy, the Australian Army, the Royal Australian Air Force and the Department of Defence in respect of the refusal to issue an entitlement to, withholding and forfeiture of such defence honours and awards;
- determine whether those approaches were consistent with the legal provisions; and
- present to Government any recommendations that the Tribunal considers appropriate to correct any injustices arising from any improper refusal to issue an entitlement to, withholding and forfeiture of such defence honours and awards.

The Tribunal is to receive submissions from individuals or representatives of individuals who may have been affected by policies related to the refusal to issue entitlements to, withholding or forfeiture of defence honours and awards; however the Tribunal is not directed through this inquiry to review and report on individual cases. These will be a matter for the Department of Defence and potentially for the Tribunal to consider after the Tribunal's inquiry is complete.

The Tribunal is to determine its own procedures, in accordance with the general principles of procedural fairness, when conducting its inquiry as set out in these Terms of Reference.

In making its findings and formulating its recommendations the Tribunal is required to maintain the integrity of the Australian honours and awards system and identify any consequential impact that any finding or recommendation may have on that system.

## EXECUTIVE SUMMARY

### Background

1. On 18 October 2013, the Tribunal decided that two veterans of World War II (the Boyes brothers) should have their campaign medals restored to them and recommended that the Tribunal should be directed to conduct an Inquiry to *determine the extent to which Imperial and Australian awards or entitlements have been improperly forfeited or withheld, since 1939, in the Royal Australian Navy, the Australian Army and the Royal Australian Air Force, and to formulate recommendations to correct any injustices identified arising from the improper forfeiture or withholding of these awards.*

2. The Minister for Defence subsequently agreed with this recommendation and directed the Tribunal to inquire into the withholding and forfeiture of defence awards for service with the Australian Defence Force since 1939, thus leading to the current Inquiry.

### Identification of the Applicable Legal Provisions

3. The Tribunal identified the relevant Acts, regulations, Instructions and policies governing the Defence Force and the three Services. It observed that the three Services were at times subject to Imperial Acts, regulations and instructions which resulted in a complicated system of military law.

4. The authority for any action taken by the Military, Naval or Air Forces or Defence begins with the Defence Act 1903. In 1910 the Naval Defence Act took over administrative responsibility for the Navy. The Air Force Act administered the Royal Australian Air Force (Air Force) from 1923. From the commencement of World War II, a medal could be forfeited at any time until 1977 under s 80F of the Defence Act for the unauthorised disposal of the medal.

#### *The Australian Army*

5. Campaign medals could be forfeited under reg 799 of the Australian Military Regulations (AMRs). On war service campaign medals could be forfeited pursuant to s 44 of the UK Army Act as part of the penalty imposed for conviction of an offence. Given the modification to s 44 for the Australian Army, the penalty of forfeiture of medals could only be imposed for the offences set out in reg 799. Convictions for offences could be obtained either by courts-martial or by following the summary procedure. Of particular note is the provision in the AMRs that a conviction for desertion could be obtained if a soldier was absent for 21 days or more and had not either surrendered or been captured; a declaration that the soldier had deserted would be deemed a conviction.

6. In 1946 the Military Board issued an Instruction which authorised the mandatory forfeiture of campaign medals for certain serious offences (treason, sedition, mutiny, cowardice, desertion, disgraceful conduct of an unnatural kind, death as a result of sentence by a court-martial or a civil court for an offence committed on service or being declared an illegal absentee) and the discretionary forfeiture of

medals for certain military offences. A member forfeited his medals if he was deemed to have not rendered approved service.

7. Under the Military Board Instructions (MBIs) from 1951 onwards a member could forfeit campaign medals for an expanded number of reasons including conviction of offences from 2 September 1939. The term 'dishonourable discharge' was first referred to in a General Routine Order and then in an MBI. The reasons for being classified 'dishonourable discharge' were similar to the reasons for forfeiting medals set out in the 1951 MBI. It became a ground for forfeiture of campaign medals in late 1951.

8. The Tribunal found that there was legal authority for the forfeiture of medals in the Acts and in military law set out in the Regulations until 1955 and continuing in the MBIs and Defence Instructions.

9. The Military Board was removed from the Defence Act in 1975. All references to offences and disciplinary procedures in the Act were removed on 3 July 1985 when the *Defence Force Discipline Act 1982* (DFDA) came into force.

#### *The Royal Australian Navy*

10. The Naval Defence Act became responsible for the administration of the Navy on 25 November 1910. Section 36 applied the UK Naval Discipline Act and the King's and then Queen's Regulations and Admiralty Instructions (K/QR&AI) to the Navy. The Defence Act specifically noted that the laws and regulations of the King's Naval Forces applied to the *Australian Naval Forces*.

11. The Imperial Naval Discipline Act set out the offences and penalties that were applicable to the Royal Navy and with modifications to the Royal Australian Navy (RAN). Included amongst the penalties that could be imposed was the forfeiture of medals.

12. Until 1964 Article 562a of the KR&AI provided that the punishment awarded for *treason, sedition, mutiny, cowardice or disgraceful conduct of an unnatural kind should always include the forfeiture of any campaign and commemorative medals*. However medals for gallantry would not be forfeited automatically. A report would be made to the Naval Board for consideration. The Long Service and Good Conduct Medal (LSGCM) was forfeited for desertion, imprisonment by a civil power, and various misconduct offences. The medal could be restored following five years and later three years 'Very Good' conduct.

13. A person found to be a deserter could forfeit their medals at the discretion of the service tribunal (court-martial or summary procedure). Desertion on active service would result in forfeiture of medals. If the deserter was not 'reclaimed' they were disqualified from receiving medals. If a person was found guilty of desertion summarily a decision must have been made and recorded as to whether the person would forfeit their medals. A court martial could have remitted the decision on forfeiture of medals. This meant that the Naval Board would have made the decision.

14. From 1957 the QR&AI obtained its authority from the new Naval Discipline Act 1957 although the repealed Naval Discipline Act continued to apply in Australia.



The new Act did not impose the penalty of forfeiture of medals set out in the former Act. Rather it referred to the Instrument creating the medal as the source of the power to forfeit medals. A conviction by court martial for certain offences would result in the forfeiture of campaign medals. In 1977 the number of these offences was reduced. Medals for gallantry were not forfeited. Similar provisions continued to apply to the LSGCM under the Australian Naval Orders and the Manual of Naval Law.

15. The Naval Board was removed from the Naval Defence Act in 1975. All references to offences and disciplinary procedures in the Act were removed on 3 July 1985 when the DFDA came into force.

#### *The Royal Australian Air Force*

16. The *Air Force Act* 1923 received Royal Assent on 1 September 1923 and authorised the formation of the Royal Australian Air Force (Air Force) and applied the Defence Act to its operations. The Air Force Act was amended on 15 December 1939 so that the Imperial Air Force Act applied to the Air Force as modified by the Air Force Regulations. There was no reference to the forfeiture of medals in either Act. The Imperial Air Force Act as amended over the years continued to apply to the Air Force until 3 July 1985.

17. The Air Force Regulations 1927 (AFRs) were set out in a similar format to the AMRs. Regulation 190 set out the offences and applied whether or not a member was on war service. In 1933 the Regulations were amended so that *Part XIII Medals* was added. Regulation 684 provided that war medals could be forfeited. Mandatory forfeiture applied for a sentence of death, dismissal for misconduct (officer) or discharge because of certain convictions (airman). The grounds for discretionary forfeiture were conviction or a finding of guilt by a civil court. The Air Board could restore those medals. This regulation was repealed on 5 February 1976.

### **Approaches of the Services and the Defence Department**

18. On 10 April 2000 the Minister endorsed the recommendation that there should be a standardised policy on forfeiture and restoration and that there should be *a single and more liberal tri-Service policy*. This resulted in the draft of a Defence Instruction (General), which was eventually approved and promulgated on 17 December 2002. The substance of the Instruction followed earlier recommendations.

19. In the mid-1990s World War II medals were restored to a number of veterans and in 2004 medals were again restored to veterans and one set of medals was restored to a deceased veteran's immediate family. The Tribunal believes that more medals may have been restored to families. The policy with respect to forfeiture set out in Defence Honours and Awards Manual (DHAM) Chapter 46 was applied at least twice in 2013.

20. The Tribunal wrote to a number of organisations and individuals seeking their views on the issues raised by the Terms of Reference for this Inquiry. Those who expressed a view were invited to attend the hearings to explain those views.

21. Also included amongst the submissions to the Inquiry were submissions from family members whose relatives had been members of the Armed Forces during World War II. The veterans had their medals forfeited. These submitters were invited to talk to their submissions at hearings.

### **Inconsistencies between Approach and the Law**

22. After considering the approaches and the law, the Tribunal was unable to make a definitive statement that there were inconsistencies between the legal provisions and the three Services. Each Service did have the legal authority to order the forfeiture of medals. The Tribunal is in no doubt that errors were made when the legal provisions were applied by the three Services. However, there is no evidence of 'maladministration' or institutional injustice.

### **Restoration**

23. The Terms of Reference for this Inquiry do not include a referral to the Tribunal to consider whether decisions made since 1939 about the restoration of medals, were made according to law. Nonetheless the Tribunal was of the opinion that it must address the role of restoration in relation to the issue of forfeiture of medals. The Tribunal has made observations about how the law in relation to the restoration of medals has had an impact on the forfeiture of medals.

### **Psychosocial Considerations**

24. It became clear to the Tribunal that psychosocial issues of the veterans needed to be considered during its deliberations through both reading submissions provided by individuals and families in addition to listening to some of their stories in person during the hearings. The fact that many of the personal stories involved a late father, grandfather or uncle coming back from war a 'different person', often developing addictions and other negative behaviours which would have previously been out of character, needed to be considered. In addition, why several generations of a family could be adversely affected by a forfeiture decision made some 70 years before, warranted some examination.

25. The Tribunal looked at some of the reasons why these family reactions could occur, in parallel with changes in the understanding of Post-Traumatic Stress Disorder (PTSD) over time.

### **Conclusions**

26. The Tribunal concluded that it would not be appropriate to recommend that the decisions made following World War II to withhold or forfeit campaign medals in certain circumstances be overturned. For the most part these decisions were legally valid and made according to a policy that was publicly endorsed.

27. Any injustices that arose from the withholding or forfeiture of campaign medals could be overcome by restoring all withheld or forfeited medals to the veteran who earned the medal or medals, or if the veteran is deceased, gifting the medals to

the family of the veteran. The Tribunal has recommended the gifting of these medals in Recommendation 1.

28. The Tribunal rationalised which offences should be included in the list of offences resulting in mandatory forfeiture of medals and set out the offences that could result in the discretionary forfeiture of medals. These lists, together with the guidelines for the exercise of the discretion, are set out in Recommendation 2.

29. In Recommendation 3, the Tribunal recommended that the decisions authorising the mandatory or discretionary forfeiture of medals be placed in either a Defence Instruction or the regulations, rather than in the DHAM.

30. The Tribunal considers that when a decision is made that medals should be forfeited, the forfeiture should be for a specific period. When the decision maker decides that a medal should be forfeited he or she should also decide the period of the forfeiture and this is the basis for Recommendation 4.

31. A decision that a medal is forfeited, or a decision to refuse to restore a forfeited medal, is a decision affecting a person's entitlement to a medal and such a decision should be reviewable as set out in Recommendation 5.

## **RECOMMENDATIONS**

### *Recommendation 1*

The Tribunal recommends:

1. that the medals forfeited by veterans pursuant to DPS Instruction of 9 July 1946 and MBI 148/1951 amended on 7 December 1951 and subsequently reissued a number of times, be restored to veterans or gifted to the families of deceased veterans;
2. that medals subject to certain mandatory withholding or forfeiture for offences not be restored to veterans or gifted to their families under point 1. Only those medals forfeited as a result of convictions for offences set out in Recommendation 2(1) should not be restored or gifted to veterans or their families. If the offence that resulted in the withholding or forfeiture is no longer an offence under military or civil law, the medals should be restored to the veteran or gifted to their families; and
3. medals gifted to deceased veterans' families are to be gifted according to the following rules:
  - a. to the executor under the veteran's will;
  - b. if the veteran died intestate, to the Public Trustee Administrator;
  - c. to a member of the family nominated in writing by the immediate descendants of the veteran;
  - d. if there are no immediate descendants, to a member of the family nominated in writing by the family at large; or
  - e. if there is a dispute in the family about who should be gifted the medals, the medals should not be gifted.

### *Recommendation 2*

The Tribunal recommends:

1. that there be mandatory forfeiture of medals on conviction for the following grounds:
  - a. treason and related offences; (see for example s 9A of the Crimes Act 1958 (Vic));
  - b. mutiny and related offences (see s 20 of DFDA 1982);
  - c. sabotage of own and allied assets (see s 15A of DFDA 1982);
  - d. aiding the enemy (including assisting prisoners of war) and related offences (see ss 15D, 15E, 16 of DFDA 1982); and
  - e. serious terrorism related offences (see s 3(1) of the Crimes Act 1914 (C'th), Criminal Code Act 1995).
  
2. a. that there be discretionary forfeiture of medals on the following grounds:
  - i. conviction for an offence which is considered to be so disgraceful or serious that it would be improper for the offender to retain the award; or
  - ii. if an award was obtained by making a false declaration.
  
- b. the guidelines to be applied when considering the discretionary forfeiture of medals are:
  - i. gallantry and distinguished service decorations should only be forfeited in extreme situations;
  - ii. a decision that one award should be forfeited does not mean that any other award should be forfeited;
  - iii. the quality of the member's entire service should be taken into account;
  - iv. a dishonourable or disciplinary discharge or termination would not of itself be a reason for forfeiture of awards but may be taken into account; and
  - v. consideration should be given to variables such as mental health, physical condition and any other mitigating circumstances.

### *Recommendation 3*

The Tribunal recommends that the authority to order the mandatory or discretionary forfeiture of any medals be placed in a Defence Instruction or in regulations under the Defence Act. The Instruction or regulation must state the requirements for the mandatory forfeiture of any medals (Recommendation 2). The DHAM should contain the policy guidelines on how the discretionary decisions should be exercised.

### *Recommendation 4*

The Tribunal recommends that:

1. a. when a decision is made that the member forfeit any medal, the decision maker should also decide the period of the forfeiture; and
- b. the DHAM should contain policy guidelines on the appropriate period that should apply to the forfeiture of a medal.

2.
  - a. the mandatory forfeiture of medals be forever or for the life of the veteran; and
  - b. that these medals should not be gifted.

*Recommendation 5*

The Tribunal recommends that the Defence Act be amended to include decisions on withholding, forfeiture and restoration of medals in s 110V(1).

# REPORT OF THE TRIBUNAL

## Preliminary Matters

### Conduct of the Inquiry

1. The Defence Honours and Awards Appeals Tribunal (the Tribunal) is established under Part VIIC of the *Defence Act 1903* (the Act). Section 110UA of the Act sets out the functions of the Tribunal which includes inquiring into matters concerning Defence honours or awards for eligible service. Section 110W of the Act provides that the Minister for Defence may give the Tribunal a direction in writing to hold an Inquiry into a specified matter. The Tribunal then must hold an Inquiry into that specified matter and report on the outcomes of the inquiry to the Minister. The report may include any recommendations the Tribunal considers appropriate.

2. On 14 November 2013 the Minister for Defence gave a direction to the Tribunal to hold an Inquiry into the refusal to issue entitlements to, withholding and forfeiture of defence honours and awards for service with the Australian Defence Force since 1939. The Terms of Reference (TOR) for the Inquiry appear earlier in this report.

3. The Inquiry was undertaken by the following Members of the Tribunal:

Mr Alan Rose (Tribunal Chair) (Retired 25 September 2014);  
Ms Christine Heazlewood (Presiding Member from 26 September 2014);  
Dr Jane Harte;  
Air Commodore Mark Lax (Retd); and  
Mr Kevin Woods.

### Conflict of Interest

4. No conflicts of interest were declared.

### Steps taken in the inquiry

5. The Inquiry commenced on 11 January 2014 with a press release and advertisements being placed in major newspapers nationally giving notice of the Inquiry and calling for submissions by 28 February 2014. On 16 January 2014 the Tribunal wrote to the Department of Defence (Defence), former Chiefs of the Defence Force (CDF) and Service Chiefs, Veterans' Associations, retired senior officers, historians and other Government Departments requesting a submission. A full listing of those approached for a submission is at Appendix 1.

6. The Tribunal received a total of 162 submissions following the call for submissions for this Inquiry, amongst those were 33 written submissions relevant to the TOR including from the Department of Defence. A list of these submissions is at Appendix 2. The remaining 129 written submissions were rejected because, rather than focusing on the development of policies relating to the withholding and forfeiture of medals, the public saw the announcement of the Inquiry as an opportunity to bring

to the Tribunal all manner of refusals and denials for a range of medallic recognition that were not directly relevant to the TOR for this Inquiry.

7. The Tribunal conducted an initial meeting on 2 February 2014 to consider the TORs and to determine if further research was required. Further deliberative meetings were held from February 2014 to July 2015. Appendix 3 lists the Tribunal’s meeting dates.

### Public Hearings

8. The Tribunal held public hearings in Canberra and Melbourne and heard 20 oral submissions over three separate days as also set out in Appendix 3.

### Tribunal Research

9. In addition to material provided in submissions including the comprehensive research material provided by Defence, the Tribunal and its Secretariat carried out additional research. This included accessing extensive archival material in Australia and the United Kingdom. Additional material examined by the Tribunal is listed at Appendix 4.

### Definition of Terms

10. For the purposes of this inquiry, the Tribunal adopted the following definitions of the terms commonly used in the report:

<b>Term</b>	<b>Meaning</b>
Armed Forces	The Australian Army, Royal Australian Navy and Royal Australian Air Force, the Australian Defence Force
Forfeiture	Withholding, cancellation, refusal or withdrawal of an honour or award
Member	A current member of the Armed Forces
Restoration	Reinstatement of an honour or award
Medals	Crosses, Medals, Decorations for Gallantry or Distinguished Service, Campaign Medals and Long Service and Good Conduct Medals, including defence honours and defence awards as set out in the Schedules 3 of the <i>Defence Force Regulations</i> 1952.
Active service	Service in or with a force which is engaged in operations against the enemy. It includes travel to and from operations as well as operations in other countries.
In the face of the enemy	Implies actual engagement with the enemy, originating during times when close fighting was more common than today.
Navy	The Royal Australian Navy Australian Naval Forces
Army	Australian Army
Air Force	Royal Australian Air Force
Veteran	A former member of the Armed Forces – alive or deceased.

## **Acknowledgements**

11. The Tribunal acknowledges and thanks its Executive Officer, Ms Mary Bermingham and the staff of its Secretariat for its considerable research assistance and administration during this inquiry. The Tribunal also acknowledges and thanks the staff of the Directorate of Honours and Awards of the Department of Defence for the comprehensive and detailed research provided to the Tribunal over the course of the Inquiry.



# **CHAPTER 1**

## **General Issues**

### **Approach Taken by the Tribunal**

1. The report is presented in eight chapters. Chapter 1 discusses the case that lead to this Inquiry being conducted, the terms used in the Report and sets out brief histories of medallic recognition and the Defence Force. Chapter 2 sets out the applicable legal provisions for each service and Chapter 3 discusses the approaches of Defence and the services to the forfeiture of medals. In Chapter 4 the Tribunal considers whether the approaches of Defence and the three services are consistent with the legal provisions. Chapter 5 deals briefly with the restoration of medals and Chapter 6 refers to the psychological effects of active service. In Chapters 7 and 8 the Tribunal considers its conclusions based on its findings in the previous chapters and explains its recommendations.

### **Background to the Inquiry**

2. In March 2011, Mr Kenneth Stephens, the nephew of Mr Archibald Boyes and Mr John Boyes requested that the Directorate of Honours and Awards (the Directorate) restore to Mr Archibald Boyes and Mr John Boyes their World War II medal. Their medals were withheld from them at the end of the war. The Directorate argued that the medals should not be restored because of the litany of recalcitrant behaviour of the brothers during their war service. This was the justification for withholding their medals in the first instance. In August 2011, Mr Stephens applied to the Tribunal for review of the Directorate's decision that Mr Archibald Boyes and Mr John Boyes were not entitled to receive their World War II campaign awards because that entitlement had been forfeited, and any claim to have the medals restored lapsed on their respective deaths.

### **History of the Boyes' Review**

3. As the Boyes' case was a precursor to the current Inquiry, it is useful to provide an overview of the history of their respective situations and how the final decision of the Tribunal unfolded. The Tribunal found that at the conclusion of World War II, the Australian Army introduced a policy in which former members who had already received medals could forfeit their medal or if the medal had not yet been issued, it could be withheld. Forfeiture or withholding of medals occurred where a soldier had been convicted of specified offences, had been discharged dishonourably or had been discharged under the provisions of certain military regulations. Mr Archibald Boyes and Mr John Boyes both served in the Second Australian Imperial Force (2<sup>nd</sup> AIF) and were purported to have been discharged dishonourably under the provisions of certain military regulations. As such, the medals for which they had previously qualified as at their respective discharge from the Army in 1944 were withheld sometime after 1946. Subsequent requests in 1950 and 1973, along with the most recent request in 2011, for the medals to be restored and issued, were all refused.

4. The war service of Mr Archibald Boyes and Mr John Boyes is summarised in Appendix 5. On observation, the Boyes brothers' respective war service include long

lists of military offences, including being absent without leave, insubordination, disobedience and use of threatening language, all of which were committed on active service. The Tribunal found that they each met the eligibility criteria for:

- The 1939-45 Star;
- The Africa Star;
- The Defence Medal;
- The War Medal 1939-45; and
- The Australia Service Medal 1939-45.

5. However, records indicate that sometime after 1946, the medals that should have been issued to the Boyes brothers were withheld.

### **Key Points in the Boyes Review**

6. Mr Stephens' arguments about why his late uncles' medals should be restored, included participation in successful combat action in Tobruk, the effects of distressing childhoods on their preponderance towards alcohol abuse when on leave, the recognition by the Department of Veterans' Affairs in providing war service plaques on their graves, in approving their war service pensions and the fact that they were found not guilty after being charged with court-martial offences.

7. In presenting the counter argument, the Directorate submitted that it had sought to honour decisions of the time with the belief that the punishments handed down (withholding medals) were done legally and within the powers of the authorities of the time. It was also submitted that Defence did not support applying today's standards and values to review decisions made at the time of past conflicts and operations, consequently, *'decisions to forfeit or withdraw (sic) award entitlements as a result of court-martial and summary proceedings should be upheld'*.

8. Although dismissing most of Mr Stephens' arguments in considering the material presented to it, the Tribunal conducted research into the basis of forfeiture of medals since World War II, the nature of 'dishonourable discharge' and the status of notes written on discharge certificates, whether any offence the Boyes brothers committed fitted into the list of reasons for mandatory forfeiture of medals<sup>1</sup> (and concluding that they did not) and legal delegations to make decisions to withhold medals over the years. The Tribunal also noted that in 1985 the Chief of Staff Committee (COSC) had highlighted some potential anomalies in the manner in which medals had been forfeited since the war, with the view to implementing some approach to rectifying this situation.

9. Consequently, the Tribunal found that there was inconsistency in the various decisions made by Defence over the years and therefore problems with withholding or failure to issue awards, purportedly based on policy and legal authority. This had been known within Defence at least since the 1985 COSC considerations. The potential number of World War II or later veterans who might have been improperly denied their entitlements to awards was highlighted. The Tribunal identified irregularities in the Army's decision making and it follows that there were likely to be similar

---

<sup>1</sup> See Chapter 2, paragraph 109.

injustices in the Navy and the Air Force since each had separate regulations and instructions. Given the potential for widespread injustice, the Tribunal decided to bring this matter to the attention of the Minister for further consideration.

10. After due consideration, on 18 October 2013, the Tribunal decided to:

*a. set aside the decision of the Department of Defence to refuse to recommend Mr Archibald Lawrence Boyes and Mr John Thomas Boyes for the awards to which they had established an entitlement;*

*b. substitute its decision that both Mr Archibald Lawrence Boyes and Mr John Thomas Boyes be recommended for the award of their Second World War Medal entitlements including The Australia Service Medal 1939-45, and those medals be issued; and*

*c. recommend in accordance with the provisions of Section 110VB (3) of the Defence Act 1903 to the Minister for Defence, that the Tribunal be directed to undertake an Inquiry to determine the extent to which Imperial and Australian awards or entitlements have been improperly forfeited or withheld, since 1939, in the Royal Australian Navy, the Australian Army and the Royal Australian Air Force, and to formulate recommendations to correct any injustices identified arising from the improper forfeiture or withholding of these awards.*

11. The above advice and recommendation (c) were provided to the Minister for Defence on 28 October 2013. On 14 November 2013 the Minister agreed the Tribunal's recommendation and directed it to inquire into the withholding and forfeiture of defence awards for service with the Australian Defence Force since 1939, thus leading to the current Inquiry.

## **Introduction**

### **A Brief History of Medallic Recognition**

12. England was one of the first countries to recognise its citizens with honours and awards with the establishment in 1348 of the Order of the Garter. In May 1643, Charles I instituted the first medals for gallantry and bravery. Campaign medals were to come from wars of the late 1700s and the awarding of campaign medals continues to this day. By the mid to late-1800s, the system of British orders, honours and awards had been well established with the power to create and issue such, vested in the King or Queen generally upon recommendation of the government. Thus the original legal authority to bestow honours and awards is vested in the Sovereign as *Fons Honorum* (Fount of Honour).

13. Australia follows the British system where, for the most part, medals are created by Royal Warrant/Letters Patent, issued by the Sovereign, with the eligibility criteria set out in attached regulations. Amendments to regulations also require the approval of the Sovereign, unless that authority has been delegated. In Australia this power is delegated to the Governor-General who acts on the advice of the government.

14. Over the years honours and awards have generally been divided into several distinct groups. These are:

- Orders of chivalry or merit. These include Imperial orders such as the Order of the British Empire and, under the Australian system, the Order of Australia.
- Crosses and Medals for gallantry or distinguished service in war or conflict or for bravery or conspicuous service in time of peace. These are sometimes called decorations.
- All other awards, not being an order or a decoration, include:
  - medals for war service, more commonly known as campaign or service medals and stars;
  - medals for long service and good conduct;
  - commemorative medals;
  - badges; and
  - Other awards.

### **Honours and Awards to the Australian Armed Forces**

15. Members of the Australian Armed Forces have received honours and awards under two systems – the Imperial system and the Australian system. The Imperial system was used exclusively by Australia until February 1975, when the Government introduced the Australian system. The two systems - the Imperial and the Australian – then operated in parallel until October 1992, when the Prime Minister announced that Australia would no longer make recommendations for Imperial awards. The Commonwealth and the States agreed on this course of action and this proposal was

submitted to the Queen who agreed.<sup>2</sup> As a consequence Imperial honours made to Australians since 1992 are now regarded as foreign awards.<sup>3</sup>

## **A Brief History of Australia's Armed Forces**

16. To assist in understanding the differences in the legal provisions that applied to each service and their approach to medallic recognition, this section covers a very brief history of the Royal Australian Navy, the Australian Army and the Royal Australian Air Force.

### *The Royal Australian Navy*<sup>4</sup>

17. Up until 1913, elements of the British Royal Navy provided for Australia's naval defence. In 1909, a decision was made to establish an Australian fleet. The first of these ships arrived in 1910 and in July 1911, the King granted the title of 'Royal Australian Navy' (Navy) to the Commonwealth Naval Forces. In October 1913, the Australian fleet entered Sydney Harbour and control of the fleet formally passed to the Australian Commonwealth Naval Board.

18. During World War I, the Navy operated as an integral part of the Royal Navy and served in all operational areas. These included protection of shipping in Australian waters, and naval operations in the South-West Pacific, the Indian Ocean, in the Dardanelles and the North Sea.

19. During World War II, the Navy was involved in securing Australia's sea lines of communication and assisting Allied naval forces. Ships were engaged in operations as far afield as the North, West and South Atlantic, the Caribbean, the Mediterranean, the Indian Ocean, the Pacific, the Persian Gulf and Red Sea.

20. When war broke out in the Pacific, Navy vessels took part in the battles of the Java Sea, Sunda Strait, Coral Sea, Savo Island and Lingayen Gulf. The war cost the Navy dearly with the heaviest losses resulting from the sinking of the cruisers HMA Ships *Sydney*, *Perth* and *Canberra*.

21. After the war, units of the Navy served on operations in Korea, the Malayan Emergency and Indonesian Confrontation as part of the Far East Strategic Reserve, the Vietnam War, the First Gulf War, East Timor and in the Middle East. More recently, the Navy has played an active role in supporting the United Nations and other peacekeeping operations throughout the world including Somalia, Cambodia, Rwanda, Bougainville, East Timor, Timor Leste, and the Solomon Islands.

### *The Australian Army*<sup>5</sup>

22. The Australian Army (Army) was formed on 1 March 1901 with the amalgamation of the various State militias. There were slightly more than 29,000

---

<sup>2</sup> Letter to Her Majesty from the Australian Prime Minister dated 19 June 1992 initialled by Her Majesty as approved.

<sup>3</sup> The order of wear of Australian honours and awards states that 'all imperial British award made to Australian citizens after 5 October 1992 are foreign awards and should be worn accordingly', *Commonwealth of Australia Gazette* No. S192, 28 September 2007, p 1.

<sup>4</sup> Adapted from [www.navy.gov.au/history](http://www.navy.gov.au/history) accessed on 7 May 2015.

<sup>5</sup> Adapted from [www.army.gov.au/Our-history](http://www.army.gov.au/Our-history) accessed on 7 May 2015.

men in the combined State militias of whom 1,700 were regular members. In 1904, a Council of Defence, a Military Board of Administration, and an Inspector-General were established.

23. At the outbreak of World War I the Australian Army was home based and not available for overseas deployment. A separate all-volunteer force, which came to be known as the First Australian Imperial Force, (1<sup>st</sup> AIF) had to be recruited for overseas service. The 1st AIF served throughout World War I, predominantly in Gallipoli, the Middle East and on the Western Front.

24. The 1st AIF was disbanded on 1 February 1921 and in the same year, the Citizens Military Force (CMF) was organised as a volunteer force. Australia was to have an all-volunteer and primarily part-time Army until the commencement of World War II.

25. On the outbreak of World War II, Australia again had to raise an all-volunteer force for overseas service. This became known as the Second Australian Imperial Force (2<sup>nd</sup> AIF). The 2nd AIF served in the Middle East, South-East Asia, in New Guinea and in the islands of the South-West Pacific. For the main part the CMF remained in Australia as a training force.

26. After the war, Army activities continued at a high level for several years. Between 1946 and 1952, Australia contributed to the British Commonwealth Occupation Force (BCOF) in Japan. The Army also deployed a number of battalions to South Korea and joined the British Commonwealth Brigade to fight in the Korean War.

27. As well as Korea, the Australian Army fought in the jungles of Malaya during the Emergency and made a significant contribution to the war in Vietnam. Australia gradually built up combat forces and by mid-1966 was at task force strength. The Army's commitment to the Vietnam War ended in December 1972.

28. In the years following the Vietnam War, the Army was involved in a significant number of United Nation peacekeeping missions. The most significant of these were in Cambodia (1992-1993), Somalia (1992–1993) and Rwanda (1993–1996).

29. Since 1999, the Army has been deployed on a number of major operations around the world. These include East Timor, various operations across the Middle East and the Persian Gulf, Afghanistan and Iraq. The Army also contributed a peacekeeping force to the Solomon Islands between 2003 and 2013.

#### *The Royal Australian Air Force*<sup>6</sup>

30. Prior to the formation of the Royal Australian Air Force (Air Force), Australia had organised its own military air service, the Australian Flying Corps (AFC) as a separate corps of the Australian Army which fought in the Middle East and the Western Front in World War I.

---

<sup>6</sup> Adapted from [www.airforce.gov.au/Hstory/?RAAF-Sq7iGFssX2/HNFhOlsw4TP9flTfyhI7O](http://www.airforce.gov.au/Hstory/?RAAF-Sq7iGFssX2/HNFhOlsw4TP9flTfyhI7O) accessed on 7 May 2015.

31. After the war, the Air Force was formed on 31 March 1921 and was constituted as a part of the Australian Military Forces. The prefix 'Royal' was later added in August after receiving Royal assent. The Air Force was hereafter known as the Royal Australian Air Force (RAAF).

32. Between the wars the Air Force was initially able to muster only two operational squadrons and a training unit. The two operational squadrons consisted of one third permanent and two thirds Citizen Air Force (reserve) members. With the possibility of war, the Air Force gradually began to increase in size from 1936.

33. At the outbreak of World War II, the Air Force was still very small with only 164 operational aircraft. The permanent air force comprised just 3500 men. Members of the RAAF fought in all theatres of the war. Arguably, the Air Force 'came of age' during World War II, ending the conflict as the world's fourth largest air force in terms of squadrons and personnel numbers.

34. Post-war, the Air Force rapidly downsized, but peace did not last long. The Air Force was soon involved in combat operations in Malaya, Korea and Vietnam. Peacekeeping missions were also required, and the Air Force participated in peacekeeping operations across the globe. A major overseas deployment to Malaysia as part of the Far East Strategic Reserve required one third of the Air Force's operational force to be deployed overseas from 1958 to the late 1980s. The Air Force presence in South-East Asia continues to the present day. In the past decade, the two major peacekeeping operations that relied on Air Force support were Australia's deployment to East Timor and the Solomon Islands.

35. During the Cold War (1945-1989), the Air Force support included provision of personnel, air transport, operating the many airfields and conducting surveillance operations. As part of the western alliance, the Air Force's P-3 Orion aircraft maintained surveillance over South-East Asian waters and the approaches to Australia. More recently, the RAAF has undertaken combat operations in the Gulf, Afghanistan and Iraq and these continue to the present day.

### **A Brief History of Australia at War**

36. Throughout the twentieth and twenty-first centuries, Australia has been involved in most major conflicts. With regard to medallic recognition for warlike service, these include:

- World War I (1914-1918);
- World War II (1939-1945);
- Malayan Emergency (1950-1960);
- Korean War (1950-1953);
- Confrontation (with Indonesia) (1964-1966);
- Vietnam War (1962-1972);
- Gulf War (1990-1991);
- East Timor (1999-2003)
- Afghanistan (2001-2014); and
- Iraq (2003-2009; 2014 - present).

37. There are a number of other major operations/conflicts that involved the Australian Defence Force. With regards to medallic recognition for non-warlike service, these include:

- British Commonwealth Occupation Force (Japan) (1945-1952);
- Berlin Airlift (1948-1949);
- East Timor (1975; 1999; 2001-2006);
- Solomon Islands (2003-2013); and
- Timor Leste (2006 – present).

38. In addition, Australia's contribution to world stability has included over 30 peacekeeping and observer missions which are recognised by an Australian Service Medal and if appropriate, a United Nations medal as well.



## CHAPTER 2

### The Legal Provisions Applicable to Withholding and Forfeiture of Defence Honours and Awards

1. The first task set out in the Terms of Reference directs the Tribunal to:

*identify the legal provisions applicable to the refusal to issue entitlements to, withholding and forfeiture of such defence honours and awards*

#### *Introduction*

2. Identifying the legal provisions applicable to the forfeiture of defence honours and awards is far from a straightforward task. As noted by the Defence Military Law Sub-Committee in 1970 when considering the legal basis for the forfeiture and restoration of war medals:

*Two main features stand out in the Australian history of forfeiture and restoration. Firstly, on a number of occasions, there has often been no accurate idea whether the body exercising a discretion or issuing an instruction or Regulation has the power to do so. Secondly, the most important practical effect resulting from the instructions made and the Regulations and provisions actually observed has been the varying width of any discretion in respect of both forfeiture and restoration.<sup>7</sup>*

3. The Committee then observed that there was confusion around the relationship between Australian and British Regulations, and Military Board Instructions and Warrants. It is this confusion that the Tribunal will attempt to clarify.

#### *The Hierarchy of Legislative Powers*

4. The Commonwealth Parliament has powers to make laws *for the peace, order and good government of the Commonwealth* in relation to the items set out in s 51 of the Constitution. Section 51(vi) authorises the Commonwealth Parliament to make laws for the naval and military defence of the Commonwealth. Under this power the Parliament made the following acts: the *Defence Act 1903* (the Military Forces including the Army and the Department of Defence), the *Naval Defence Act 1910* (the Navy) and the *Air Force Act 1923* (the Air Force). Before the Naval Defence Act was passed the Defence Act covered both the Army and the Navy.

5. Because the Australian States were originally colonies of the United Kingdom, each of the colonies received so much of the laws of England as in force at the time of their settlement. Following Federation, Australia was a self-governing entity within the British Empire and thus British law continued to apply in certain circumstances. Following the ratification of the *Imperial Statute of Westminster Act 1931* by the *Statute of Westminster Adoption Act 1942* backdated to 3 September 1939, a Commonwealth Act must declare that an Imperial Act would apply in Australia for it to have effect.

---

<sup>7</sup> Defence Military Law Sub-Committee Report 1/1970, *Forfeiture and Restoration of War Medals*, 23 April 1970, obtained from loose files, Directorate of Honours and Awards.

### *Statute Law*

6. The primary legislative authority in Australia is the Act of Parliament. An Act may authorise subordinate or delegated legislation to be made. These are laws made by persons or authorities delegated with the task of making these subordinate laws according to a certain section(s) of the Act. The subordinate laws must comply with the authority given by the Act otherwise the law will be said to be *ultra vires* (outside the power) and therefore invalid.

### *Imperial Acts*

7. As mentioned above, Imperial Acts do not apply in Australia unless an Act of the Australian Parliament specifically applies that Imperial Act. In 1939 the Defence Act applied the Imperial *Army Act* (44 & 45 Vict.) to the Army in specific circumstances. The Naval Defence Act applied the Imperial *Naval Discipline Act* (23 & 24 Vict.) and Regulations and Instructions more generally. The Air Force Act applied the Imperial *Air Force Act* (7 & 8 Geo. 5) and Regulations and Instructions in certain situations.

### *Subordinate legislation*

8. The authority to make subordinate laws is given to the Governor-General in Council, Ministers and Statutory Authorities amongst others. The various forms of subordinate legislation include Royal Warrants and Letters Patent, Regulations, Orders, Statutory Rules, Determinations and Statutory Instruments.

### *Royal Warrants and Letters Patent*

9. Royal Warrants and Letters Patent are a common instrument for the creation of medals. They are documents issued by the King/Queen or the Governor-General and are classified as subordinate legislation although they are not necessarily issued pursuant to an Act of Parliament. Letters Patent and Royal Warrants are essentially grants by the Sovereign. An example of a grant of a medal by the Sovereign would be the Australia Service Medal 1939-45 or the Australian Active Service Medal 1945-75.

### *Command Papers*

10. In the United Kingdom the term Command Papers covers a number of different categories of documents and is a type of parliamentary paper. Command Papers may be presented to the Parliament by command of the Sovereign. They derive their authority from the Sovereign and are laid before Parliament to bring to the Parliament's attention information or decisions. For example, Command Paper 6833 the Award of Honours, Decorations and Medals for War Service was a paper brought to the attention of the UK Parliament advising of the King's decision to award campaign medals for service in World War II.

### *Regulations*

11. Regulations are subordinate legislation made pursuant to an Act of Parliament. In relation to medals, Regulations are often made pursuant to the Letters Patent or Royal Warrants creating the medal.

### *Orders*

12. This term is most often used in relation to executive acts or by the Courts.

### Statutory Rules

13. This term can be used as an alternative to Regulations, but now is more frequently used to describe the procedural rules of the Courts.

### Determinations and Statutory Instruments

14. These terms are used to describe subordinate legislation that is an exercise of statutory power. Determinations are often published as legislative instruments.

### Defence Instructions

15. Defence Instructions are made under s 9A of the Defence Act. They are legislative instruments but are specifically excluded from having to comply with the requirements of the *Legislative Instruments Act 2003* (s 7).

### Military/Naval/Air Board Instructions

16. These Instructions are categorised as part of military law. The Service Boards were set up under their respective Acts and their powers to make Instructions were given to them under the regulations that applied to each service. The Tribunal is of the opinion that the Instructions are legislative instruments.

### Military Law

17. The Manual of Military Law 1941 described military law as *law which governs the members of the Army and regulates the conduct of officers and soldiers as such at all times and at all places, in peace and in war, at home and abroad.*<sup>8</sup> The purpose of military law is:

6. *to provide for the maintenance of discipline among troops and other persons forming part of, or following, the forces, for which purpose acts and omissions which in civil life may be breaches of contract – eg. Desertion or disobedience to orders – must, if committed by soldiers even in time of peace, be made punishable offences, whilst in war every act or omission which impairs a man's fighting efficiency must be dealt with severely; and*

7. *to provide for administrative matters, such as terms of service, enlistment, discharge and billeting ...*

18. Military Law applies to the Armed Forces and consists of the statutory law, subordinate legislation, the Instructions of the three Boards and later Defence Instructions. The law is operated by and enforced by members of the Defence Force, who are not necessarily lawyers or law enforcement officers. Those members enforce laws, which allow for punishments such as restriction of liberty, fines and detention. In 1941 the Commanding Officer was given the power to administer military law but not to imprison a member, or dismiss them from the Defence Force. Only a court-martial could do this. Courts-martial are not courts of law and are usually constituted by non-lawyers. They are equivalent to a Magistrates Court although they exercise administrative power, not judicial power. Since 3 July 1985 military law has been administered under the *Defence Force Discipline Act 1982* (DFDA) (see paragraph 48).

---

<sup>8</sup> *Manual of Military Law*, Australian Edition, Australian Government Printer, Canberra, 1941.

### *Australian Military Regulations and Orders*

19. The Australian Military Regulations and Orders (AMROs) are a combination of the Regulations and General Routine Orders. The publication was produced to enable a member of the Army to understand the relevant regulation or instruction applicable in any circumstance. It is a tool for making a decision but not the source of the law.

### *Defence Honours and Awards Manual*

20. The introduction to the Defence Honours and Awards Manual (DHAM) states that it *provides a consolidated reference of the policies and processes applicable to honours and awards*. The Authority stated that *This Instruction establishes the DHAM* and the sponsorship notes that the DHAM had been endorsed by CDF and the Secretary to the Department of Defence. There is no statement that the DHAM has been issued under the authority of the CDF and the Secretary pursuant to s.9A of the Defence Act. The Manual reiterates the law applicable to the award of a medal, the processes Defence should follow as well as policy guidelines. The wording of the DHAM is similar to the wording of previous Defence Instructions. The Tribunal found it difficult to classify the DHAM for the purposes of this report. It concluded that the DHAM could not be a legislative instrument because it included reiterations of the law as well as policy and because of the introduction to the Manual.

21. So, the DHAM sets out the policy in relation to honours and awards amongst other things. Policy is not delegated legislation. Policy can be described as guidelines, which assist a decision maker when exercising a discretion under the law. Providing the policy is not inconsistent with the law, it may be followed by the decision maker. However the *decision maker may not lawfully refuse to entertain applications inconsistent with the adopted policy ... He or she may adopt the approach that, in the absence of exceptional circumstances, the policy will be applied.*<sup>9</sup>

## **Summary**

22. The Acts of the Australian Parliament are the primary source of legislative power. When those Acts authorise that Imperial Acts and/or their regulations to apply, those Acts and regulations apply within the limits set out in the Australian Acts and regulations. Imperial Acts cannot apply in Australia unless specifically authorised by an Australian Act.

23. Letters Patent and Royal Warrants are classified as subordinate legislation. They differ from most subordinate legislation with respect to the grant of medals because they are not made pursuant to an Act of Parliament. Rather the Sovereign or the Governor-General makes these laws, which bestow an honour for meritorious conduct or an award if certain conditions are met. Similarly the Command Paper is not made pursuant to an Act of Parliament. It is a power exercised by the Sovereign.

24. The most common form of subordinate legislation is regulation. For the most part the Governor-General is given the power to make regulations under a section of

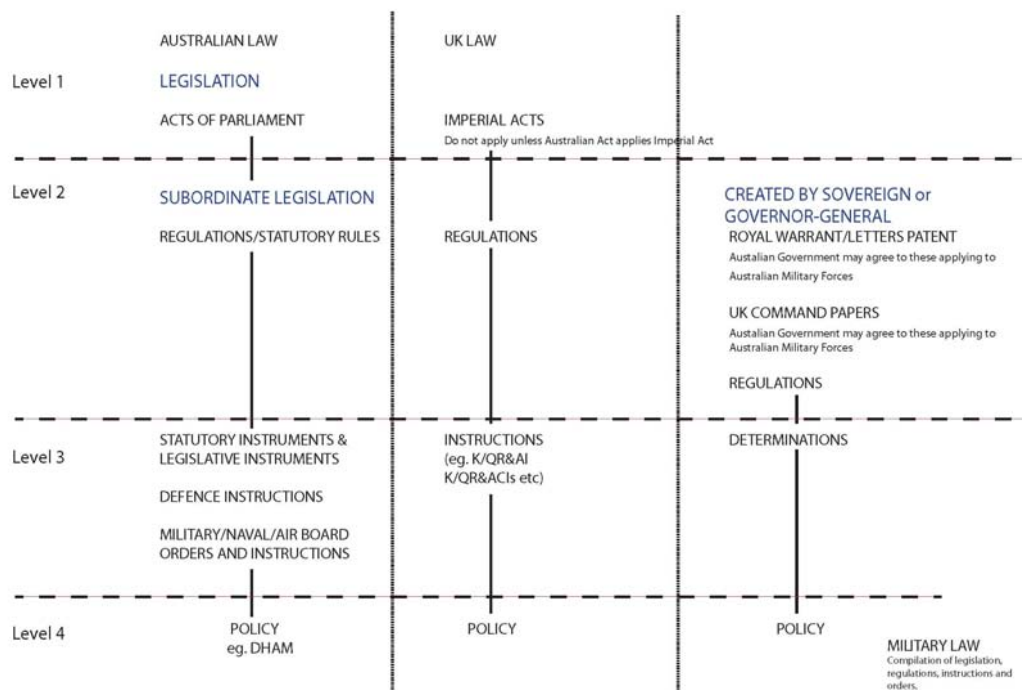
---

<sup>9</sup> Re: *Peninsular Anglican Boys School v The Honourable Susan Ryan and Commonwealth Schools Commission* (1985) 7 FCR 415 Wilcox J.

an Act. Often that section will set out the limits of those regulations – see s 124 of the Defence Act. These regulations have legislative authority providing they fall within the authorising terms of their acts.

25. The Board Instructions are authorised by the Regulations, are part of military law and are legislative instruments. Defence Instructions are authorised by the Defence Act and are legislative instruments. They are part of military law. The DHAM is a Manual that contains reiterations of the law, former Defence Instructions, procedures and policy. It is not subordinate legislation.

26. The Hierarchy of Legislative Powers graph below illustrates the relationships.



**Figure 1:** Hierarchy of Legislative Powers

27. For ease of presentation of the law and its application, the following sections do not follow the standard convention of discussing the Navy, Army and Air Force in that order.

## The Army

28. When the Defence Act was introduced in 1903 it administered both the Army and the Navy. In 1910 the Naval Defence Act assumed responsibility for the administration of the Navy and a number of references to the Navy were removed from the Defence Act.<sup>10</sup>

## The Defence Act

29. The *Defence Act* 1903 was assented to on 22 October 1903 and came into force on 1 March 1904. It made provision *for the Naval and Military Defence and Protection of the Commonwealth*. Part VII set out the offences and Part VIII the process and powers of courts-martial. Section (s) 124 gave the Governor-General the power to make Regulations under the Act *for securing the discipline and good government of the Defence Force*.

30. In s 4 the Defence Act defined *Active Service* as service in or with a force engaged in operations against the enemy by the naval and/or military service. The *Army Act* and the *Naval Discipline Act* were both defined as the Imperial Acts as amended and in force from time to time. *Naval or military offence* was defined as an offence against the Act, the Army Act or the Naval Discipline Act. Section 5 applied the Defence Act to all the Naval and Military Forces of the Commonwealth. Section 9 provided that that the General Officer Commanding and the Naval Officer Commanding exercised the powers under the Act. On 9 December 1904, s 28 of the Act was amended giving the Governor-General power to constitute Boards of Administration for the Military and Naval Forces.<sup>11</sup> The Military Board was the administrator of the Military Forces and it exercised such powers as are prescribed.

31. In time of war the Governor-General had the power to place the Defence Forces under the orders of the Commander of the King's Regular or Naval Forces (s 53). Section 55 provided that when the Military Forces were on active service they were subject to the Army Act except for any inconsistency with the Defence Act. Section 56 made a similar provision for the Naval Forces in relation to the Naval Discipline Act.

### *Offences and Penalties*

32. According to s 78 any member liable to be employed for active service who absented himself without leave for longer than seven days, was deemed to be a deserter and *punished accordingly*. Section 88 adopted the court-martial procedures and powers of the King's Regular Forces and Naval Forces in relation to the Military Forces and the Naval Forces. Section 108 provided that the regulations may authorise the officer commanding any corps or ship to punish a member by imposing a fine not exceeding £5, forfeiture of pay, confinement to barracks or on board ship for up to 21 days, reduction in rank or dismissal.

---

<sup>10</sup> The hierarchy of law that applies to the Army is set out in Appendix 7a.

<sup>11</sup> s 7 Defence Act 1904 No. 12 assented to 9 December 1904.

## *World War II*

33. The Defence Act was significantly amended in the intervening years although the overall structure of the Act remained. In 1910 s 5 was amended so that references to the Naval Forces were removed.<sup>12</sup> By 1939 s 4 contained a definition of Military Decoration, which was any medal, clasp, good conduct badge or decoration awarded for service with the Naval or Military Forces in the present war.<sup>13</sup> The definition of the Army Act remained in the Defence Act although the Naval Discipline Act definition had been removed.<sup>14</sup> A new definition of *Air Force Act* was added which meant the Imperial Air Force Act.<sup>15</sup> The definition of *Active Service* was amended by adopting the meaning set out in s 189 of the Army Act.<sup>16</sup> An amendment to the Defence Act on 15 December 1939 added *Air Force* to these definitions.<sup>17</sup> *Air Force offence* was added to Naval and Military offences and meant offences under the Imperial Air Force Act.

34. *This Act* was defined as including the regulations under the Defence Act. *War Service* was added in 1917 and was defined as active service by the Naval, Military and Air Forces in operations against the enemy including in foreign countries. Section 5 was unamended and s 9 was repealed and replaced with a provision that was similar in effect.<sup>18</sup>

35. The Military Board continued to exercise the powers and functions prescribed. Section 53 remained in force. In 1917 the Act was amended so that travel to and from Australia was included in war service (s 54A).<sup>19</sup> Section 55 was substituted so that the application of the Army Act continued to apply when members of the Military Forces were on active service. Section 56 was omitted in 1910 by the Naval Defence Act.

36. Section 78 was substituted but continued to make absence without leave for a member of the Citizen Military Forces (CMF) for longer than seven days, desertion. Punishment was to be according to the Army Act.<sup>20</sup> A new section 80B was inserted in 1917 and dealt with military decorations. It was an offence for a person to sell, exchange, pledge or otherwise dispose of a military decoration. Further offences related to the buying receiving, disposing and wearing of Military Decorations were inserted at ss. 80C, 80D, 80E. Section 80F provided that Military Decorations dealt with in this way would be forfeited.<sup>21</sup> Section 86 was amended to add subsection (2), which provided that the courts-martial powers exercised by the Governor-General were subject to the Army Act.<sup>22</sup> Section 88 was repealed in 1917 and replaced with a section of similar effect.<sup>23</sup>

---

<sup>12</sup> s 4 Naval Defence Act 1910 No. 30 assented to 25 November 1910.

<sup>13</sup> s 4 The Defence Act 1917 No 36 assented to 25 September 1917

<sup>14</sup> First Schedule Naval Defence Act 1910.

<sup>15</sup> s 4 Air Force Act 1939 No 74 assented to 15 December 1939.

<sup>16</sup> s 2 The Defence Act 1917.

<sup>17</sup> Schedule Air Force Act 1939.

<sup>18</sup> s 4 Defence Act 1904.

<sup>19</sup> s 15 The Defence Act 1917.

<sup>20</sup> s 20 *ibid.*

<sup>21</sup> s 21 *ibid.*

<sup>22</sup> s 23 The Defence Act 1917.

<sup>23</sup> s 24 *ibid.*

37. In 1917 subsection (3) was added to s 108 which provided that on war service commanding officers would have all the powers conferred by the Army Act and the Naval Discipline Act.<sup>24</sup> Section 108 was later amended to cover the Air Force under the Air Force Act. The power to make regulations pursuant to s 124 remained.

*Significant amendments to 1973*

38. In 1973 the Defence Act was consolidated with amendments to 19 December 1973. The definition of *Active Service* was omitted and a new definition substituted in 1949. The new definition applied to persons subject to military law and covered service against the enemy including in a foreign country and the occupation of a foreign country. The definitions contained operations declared by the Governor-General to be on active service.<sup>25</sup> The definition of *Military Decoration* was omitted and a new definition substituted which removed the reference to *the present war*.<sup>26</sup> In 1956 the terms *Army Act* and *Air Force Act* were omitted and new definitions substituted. The Air Force Act referred to the Imperial Air Force Act of 1939 as amended to 1956. The Army Act referred to the Imperial Army Act that applied when the Defence Act 1956 came into force.<sup>27</sup> This meant that the old Army Act continued to apply to the Military Forces in Australia in spite of the fact that this Act was repealed in the UK on 31 December 1956 and replaced with a new *Army Act 1955*. In 1964 the definition of the Naval Discipline Act was repealed and replaced. It now had the same meaning as in the Naval Defence Act, which defined the act as the *Imperial Naval Discipline Act 1957* as in force in 1964.<sup>28</sup> There was no change to the definition of *This Act* or *War Service*.

39. In 1965 the term *Military Decoration* was omitted and a new definition of *Service Decoration* substituted. The definition provided that a service decoration means any order, medal, badge, clasp, bar or other insignia that was or may be conferred for valour, distinguished conduct or service, long service, good conduct, devotion to duty, efficiency, participation in a campaign or other warlike operation or for any other reason ...<sup>29</sup>

40. Section 5 was repealed and a new section substituted which applied the Defence Act to all members of the Air, Naval and Military Forces subject to the Naval Defence and Air Force Acts.<sup>30</sup> There was no change to s 9. There was no change to s 28. In 1964 ss 53 and 54A were repealed. A new s 54 was substituted which provided:

*Members of the Military Forces, whether on war service or not, while-*  
*(a) serving beyond the territorial limits of Australia;*  
*(b) on their way from Australia for the purpose of so serving; or*  
*(c) on their way to Australia after so serving or after war service*

---

<sup>24</sup> s 32 *ibid*.

<sup>25</sup> s 3 Defence Act 1949 No 71 assented to 28 October 1949.

<sup>26</sup> *Ibid*.

<sup>27</sup> s 3 Defence Act 1956 No 72 assented to 29 October 1956.

<sup>28</sup> s 3 Naval Defence Act 1964 No 93 assented to 6 November 1964.

<sup>29</sup> s 4 Defence Act 1965 No 51 assented to 7 June 1966.

<sup>30</sup> s 4 Defence Act 1951 No 19 assented to 19 July 1951.



*shall be deemed to be on war service and are subject to the Army Act with such modifications and adaptations as are prescribed.*<sup>31</sup>

There was no change to s 55.

41. Section 78 was repealed and replaced with a new section, which provided that absence without leave for a period of more than seven days when the member was on war service, was deemed to be desertion. The punishment for this offence was provided for in the Defence Act (s 108) and if on active service the Army Act, the Naval Discipline Act or the Air Force Act.<sup>32</sup> In 1965 s 80B was repealed and replaced with a more detailed provision concerning the disposal of service decorations. It also provided:

*(6) Where a person has committed an offence against this section, any service decoration in respect of which the offence was committed is forfeited.*

Sections 80C to 80I were also repealed.<sup>33</sup>

42. Subsection 86(2) remained the same. Section 88 was repealed in 1956 and replaced with a section that continued to apply the provisions of the Army Act with respect to courts-martial.<sup>34</sup> Section 108 was amended in 1951, although subsection (3) remained the same.

#### *Significant Amendments 1973 to 1991 and beyond*

43. Between 1973 and 1991 when there was a further consolidation of the Act, there were some major changes to the administration of the Defence Force and the administration of military justice. A major reorganisation of the administration of the Defence Forces came into effect on 9 September 1975. In 1982 the Defence Force Discipline Act was introduced and as a result many of the sections in the Defence Act dealing with offences, penalties and courts-martial were removed by 3 July 1985. By 1991, only the definition of *Service Decoration* remained amongst the definitions noted above.

44. In 1975 s 9 was repealed and replaced making the Chief of Defence Force Staff (CDFS) the commander of the Defence Force. Officers were appointed as Chief of Naval Staff, Chief of the General Staff and Chief of the Air Staff to command those arms of the Defence Force. The CDFS advised the Minister together with the Secretary to the Defence Department and the Chiefs of Naval, the General and the Air, Staff advised CDFS. Section 9(A)(2) provided that:

*Instructions issued by or with the authority of the Secretary and the Chief of Defence Force Staff in pursuance of the powers vested in them jointly by virtue of sub-section (1) shall be known as Defence Instructions (General).*

45. In 1975 s 28 was amended removing subsections (2) and (3) which meant that the Military Board ceased to operate. The savings provisions provided:

---

<sup>31</sup> ss 25 & 26 Defence Act 1964 No 92 assented to 6 November 1964.

<sup>32</sup> s 28 *ibid.*

<sup>33</sup> s 19 Defence Act 1965.

<sup>34</sup> s 5 *ibid.*

*Military Board Orders shall, subject to the succeeding provisions of this section, continue in force after the commencement of this section and be as valid and effectual as if those amendments had not been made and as if the regulations having effect for the purposes of sub-section 28(3) of the Principal Act had not, by reason of those amendments, ceased to have effect.*

Instructions could also be issued by the Chiefs of Naval, the General and the Air staff and were known as Navy-Defence Instructions, Army-Defence Instructions and Air Force-Defence Instructions.<sup>35</sup> These sections (9 and 28) were amended in February 1997 so that the term ‘Staff’ was removed from the titles. A Military Board Order could be revoked or varied and those Orders in place were deemed to be Defence Instructions (Army), (Navy) or (Air Force).<sup>36</sup>

46. In 1985 the terms *Active Service, Air Force Act, Army Act, Naval, Military or Air Force Offence, Naval Discipline Act* and *War Service* were removed from the Defence Act. Section 5 was amended to remove references to the Naval Discipline Act and the Air Force Act. Sections 54, 55, 78, 86 and 88 were repealed.<sup>37</sup>

47. Section 80B was repealed and replaced in 1977. The penalty of forfeiture of the medal was removed.<sup>38</sup> Although amended, s 124 remained.

48. After 1985 the DFDA contained the powers and provisions with respect to the application of military law to the Armed Forces. The Defence Act continued to contain s 80B, which made it an offence to destroy or deface service decorations as well as sundry other offences.

#### *Defence Force Discipline Act*

49. Parts I (ss. 1-9) and XI (ss.179-188) of the DFDA came into operation on 31 December 1982. The remainder came into operation on 3 July 1985. It has been amended on a number of occasions but the essential provisions applicable to this Inquiry have remained much the same. The Discipline Law Manual sets out the purpose of the DFDA as establishing a common and high standard of discipline and that this required *a special discipline system applicable to the armed forces and a special body of law to enforce this discipline system.*<sup>39</sup>

50. Section 3 of the Act defined *Active service* as service on operations against the enemy, and service with a force or in an area declared by the Governor-General to be on active service. *Service offence* is defined as an offence against the DFDA or Regulations, an ancillary offence to those offences or an old system offence. There is no definition of *Service Decoration*. Section 9 applies the DFDA outside Australia if the person is a member of the Armed Forces.

---

<sup>35</sup> s 7 Defence Force Re-organisation Act 1975 No 96 assented to 9 September 1975.

<sup>36</sup> s 23 Defence Force Re-organisation Act 1975.

<sup>37</sup> ss 40, 41, 51 & 58 Defence Force (Miscellaneous Provisions) Act 1982 No 153 assented to 31 December 1982, date of effect 3 July 1985.

<sup>38</sup> s 3 Defence Amendment Act (No 2) 1977 No 20 assented to 14 April 1977.

<sup>39</sup> Australian Defence Force Publication 06.1.1, *Discipline Law Manual*, Fourth Edition, 2009, Paragraph 1.9 & 1.11.

51. Part III sets out the offences under the DFDA. Some examples of those offences and penalties are:

- s 22 – Desertion when engaged in an operation against the enemy or active service – Penalty – up to five years imprisonment.
- s 23 – absence from duty – Penalty – up to three months imprisonment.
- s 29 – Failure to comply with a general order – up to 12 months imprisonment.
- s 32 – Person on guard sleeps, is drunk or leaves their post – Penalty – up to 12 months imprisonment.
- s 37 – Drunk on duty – Penalty – up to six months imprisonment.
- s 40 – Driving under the Influence – Penalty – depending on the particulars, up to three months or up to twelve months imprisonment.

52. Section 68 sets out the scale of punishments under the DFDA. The scale ranges from imprisonment for life to reprimand. The consequences of a conviction by a service tribunal could be a reduction in rank, forfeiture of service for the purposes of promotion, forfeiture of seniority, restriction of privileges, stoppage of leave or extra duties. A service tribunal has the power to impose fines (s 73). There is no reference to forfeiture of service decorations in the DFDA.

### **The Imperial Army Act**

53. The *Army Act* was a Statute passed by the United Kingdom (UK) Parliament in 1881 to provide for *the Discipline and Regulation of the Army*. It replaced several earlier Acts. The Army Act set out British military law that applied to members of the military forces, in contrast to the civil law and criminal law that applied to all citizens. The Tribunal was unable to locate the Acts of the UK Parliament that amended the Army Act. Instead the Tribunal considered Australian reprints of the Army Act in 1907 and 1941.

54. Section 55 of the Defence Act specifically applied the Army Act to the Australian Armed Forces when they were ‘on active service’. Active service included operations against the enemy (see para 50).

55. In 1907 the Army Act set out what actions constituted military offences and the punishment that could be imposed on conviction for that offence. The Act also specified which offences were punishable by the *ordinary law of England*. The Act set out how courts-martial were to be convened, the power they exercised and the execution of sentences. Enlistment and various related matters were also covered.

56. In 1907 the Act began by referring to offences by persons in relation to military service. Section 9 dealt with the offence of *disobedience to a superior officer*. An offence was made out if the person showed *wilful defiance of authority* by disobeying an order given to him personally. The punishment ranged from death to a lesser punishment under the Act. If a soldier disobeyed an order on active service he was liable to penal servitude; if not on active service a soldier was liable to imprisonment and an officer to be cashiered. The offence of insubordination set out in s 10, which included breaking out of barracks, attracted the penalty of imprisonment for a soldier and being cashiered for an officer.

57. Section 12 dealt with desertion, a serious offence that following conviction by court-martial could result in the penalty of death if on active service. If the person was not on active service, a conviction for desertion could result in penal servitude. A person convicted by court-martial of *absence from duty without leave* (AWL) was liable to imprisonment if a soldier and to be cashiered if an officer (s 15). The offence of AWL comprised being absent without leave, failing to appear at parade, being beyond the limits of a camp or garrison or being absent from a school that he had been directed to attend.

58. Scandalous conduct only applied to an officer and was an offence involving behaving *in a scandalous manner, unbecoming the character of an officer and a gentleman* (s 16). Following conviction for this offence by court-martial, the officer would be cashiered. Pursuant to s 18 a soldier who malingered or feigned a disease, wilfully maimed or injured himself, was guilty of wilful misconduct. A soldier who disobeyed an order, aggravates his disease, stole or embezzled money or goods from a fellow soldier or committed fraud was guilty of disgraceful conduct. On conviction by court-martial the soldier was liable to be sentenced to imprisonment. The notes attached to this section in the UK version of the Manual of Military Law advised that a soldier convicted of this offence was liable to forfeit all good conduct badges pursuant to the Pay Warrant.

59. Section 19 dealt with the offence of drunkenness. On conviction by court-martial a soldier was liable to imprisonment or a fine. An officer was liable to be cashiered. Section 28 set out the offences relating to court-martial proceedings, such as failing to answer a summons.

60. Pursuant to s 40 a person convicted by court-martial of the offence *Conduct to prejudice of military discipline* could be cashiered if an officer, or imprisoned if a soldier. The offence comprised *any act, conduct, disorder or neglect, to the prejudice of good order and military discipline*.

61. The punishments that could be imposed generally under the Army Act were set out in s 44. Those punishments ranged from death to imprisonment, detention, forfeitures, fines and stoppages of pay. A proviso stated that where a penalty was stipulated in the section setting out the offence, any lesser punishment set out in this section could be applied instead. Paragraph 11 of that proviso stated:

*In addition to, or without any other punishment in respect of any offence, an offender convicted by court-martial may be subject to forfeiture of any deferred pay, service towards pension, military decoration or military reward, in such manner as may from time to time being provided by Royal Warrant ...*

62. This paragraph was modified in 1927 by the Australian Military Regulations (AMR reg 210) so that forfeitures:

*may be provided by regulations made under the Defence Act with reference to military decorations or military rewards ...*

63. The Army Act was modified by the AMRs so that references to the punishment of death for certain offences and to officers being cashiered were

removed and imprisonment and 'reduction in rank' were substituted. For the offence of desertion the penalty of death could only be imposed for desertion to the enemy (reg 202(g)). The Rules of Procedure and the procedures for courts-martial under the Army Act were modified by including references to the Commonwealth of Australia in the Army Act. Section 106 of the Defence Act provided that any sentence of penal servitude could be commuted to imprisonment with or without hard labour for the same or a lesser period.

64. Section 46 of the Army Act gave power to a Commanding Officer after investigation of an offence to dismiss the charge, bring an officer before a court-martial, or for a soldier, to deal with the matter summarily. The soldier was to be given the option of being tried by court-martial. Where the offence was dealt with summarily the maximum penalty was 14 days detention, a fine of no more than ten shillings, deductions from pay as authorised by the Act and if the soldier was on active service, field punishment for up to 28 days and forfeiture of pay. For a conviction of absence without leave (AWL) the Commanding Officer could award detention for up to 21 days.

65. Section 49 made provision for field courts-martial and s 57 provided that the authority, which confirmed the sentence of a court-martial, could mitigate, remit or commute the punishment for a lesser punishment. A sentence could also be suspended. Sections 166, 167 and 168 dealt with the proceedings for summary and civil proceedings. Section 171 allowed for delegation of powers under the Act and s 172 allowed for the issuing of warrants. Section 190(18) defined 'military decoration' as any medal, clasp, good conduct badge or decoration.

#### *World War II*

66. There were few changes to the Army Act between 1907 and 1941. Sections 9, 10 and 12 remained the same with the modifications for Australia. In May 1941 the notes to section 15 (AWL) were amended so that if a soldier were absent for more than 21 days an officer would be appointed to investigate his absence. Section 16 was unchanged.

67. Section 18 (Disgraceful Conduct) was amended so that this section now applied to every person subject to military law. Previously it only applied to soldiers, not officers. There was no reference to the loss of good conduct medals in the Australian version of the Manual of Military Law. The offence of drunkenness in s 19 remained. Section 28 remained unchanged. Section 40 (Conduct to prejudice of military discipline) was unchanged although the notes were amended so that 'neglect' must be 'wilful neglect'.

68. There were a number of amendments to s 44 (Punishments). Punishments imposed on officers could include reduction in rank or classification and fines. Punishments for soldiers included discharge as well as discharge with ignominy and fines. A soldier could still be punished by forfeiture, fines and stoppages. For Australia a limit was placed on the length of sentence that could be imposed except under s 106 of the Defence Act (imprisonment instead of penal servitude). The subsection referring to forfeiture of military decorations remained with minor amendments. Note 15 to this section stated:

*There is at present no provision for the forfeitures by sentence of court-martial of military decorations or military rewards as defined by s. 190(18) and (19). No such forfeitures can therefore be ordered by court-martial. Neither can a court-martial deal with naval or air force decorations.*

Section 190(18) defined 'military decoration' as *any medal, clasp, good conduct badge, or decoration.*

69. The power of a Commanding Officer set out in s 46 was amended to allow the Commanding Officer to refer the person to a civil court. The Commanding Officer could try an officer below the rank of Lieutenant Colonel or a warrant officer summarily. The subsections dealing with the penalties for drunkenness and AWL were removed in 1910 and 1921. Subsection 9 gave the Commanding Officer the ability to delegate the power to deal with a matter summarily for minor matters.

70. Section 49 was not changed substantially. In 1941 the penalty for murder referred to in s 57 was amended to penal servitude. A new section s 57A provided that a superior military authority must confirm any sentence of imprisonment or detention. That authority could suspend or remit the sentence. Sections 166 to 172 were unchanged. Section 189 defined 'on active service' as *engaged in operations against the enemy, or is engaged in military operations in a country or place wholly or partly occupied by an enemy.*

#### *The UK Army Act 1955*

71. On 6 May 1955 the Army Act 1955 received Royal Assent. It replaced the old Army Act. This 1955 Act made provision with respect to the army. Part II dealt with Discipline and Trial and Punishment of Military Offences. The Defence Act was amended on 29 October 1956 to apply the Army Act in force when this amendment came into effect. Section 226 provided that the new Army Act came into operation *on such date as Her Majesty may by Order in Council appoint.* The Act came into operation on 1 January 1957.<sup>40</sup> This meant that the old Army Act continued to apply in Australia in spite of the fact it had been repealed in the UK.

#### *Modifications to the Army Act made by the Defence Act and the AMRs*

72. Section 54A of the Defence Act provided that members of the Military Forces whether on war service or not, travelling to and from Australia to serve and on service with the Imperial Forces were subject to the Army Act. In 1966 s 54A was repealed and replaced with s 54 which had a similar effect. Section 55 applied the Army Act to the Army while on war service so far as it is not inconsistent with the Defence Act.

73. The Defence Act and the AMRs modified the level of fines that could be imposed on the Army under the Army Act. Section 88 of the Defence Act applied the processes and powers of courts-martial applicable to the UK Military Forces to the Army. All references to the Army Act were removed from the Defence Act on 3 July 1985 when the DFDA came into effect.

74. Regulation 202 of the AMRs modified the penalties that could be imposed under the Army Act. The sentence of death could only be imposed for *traitorously delivering up to the enemy a garrison, traitorous correspondence with the enemy,*

---

<sup>40</sup> Army Act 1955 (Continuation) Order 1957.

*joining in such a mutiny or desertion to the enemy.* Otherwise penal servitude was to be substituted for the sentence of death. The penalties were added to and modified for the Army. In relation to commanding officers investigating offences, references to the Army Act and Rules of Procedure were to include references to the Defence Act and regulations (reg 239). Periods of detention under s 46(2) of the Army Act were limited to 28 days (reg 256). All references to the Army Act were removed from the AMRs on 3 July 1985.

75. Regulation 205(1) referred to a member who is discharged with disgrace and paragraph (2) defines what is meant by that expression. The term includes discharged with ignominy and discharged for misconduct.

76. Regulation 216 modified the penalties imposed by s 44 of the Army Act. It applied the reduction in rank provisions to the Army and limits fines to £20. Regulation 216(c)(v) provided an explanation for how the penalties in s 44 may be imposed.

### **Australian Military Regulations**

77. On 14 December 1927 the Governor-General promulgated Statutory Rules No. 149 known as the Australian Military Regulations (AMRs), under s 124 of the Defence Act. The AMRs came into operation on 31 December 1927. The AMRs were a comprehensive list of rules for the discipline and good government of the Military Forces.

78. The AMRs covered the organisation of the Military Forces incorporating governance, discipline including offences and penalties, registration and medical examinations, service, cadets, military institutions including messes and uniforms, medals and decorations. Regulation 3 defined the terms used in the AMRs. Australian Army Orders were defined as orders of the Military Board and included any subsequent names for those orders. The term 'war service' was that set out in s 54A of the Defence Act and 'subject to military law' meant subject to military law under the AMRs.

79. Regulation 9(1) provided that the AMRs would apply to the military forces whether on war service or not. According to reg 9(2) the Army Act and the rules and regulations made under that Act when applicable to the military forces, were supplemental. If the Army Act or rules were contrary to the AMRs then the AMRs prevailed. Significantly reg 9(3) provided:

*Except to the extent to which they are expressly applied by regulations made under the D.A. [Defence Act], no provision of the King's Regulations or of the Pay Warrants, now or hereafter in force, shall apply to the Military Forces, whether on war service or not.*

80. Regulations 11, 12, 13 and 14 gave power to the Military Board to exercise the powers and discretions under the Defence Act. Regulation 21 sets out the composition of the Military Board, which was charged with the control, *and administration of all matters relating to the Military Forces, in accordance with the policy directed by the Minister* (reg 27).

81. A member of the Permanent Forces could request discharge under regs 180, 181 and 182 and under reg 183 a commander could authorise the discharge of a member of the military forces under the relevant provisions of the Defence Act. Regulation 184 set out how a voluntarily enlisted soldier could be discharged. The reasons included making a false declaration, a parent's request if the member was under 21 years, the member was considered unfit for duties or classified non-efficient or medically unfit, the member was absent without leave or was guilty of misconduct.

82. The Military Board under reg 185(3) may have discharged a soldier if the soldier had been dealt with summarily and could have been discharged but was not. Regulation 186 set out the conditions when a trainee could be discharged.

83. Regulation 197 set out who was subject to military law and this included every member of the Permanent Forces at all times and every member of the CMF when on duty or in uniform. Peacetime offences were set out in reg 203 and included *sleeps or is drunk on his post, or leaves his post*, drunkenness, absented himself without leave, used violence against a superior officer, broke out of barracks or camp, if an officer, behaved in a scandalous manner, malingered, wilfully maimed or injured himself or was wilfully guilty of misconduct.

84. The penalties were set out in reg 215. Those penalties applied where no specific penalty was provided for the offence and could be applied by a civil court or a court-martial. For an officer the penalties ranged from imprisonment, dismissal, forfeiture of seniority, to a fine or a reprimand. For a soldier the penalties ranged from imprisonment, discharge, forfeiture of rank to a fine. There was no provision for forfeiture of medals. For example, the punishment for drunkenness was a fine. Regulation 216 set out the modifications to s 44 of the Army Act.

85. Division 7 dealt with the investigation of charges and the power of a commanding officer. Under reg 239 the commanding officer had the power to investigate a charge against an officer or a soldier in relation to an offence under the Defence Act, the Army Act or the AMRs. Regulation 242 set out the process to be followed where a member of the CMF was not on war service. If the member did not attend at the date and time appointed, the powers in relation to the charge could be exercised in his absence and he was deemed to have agreed to have the matter dealt with summarily. Regulation 248 provided that a commanding officer could deal summarily with any offence under the Defence Act, Army Act, or AMRs committed by a soldier. If the charge against the soldier was drunkenness, it would be dealt with summarily unless he had been convicted of drunkenness at least four times in the preceding 12 months. The types of charges that could be dealt with summarily when a soldier was on active service were being AWL, malingering and feigning illness or drunkenness. Examples of charges that could be dealt with summarily any time were asleep or drunk at his post, disobeying a lawful command, being involved in a quarrel or fray, breaking out of barracks, AWL, escape from lawful custody or drunkenness. First offences or offences not of a serious nature would be dealt with summarily. The punishments that could have been imposed summarily were detention up to 28 days if on active service and otherwise up to seven days. Other penalties were field punishment, forfeiture of pay, discharge, reduction in rank and fines. Regulation 276 provided that absence without leave for 21 days (deemed desertion in s 78 Defence



Act) would result in a court of inquiry. If the absent soldier did not surrender or was not apprehended, a declaration that the soldier had been absent for the period would have the legal effect of a conviction by court-martial.

86. Regulation 321(5) provided that discharge with ignominy could only be imposed for an offence committed on war service or with a sentence of detention or imprisonment. Paragraph 10 provided that discharge with ignominy should only be applied to a voluntarily enlisted soldier if that soldier has twice previously been convicted for desertion or fraudulent enlistment, fraud or 'disgraceful conduct'.

87. Division 2 of Part XII dealt with medal and decorations. Regulation 793 set out the requirements to be awarded the Long Service and Good Conduct Medal (LSGCM), which could be forfeited under reg. 795. This regulation was repealed in 1936.

88. Regulation 799 dealt with the forfeiture of war medals. An officer who was sentenced to death by court-martial, or who was cashiered or dismissed for misconduct would forfeit all war medals in his possession or to which he was entitled. A soldier who was sentenced to death by court-martial, who was discharged with ignominy or for misconduct, convicted by a civil power or sentenced to imprisonment for more than two years, would forfeit all war medals in his possession or to which he was entitled. The Military Board was given the discretion to impose the forfeiture of war medals if a member was found guilty by a civil power of an offence, but not convicted. The Governor-General on the recommendation of the Military Board could restore war medals (reg 800).

#### *World War II*

89. On 21 February 1941 an amendment to reg 9 added a number of the sections of the Army Act that did not apply to the Military Forces. The composition of the Military Board was modified on 4 December 1940.

90. The addition of reg 184A on 24 July 1942 and with further amendments on 29 September 1943 set out the reasons for discharge when a soldier was on war service. Regulation 184 was modified so that it applied to soldiers except in time of war. Pursuant to reg 184A(1) a soldier could be discharged if commissioned or transferred to the Navy or Air Force. A soldier could also be discharged if medically unfit, when found to be not suitable, if he had been convicted by a civil court for an offence involving dishonesty or physical violence or if he served a sentence of imprisonment. The amendments in 1943 added that a person could be discharged if under the age of 18 years, at his own request, on compassionate grounds or *that, by reason of numerous convictions, he is deemed to be incorrigible*. On 17 January 1945 the regulation was amended so that a member might be discharged if he had been sentenced during his service to detention for a period of not less than six months.

91. On 23 March 1943 reg 799 was repealed and a new regulation substituted. It provided:

*799. The Military Board may, in its discretion, order to be forfeited any war medal, awarded to any person in connexion with his service in the Australian Military Forces, which is in his possession or to which he is entitled, if-*

- (a) *in the case of an officer-*
  - (i) *he is, by sentence of court-martial, sentenced to death, cashiered or dismissed from His Majesty's Service or from the Defence Force;*
  - (ii) *he is, by sentence of civil court, sentenced to death, penal servitude or imprisonment; or*
  - (iii) *his commission is cancelled for misconduct ; and*
- (b) *in the case of a soldier, he is-*
  - (i) *by sentence of court-martial, sentenced to death, penal servitude, imprisonment, discharge with ignominy from His Majesty's Service or discharged from the Defence Force; or*
  - (ii) *by sentence of a civil court, sentenced to death, penal servitude or imprisonment.*

The medals could be restored on the recommendation of the Military Board (reg 800).

#### *Amendments from 1946*

92. On 5 February 1976 reference to the Military Board was removed. Regulation 9 which referred to the application of the Army Act and the rules and regulations under that Act was repealed on 3 July 1985. The regulations referring to the composition and powers of the Military Board were repealed on 1 July 1971 and 5 February 1976.

93. Regulations 184, 184A and 185 setting out the grounds upon which a member could be discharged from the Military Forces were repealed on 8 June 1965. All regulations dealing with offences and penalties were removed on 3 July 1985.

94. Regulations 792, 793, 794, 799 and 800 were repealed on 10 May 1955. This meant that the AMRs did not deal with the forfeiture and restoration of war medals after that date.

#### **Australian Military Regulations and Orders**

95. The Australian Military Regulations and Orders (AMROs) was described as a *complete code applicable to conditions, both of peace and of war service, in Australia and abroad, in such form that transition from one condition to another may involve as little change as possible in method of administration.*<sup>41</sup> The publications were designed with the Defence Act and the Army Act to contain all the relevant rules and regulations that applied to the Army. The publication contained the regulation in full together with a commentary on how that regulation applied in the form of an order. Some regulations did not require an explanation. In personnel files a reference would usually have been made to the relevant AMRO rather than the regulation. The numbering of the AMROs differs from the AMRs.

#### **Military Board Instructions and Defence Instructions**

96. On 9 July 1946 the Military Board issued *an Instruction for the administration of the granting forfeiture and restoration of war medals.* The Instruction was issued through the Director of Personal Services (DPS) and became known as a *staff instruction* rather than an MBI. A copy of the staff instruction is at Appendix 6. The

---

<sup>41</sup> P3 Preface AMROs 30 June 1955.

Military Board appeared to have based this Instruction on the UK Pay Warrants and referred to a delegation from the Army Council in 1922.

97. The Instruction defined *war medals* and *the date of execution of the sentence*. War medals were the medals issued to commemorate World War II. The date of execution of a sentence was the date the sentence of imprisonment or detention was completed or suspended, or the date the penalty was promulgated.

98. Part II dealt with withholding. The Instruction explained that withholding applied before a medal was issued to the person. Using the words of the Royal Pay Warrant, the Instruction advised that war medals would be withheld if the member had not rendered *approved service*. The member was deemed not to have rendered approved service if he had been convicted of treason, sedition, mutiny, cowardice, desertion, disgraceful conduct of an unnatural kind or if he had suffered death as a result of sentence by a court-martial or a civil court for an offence committed on service. A further ground for not rendering approved service was being declared an illegal absentee by a Court of Inquiry or Investigating Officer and still being illegally absent.

99. In relation to a particular campaign for a prescribed area, the member was deemed not to have rendered approved service if the member had been sentenced to penal servitude, imprisonment, cashiering, dismissal or discharge. If a member had been discharged by administrative action after being found guilty of misconduct and sentenced to least six months imprisonment, if he was unfit for duty with his corps, if his services were no longer required or if he had been found to be not suitable for military service, he would not have rendered approved service. These grounds for discharge were contained in regs 184 and 184A. If a member became qualified for the medal by a period of further service in the operational area, the medal would not be withheld. An amendment in 1949 modified the illegal absentee ground – if a person had been discharged in absentia because of an illegal absence commencing before 2 September 1945, the member would have their medals withheld.

100. Where a member had been discharged because he was deemed incorrigible by reason of numerous convictions, the decision on whether to withhold his war medals would be referred to the Director of Personal Services for a decision. A similar process applied if the person had been awarded a decoration or Mention in Despatches (MID), or an officer had had his commission cancelled, or he had been retired because of misconduct. A number of provisos to these conditions were set out in Part III of the Instruction.

101. Medals might be forfeited where final approval for the grant of the medals had been given and thus the person had a right to the medals. If a person had not been awarded a decoration or MID, he would forfeit all war medals on conviction for the offences set out in paragraph 98 above. If a Court of Inquiry or Investigating Officer had declared the member an illegal absentee he would forfeit his medals unless he surrendered or was captured.

102. Part V dealt with restoration of forfeited medals, but not withheld medals. Medals could be restored if the person provided meritorious service at a later date that outweighed *the stigma of any offence of which he was convicted*. A person who had

deserted from the battlefield would only have his medals restored if he *rendered meritorious service in actual combat with the enemy.*

103. On 21 September 1951 the Military Board issued a Military Board Instruction (MBI), which covered Awards, Medals, Forfeiture and Restoration, MBI 148 of 1951. MBI 148/1951 provided:

148. AWARDS - MEDALS - FORFEITURE AND RESTORATION.

*1. Campaign stars, commemorative war medals and clasps will be forfeited and restored under the following conditions.*

2. Forfeiture of Campaign Stars, Commemorative War Medals and Clasps

*(a) Every officer or soldier of the AMF -*

*(i) who has been convicted of treason, sedition, mutiny, cowardice, desertion or disgraceful conduct of an unnatural kind;*

*(ii) who has been cashiered, dismissed, removed or discharged from the Service with disgrace or with ignominy; or*

*(iii) whose commission has been cancelled*

*will forfeit any campaign star, commemorative war medal and clasp, of which he may be in possession, or to which he may be entitled by his service up to the date of conviction, or the date of cashiering, dismissal, removal or discharge.*

And under paragraph 7:

*7. Administration. -*

*(a) The above conditions for forfeiture and restoration of awards will be made retrospective for offences committed subsequent to 2nd September, 1939.*

Paragraph 3 dealt with the restoration of campaign stars, commemorative war medals and clasps. Paragraph 6 referred to medals for efficiency and long service and stated that the provisions regarding forfeiture and restoration of these medals could be found in the Regulations for Efficiency Decorations.

104. Three months later on 7 December 1951, the MBIs were amended. Sub-paragraph 2(a) was repealed and a new sub-paragraph 2(a) inserted such that:

*2. Forfeiture of Campaign Stars, Commemorative War Medals and Clasps*

*(a) Every officer or soldier of the AMF -*

*(i) who has been convicted of treason, sedition, mutiny, cowardice, desertion or disgraceful conduct of an unnatural kind;*

*(ii) who has, by sentence of court-martial been cashiered, dismissed from His Majesty's service, discharged with ignominy from His Majesty's service, dismissed or discharged from the Defence Force;*

*(iii) whose commission has been cancelled, or who has been retired and such retirement is recorded into his record of service as being on account of an offense or misconduct of any kind during his service;*

*(iv) who has been discharged from the Military Forces for any of the reasons specified in AMR 184(1)(x), (xi) or (xiii) or AMR 184A(1)(k), (m) or (mm);*

*(v) who has been discharged from the Military Forces for any of the reasons specified in AMR 184(1) or AMR 184(A)1 and such discharge*

*is recorded into his record of service as being on account of misconduct during his service, or discreditable service, or is classified as “dishonourable discharge”;*

*will forfeit any campaign star, commemorative war medal and clasp, of which he may be in possession, or to which he may be entitled by his service up to the date of conviction, or the date of cashiering, dismissal, retirement, the cancellation of his commission or discharge.*

105. Regulation 184(1)(x), (xi) and (xiii) [see AMRO 253] allowed for discharge in the following circumstances:

- the member was absent without leave;
- the member was guilty of misconduct; or
- the member was sentenced during his service to penal servitude or imprisonment by a civil court.

106. Regulation 184A(1)(k),(m) and (mm) [see AMRO 253A] allowed for discharge in the following circumstances:

- the member is deemed to be incorrigible because of numerous convictions;
- the member was sentenced during his service to penal servitude or imprisonment by a civil court or by court-martial; or
- the member was sentenced during his service to detention for a period of not less than six months.

107. Regulation 184(1) set out when a soldier who had voluntarily enlisted in the Military Forces could be discharged other than in times of war. The reasons for discharge included - making a false statement on his attestation, being considered unfit for the duties of his corps, absence without leave or being guilty of misconduct. Regulation 184A(1) set out how a soldier on war service could be discharged. The reasons for discharge included - by reason of numerous convictions he is deemed incorrigible, before enlistment he had been convicted by a civil court for a dishonesty or violence offence or the soldier was sentenced during his service to penal servitude or imprisonment. Regulations 184 and 184A were repealed on 8 June 1965 and replaced with reg. 176 that set out the grounds for discharge.

108. Instruction 148 was reissued over the years (MBIs 22/1954, 44/1960). On 24 January 1963 it was reissued with the same wording in all material respects as MBI 102-1. On 9 September 1975 due to the reorganisation of the Defence Force, the Military Board ceased to exist and no further MBIs were issued. Existing MBIs continued in effect until they were repealed or replaced by Defence Instructions. According to s 23(4) of the *Defence Force Re-Organisation Act 1975* the existing MBIs were deemed to be Defence Instructions under s 9A.

109. MBI 102-3 issued on 23 December 1968 set out the conditions for the award of the Vietnam Medal. Paragraph 21 stated *(T)he medal may be forfeited and restored in accordance with MBI 102-1*. Similarly MBI 102-2 AMDT No 2 of 8 August 1969 provided in relation to the General Service Medal 1962 that the medal could be forfeited or restored under MBI 102-3.

### *Dishonourable Discharge*

110. The term dishonourable discharge was referred to in MBI 187/1948 (8 October 1948), which cancelled the earlier General Routine Order (GRO) of 15 February 1946. Both Orders were used to deny a member who had been dishonourably discharged from receiving discharge benefits. The reasons for dishonourable discharge were much the same as those set out for forfeiture of medals. MBI 187- 2 stated:

*2. Reason for dishonourable discharge. - A member discharged for any of the following reasons will be deemed to be dishonourably discharged and ineligible for any of the discharge benefits referred to in para 3 of this instruction.*

*(a) In the case of an officer-*

*(i) if he is sentenced by court-martial to penal servitude, or imprisonment, or to be cashiered, or to be dismissed from His Majesty's service, or*

*(ii) his commission is cancelled*

*(b) in case of a soldier-*

*(i) if he is sentenced by court- martial either to be discharged with ignominy from His Majesty's service or to be discharged from the Defence Force; or*

*(ii) if he is discharged or dismissed by the Governor-General under DA 44; or*

*(iii) if he is discharged for any of the following reasons:-*

*(a) that by reason of numerous convictions he is deemed to be incorrigible; or*

*(b) that he has been sentenced during his service to penal servitude or imprisoned by a civil court or court-martial; or*

*(c) that he has been sentenced during his service to detention for a period of not less than six months; or*

*(iv) if he is discharged for any of the following reasons and such discharged is recorded in his record of service as deemed to be on account of either misconduct during his service or discreditable service:-*

*(a) that he is considered unfit for the duties of his corps; or*

*(b) that he is considered unsuitable for any further military service; or*

*(c) that he has made a false answer on attestation; or*

*(d) that his service for any reason deemed sufficient by the Military Board are no longer required.*

...

111. The MBI issued on 6 February 1953 as amended in 1956 to 3/1957 included paragraph 55 *Discharge in Time of Peace*. It was reissued in 1959 as MBI 42. The introduction noted that it was no longer appropriate for the authorising officer to classify discharges as honourable or dishonourable. However, all previous classifications would stand. It was still necessary to distinguish between honourable and dishonourable discharges because of the loss of benefits attached to dishonourable discharge. The reason for discharge would be recorded in the personal record of a member and the Certificate of Discharge, but not 'honourable' or 'dishonourable'

discharge. An officer would be dishonourably discharged if sentenced to be cashiered by court-martial, if his commission was cancelled or for misconduct. A soldier would be dishonourably discharged if sentenced by court-martial to be discharged with ignominy, or to be discharged because he committed a crime on service.

112. Defence Instruction (General) Personnel (DI(G) PERS) 31-8 – *Forfeiture, restoration and replacement of decorations, medals and war badges* was promulgated on 17 September 2002 dealing with the forfeiture, restoration and replacement of decorations, medals and war badges. The Instruction applied where there were no specific provisions relating to the forfeiture and restoration of an award. There were both mandatory and discretionary provisions for the forfeiture of an award depending upon the offence.

113. The mandatory forfeiture of awards would occur for providing aid to the enemy in the following circumstances:

- treason;
- receiving or assisting a person known to be guilty of treason, or for not preventing treason;
- treachery;
- inciting mutiny;
- assisting prisoners of war to escape;
- sabotage of assets;
- aiding the enemy;
- communicating with the enemy with the intention of assisting;
- taking part in a mutiny;
- sedition in time of war;
- cowardice in the face of the enemy; or
- convicted of desertion in the face of the enemy from an operational area or while on recreational leave from an operational area.

114. The discretionary forfeiture of awards would occur for:

- conviction for a crime or offence or for acts which are considered to be so disgraceful or serious that it would be improper for the offender to retain the award;
- Gallantry and Distinguished Service decorations would only be forfeited in extreme situations;
- A decision that one award should be forfeited does not mean that any other award should be forfeited;
- The quality of the member's entire service should be taken into account; and
- A dishonourable or disciplinary discharge or termination would not of itself be a reason for forfeiture of awards but may be taken into account.

An award would be forfeited if it was obtained by making a false declaration.

115. The decision that an award was to be forfeited was to be made by the CDF on the recommendation of the Director Honours and Awards. The member would have

been given the opportunity to put his or her case forward before the decision was made.

116. Awards that had been subject to mandatory forfeiture would only be restored if the conviction on the basis of the forfeiture was overturned. The matters that would have been taken into account when considering whether to restore awards were:

- the age, physical and mental condition of the member at the time of the forfeiture;
- any mitigating circumstances resulting in a significant downgrading of the offence;
- if under contemporaneous standards the person would not have forfeited the award; and
- the subsequent behaviour and activities of the person either in the ADF or in civilian life.

This Instruction was repealed in 2012 on the establishment of the Defence Honours and Awards Manual.

#### *Defence Honours and Awards Manual*

117. The policy with respect to the forfeiture and restoration of service awards is contained in chapter 46. The policy refers to mandatory and discretionary forfeiture. The guidelines for mandatory forfeiture are the same as those set out in DI(G) PERS 31-8 as are the guidelines for discretionary forfeiture. The policy provides that restoration will only be considered where the person is still living and can therefore make a personal application. *Applications on behalf of deceased members will not be considered.* Restoration of medals will be based solely on the merits of the argument presented.

## **Conclusion**

118. In relation to the power to forfeit medals, the following legal provisions apply to the Army:

#### *Ordinary Service*

- Defence Act
- Defence Force Discipline Act
- Australian Military Regulations (AMRs)
- Court-martial Procedures in King's/Queen's Regulations
- Military Board Instructions (MBIs)
- Defence Instructions General and Army (DI(G) & (A))
- Letters Patent and Royal Warrants
- Defence Honours and Awards Manual (DHAM)

#### *Active Service*

- Defence Act
- Defence Force Discipline Act
- Army Act (UK)
- Australian Military Regulations AMRs
- Court-martial Procedures in King's/Queen's Regulations



- Military Board Instructions (MBIs)
- Defence Instructions General and Army (DI(G) & (A))
- Letters Patent and Royal Warrants
- Defence Honours and Awards Manual (DHAM)

119. From the commencement of World War II, medals could be forfeited at any time until 1977 under the particular condition in s 80B of the Defence Act. Campaign medals could be forfeited under reg 799 of the AMRs. On active service Campaign medals could be forfeited pursuant to s 44 of the Army Act as part of the penalty imposed for conviction of an offence. Given the modification to s 44 for the Army, the penalty of forfeiture of medals could only be imposed for the offences set out in reg 799. Convictions for offences could be obtained either by court-martial or by following the summary procedure. Of particular note is the provision in the AMRs that a conviction for desertion could be obtained if the soldier was absent for 21 days or more and had not either surrendered or had been captured. Following an investigation a declaration that the soldier had deserted would be deemed a conviction. All the decisions relating to forfeiture were discretionary.

120. On 9 July 1946 the Military Board issued an Instruction on forfeiture and restoration of war medals. Most decisions regarding the forfeiture of medals after World War II were made on the basis of this Instruction. If a member did not provide approved service that included being an illegal absentee, his campaign medals would be forfeited (mandatory). If a member was discharged on a number of the grounds set out in reg 184A their medals could be forfeited (discretionary). An amendment in 1949 elaborated on the illegal absentee ground – if a person had been discharged in absentia because of illegal absence commencing before 2 September 1945, the member would have their medals withheld.

121. From 1951 onwards a member would forfeit campaign medals for an expanded number of reasons including conviction of certain offences from 2 September 1939 onwards under the MBI 148/51. The Tribunal carefully considered whether this could be considered a retrospective decision. It concluded that the decision was not retrospective because the decision could only be made after the MBI came into operation. The Military Board could take into account all existing information, including past convictions, when it made its decision.

122. The term 'dishonourable discharge' was first referred to in a GRO and then in an MBI. The reasons for being classified 'dishonourable discharge' were similar to the reasons for forfeiting medals set out in MBI 148/51. 'Dishonourable Discharge' became a ground for forfeiture of campaign medals in late 1951.

123. The Tribunal finds that there was legal authority for the forfeiture of campaign medals in the Acts and in military law set out in the Regulations until 1955 and continued in the MBIs and Defence Instructions.

## The Navy

### Naval Defence Act 1910<sup>42</sup>

124. The Naval Defence Act 1910 (the ND Act) received Royal Assent on 25 November 1910. Section 3 defined words and phrases used in this Act. ‘Active service’ was defined as service with a force engaged in operations against the enemy including at times of war. ‘The Naval Discipline Act’ was defined as the Imperial Act as amended from time to time. ‘Regulations’ included those regulations relating to the Navy under the ND Act, the Defence Act or any other power. ‘This Act’ included all regulations under the ND Act.

125. Sections 5, 30, 43, 46, 47, 51, 53 and 58 and Parts IV to XIV of the Defence Act continued to apply to the Navy subject to the ND Act. The Naval Board administered the Navy with such powers and functions as prescribed. According to s 36, the Naval Discipline Act and the King’s Regulations and Admiralty Instructions (KR&AI) applied to the Navy subject to the ND Act and modifications in the regulations. The Governor-General was given the power in s 45 to make regulations for *securing the discipline and good government of the Naval Forces*.

### World War II

126. A proviso was added in 1918 to s 5 so that any reference to the Minister was construed as the Minister administering the ND Act when applying the sections of the Defence Act.<sup>43</sup> The *Naval Discipline (Dominion Naval Forces) Act 1911* was added to s 36 in 1912.<sup>44</sup> Otherwise the ND Act remained the same.

### Post-World War II to 1973

127. There were minor amendments updating the definitions. ‘The Naval Discipline Act’ was defined as the Imperial Act called the Naval Discipline Act 1957, as in force on 6 November 1964. Section 5 was amended so that Part I, ss 12, 13, 30, 50A, 50B, 51, 58 and Parts IV and Parts VI to XI of the Defence Act applied to the Navy.

128. Section 36 was repealed on 6 November 1964 and a new s 34 which applied the Naval Discipline Act and the Queen’s Regulations and Admiralty Instructions (QR&AI) came into force on 6 November 1964 subject to the modifications and adaptations of the regulations.<sup>45</sup> An amendment to s 45 on 28 October 1949 added subsection (2) which provided that the regulations could make provision for penalties for breaches of the regulations.

### 1991

129. By 1991 the terms ‘active service’, ‘the Defence Act’ and ‘the Naval Discipline Act’ were removed. Sections 5, 8 and 34 were all repealed on 3 July 1985 by the *Defence Force (Miscellaneous Provisions) Act 1982*. Section 45 was amended so that regulations could be made *for securing the good government of the Navy, or for carrying out or giving effect to this Act*.

---

<sup>42</sup> The hierarchy of law that applies to the Navy is set out in Appendix 7b.

<sup>43</sup> s 3 Naval Defence Act 1918 No 45 assented to 25 December 1918.

<sup>44</sup> s 3 Naval Defence Act 1912 No 21 assented to 24 December 1912.

<sup>45</sup> s 13 Naval Defence Act 1964 No 93 assented to 6 November 1964.

## The Naval Discipline Act

130. The Imperial Naval Discipline Act 1866 was applied first by the Defence Act 1903 and then the Naval Defence Act 1910 to the Australian Naval Forces. The Tribunal was unable to locate the Acts of the UK Parliament that amended the Naval Discipline Act. Instead the Tribunal considered an Australian reprint of the Naval Discipline Act in 1915 and UK reprints of 1918, 1922, 1938 and 1941.

131. The Naval Discipline Act received Royal Assent on 10 August 1866 and was an *Act to make Provision for the Discipline of the Navy*. The Act commenced with the offences and penalties applicable to the Royal Navy and by application after 1910 to the Royal Australian Navy. The first offence set out in s 2 was misconduct in the presence of the enemy and provided that if a commanding officer *had acted traitorously* he shall suffer death. If he acted from cowardice the penalty would be death. Otherwise a lesser penalty could be imposed. According to s 9 a member who neglected his duty by deserting his post or sleeping on duty would be dismissed with disgrace or another lesser penalty.

132. Desertion and Absence without Leave (AWL) were dealt with in s 19. Desertion to the enemy was punishable by death. Desertion in any other circumstances was punishable by penal servitude or a lesser penalty. Additionally the person would forfeit all pay and *other benefits and pensions, gratuities, medals and decorations that may have been granted*. The penalty for being AWL under s 23 was imprisonment in times of war and at other times detention for up to 10 weeks or a lesser punishment. If a person was AWL for a month or more and not apprehended and tried for this offence, he would be liable to forfeit his wages and other benefits as prescribed in the regulations (s 24).

133. The penalty for profane swearing and other immoralities was dismissal with disgrace or a lesser punishment (s 27). The penalty for offences against naval discipline not described in the earlier sections was dismissal with disgrace or a lesser punishment (s 43).

134. A court-martial may have found that an offence had been committed but imposed a lesser punishment depending on the circumstances of the case (s 47). According to s 52 the punishments that could be imposed for offences ranged from death, imprisonment, detention, fines to reprimand or *such minor punishments as are now inflicted according to the custom of the navy*. Subsection 10 allowed for the forfeiture of medals and decorations granted to the offender. For Australia the Naval Board was given the power to suspend, annul, or modify any sentence or to substitute an inferior punishment (s 53(1)). Pursuant to s 53(6) dismissal with disgrace would always have involved forfeiture of medals and decorations that had been granted to the offender.

### *World War II*

135. The above provisions of the Naval Discipline Act remained in force virtually unchanged during World War II.

1957

136. On 1 September 1957 the *Naval Discipline Act 1866* was replaced by the *Naval Discipline Act 1957* which received Royal Assent on 31 July 1957. The Act made provision for the discipline of the Navy and other purposes connected to the Navy.

137. Section 6 set out the offence of sleeping on watch or abandoning the person's post. The penalty was imprisonment or a lesser punishment authorised by the Act. Neglect of duty resulted in a punishment of dismissal with disgrace or a lesser punishment (s 7).

138. Section 15 set out the offence of desertion, which was defined as the person leaves or fails to attend the ship or place of duty with the intention of remaining permanently absent without proper authority. The punishment was imprisonment or a lesser penalty. The person would have also forfeited all annuities, pensions and gratuities unless the court or officer otherwise directed. Section 17 dealt with AWL or when a person improperly left the ship or place of duty. The punishment for this offence was imprisonment for up to two years or a lesser punishment as well as forfeiture of pay or benefits as prescribed by the regulations.

139. The offence of malingering or drunkenness resulted in a punishment of imprisonment or a lesser punishment (s 28). There was an offence of pawns, sells, destroys, loses by negligence or damages a decoration which resulted in possible imprisonment for up to two years or a lesser punishment (s 31).

140. According to s 36 every officer who was guilty of cruelty or scandalous conduct unbecoming the character of an officer would be liable to dismissal with or without disgrace. Every person guilty of disgraceful conduct of an indecent kind was liable to be dismissed with disgrace or a lesser punishment.

141. Section 43 set out the punishment that could have been awarded if a person was convicted of an offence. The punishments ranged from death, imprisonment, dismissal, detention, forfeiture of seniority, reprimand, to a fine. According to s 44(1) a sentence of imprisonment of two years or more would also have involved dismissal with disgrace. A sentence of imprisonment of up to two years would also have involved in the case of a rating, deprivation of good conduct medals and badges.

#### *Naval Discipline (Dominion Naval Forces) Act 1911*

142. This Imperial Act received Royal Assent on 16 December 1911. It applied the *Naval Discipline Act* to the ships of the Australian Naval Forces as described in s 36 of the *Naval Defence Act 1910*.

#### *Application of the Defence Act*

143. The ND Act provided that sections and parts of the Defence Act continued to apply to the Navy after the ND Act came into operation. The 'Naval Discipline Act' was defined in s 3 of the Defence Act as the Imperial Naval Discipline Act.

144. Sections 30, 43, 46, 47, 51, 53 and 58 dealt with the constitution of the Armed Forces and how they were to be used. Part VII dealt with offences and Part VIII

Courts-Martial. The offences dealt with fraudulent conduct as a serviceman and with the disposal of war decorations, which applied to the Navy.

145. According to s 78 any member liable to be employed for active service who absented himself without leave for longer than seven days, was deemed to be a deserter and *punished accordingly*. The penalty for bringing contempt on any uniform of the Defence Force was a fine of up to £20 (s 84).

146. Section 88 provided that the laws and regulations in force for King's Regular Naval Forces in relation to courts-martial, would apply to the Australian Naval Forces and s 97 stated that any member of the Defence Force found guilty of a naval offence was to be punished according to the punishment set out for that offence. The person could also be dismissed or discharged from the Defence Force. If the punishment was penal servitude the person may have been sentenced to imprisonment (s 106).

147. In 1917 a definition of naval offence was added. It provided that an offence against the Naval Discipline Act was a naval offence. On 6 November 1964 the definition of Naval Discipline Act was removed and replaced by the same definition as in the ND Act. That is, the Imperial Naval Discipline Act 1957 applied to the Naval Forces. On 3 July 1985 all references to the Naval Discipline Act were removed.

### **Naval Regulations**

148. The Naval Regulations under the ND Act were set out in Statutory Rules 133 of 1935 approved on 11 December 1935. Regulation 4 set out definitions of terms used in the regulations. 'The Acts' was defined as the ND Act and any later Acts.

149. Section II applied the Imperial Naval Discipline Act and the KR&AI to the Navy. Regulation 7 provided that the regulations should not be construed so as to prevent the application of the Naval Discipline Act to the Navy while on active service. Pursuant to reg 8(a) references to the Admiralty were to be read as references to the Naval Board. The Naval Board was vested with the powers exercised by the Admiralty. All powers vested in His Majesty were vested in the Governor-General. Further changes were made to ensure that the Naval Discipline Act was modified for Australia.

150. Regulation 9 provided that any matter not provided for in these Regulations would be dealt with by the KR&AI. Regulation 11 set out the membership of the Naval Board that under reg 12 was responsible for the control and administration of all matters related to the Naval Forces.

151. According to reg 122 the Governor-General may have cancelled the commission of any officer of the Naval Forces guilty of improper conduct, a civil offence, bringing discredit on the Service or negligence in the performance of his duties. Regulation 132 specifically applied the regulations contained in certain chapters of the KR&AI to the Naval Forces. Those regulations were modified by adding certain clauses and stating that certain clauses would not apply. Clause (k) stated that a LSGCM that had been forfeited for misconduct could have been restored

by the Naval Board if a petty officer or seaman recorded 'Very Good' for character for a further five years. The medal could also have been restored for special service.

152. Regulation 155 set out the conditions for the Conspicuous Gallantry Medal, which could have been granted to petty officers and seamen of the Permanent Naval Forces if recommended by the Naval Board to the Governor-General. The Admiralty would then adjudicate on the award of the medal. The person *may be deprived of it [the medal] with the approval of the Governor-General* and restored if appropriate, also by the Governor-General.

#### *World War II*

153. The membership of the Naval Board was modified in 1940 and again in 1942.

#### *Post-World War II*

154. The membership of the Naval Board was again modified in 1947, 1954, 1959 and 1961. Regulation 11 dealing with the composition of the Naval Board was repealed on 3 October 1972. On 1 January 1959 reg 8 was replaced. Regulation 8 modified the application of the Naval Discipline Act to the Naval Forces so that UK references were amended to Australian references.

155. On 27 May 1965 regs 7 and 9 were repealed. Regulation 8 was amended by omitting the reference to s 36 and replacing it with s 34 of the Naval Defence Act.

### **King's/Queen's Regulations and Admiralty Instructions**

#### *KR&AI 1932*

156. In 1932 Article (A) 562a of the KR&AI provided for the forfeiture of medals. The punishment awarded for *treason, sedition, mutiny, cowardice or disgraceful conduct of an unnatural kind should always include the forfeiture of any campaign and commemorative medals*. However medals and decorations for gallantry in the possession of the person should not be forfeited automatically. Instead a report should be made to the Admiralty and in Australia, to the Naval Board.

157. *Good Conduct medals*. The LSGCM and badge would have been forfeited for desertion, imprisonment by the civil power, detention, disrating for misconduct, reduction to second class for conduct or assessment of character less than 'Very Good'. The medal could then have been restored following five years of 'Very Good' conduct (A 563(3)).

158. *Desertion*. Article 588 stated that if any person below the rank of officer belonging to a ship on sailing orders was absent without leave, the Captain would mark the ship's books against his name with 'RQ'. If the person was absent for seven or more days, his name in the ship's books was to be marked 'RUN'. If the person was absent for more than three months the Captain may have discharged him from the ship's books (A 589(1a)).

159. A person found to have been a deserter may have forfeited amongst other things *medals and decorations (including good conduct medal) which may have been granted to him* (A 589(6)). The service tribunal that finds that the person was guilty of desertion was to record a decision on whether medals were to be retained or

forfeited at its discretion. This includes medals that had been issued but not yet in the person's possession. If the desertion occurred in the face of the enemy, the service tribunal needed to remit the forfeiture of gallantry medals or decorations to the Admiralty (in Australia, to the Naval Board). Campaign medals would have been forfeited. A deserter, who has not been reclaimed, was disqualified from the grant of a medal or decoration not already awarded, but not for a gallantry award except if the desertion was during hostilities, then it was at the discretion of the Naval Board.

*KR&AI 1938*

160. Pursuant to A 535 the Captain was authorised to award a number of the punishments set out in A 540 Table II. However before the penalties *Dismissal with Disgrace* and *Dismissal from the Service* could be imposed, the Naval Board needed to give approval. The Captain was able to impose penalties that included imprisonment, detention, deprivation of LSGCM, disrating and deduction from pay. The Captain could delegate the power to punish to certain officers (A 536).

161. The limits on the authority of the Captain to try offences were set out in A 551. An offence with a punishment of imprisonment could have been tried summarily although the maximum punishment that could have been imposed was three months imprisonment. The maximum period of imprisonment for being AWL was 10 weeks except in times of war.

162. *Dismissal with Disgrace*. A person would only have been dismissed with disgrace for offences of a disgraceful, immoral character or for a continued course of such conduct. The person would need to have been considered unworthy to serve in the Navy. All medals and decorations awarded to the person were to be forfeited (A 541).

163. Article 562a remained the same. The LSGCM could be deprived summarily by warrant for misconduct. The medal was also deprived for desertion and for a sentence of imprisonment (A 563). The medal was automatically forfeited for desertion during hostilities. The medal can have been restored on the grounds set out above in A 563(3).

164. *Desertion*. The procedure for recording whether a person had deserted remained the same. If a person dealt with summarily for desertion was found guilty, a decision must have been made and recorded as to whether medals and decorations should have been retained or forfeited. If a court-martial convicted the person of desertion the court could have remitted the forfeiture of medals. The forfeiture or retention of medals and decorations was at the discretion of the service tribunal except for gallantry awards and decorations, which should be remitted. Deserters who were not reclaimed forfeited medals and decorations they had not received, but not gallantry awards and decorations (A 589(6)).

165. Medals may have been restored in certain circumstances, namely:

- On completion of three periods of 'Very Good' service;
- On promotion to petty officer or sergeant;
- On mobilisation from the reserve;
- On re-engagement after serving the first period of service;

- At the discretion of the Admiralty (Naval Board) after recognition of meritorious service; or
- For ‘Very Good’ service following re-engagement if discharged before three years (A 589(8)).

#### *KR&AI 1943*

166. There were no changes with respect to the forfeiture provisions.

167. *Desertion.* The procedure for classifying a person as a deserter remained the same with the following addition. If the Captain was subsequently satisfied that there was no intention to desert he could have removed the ‘R’ from the ship’s books, provided that the person had not been convicted. ‘R’ could have been removed by the Admiralty (Naval Board) if the person subsequently served for three more years with ‘Very Good’ recorded in their file.

168. If a person deserted a second time his medals would have been forfeited unless the service tribunal or the Admiralty (Naval Board) ordered otherwise. If the desertion was during hostilities the same rules applied as before (A 589). Medals could have been restored for the same reasons as above in A 589(8).

#### *KR&AI 1948*

169. Articles 167a and 562a provided that a member dismissed with disgrace or convicted of desertion, forfeited medals under the Naval Discipline Act. The remainder of the Articles was essentially the same with respect to forfeiture.

#### *Admiralty Fleet Order 1949*

170. Article 745 provided that a member’s campaign medals earned in World War II would only have been restored to a deserter during hostilities if they had rendered approved service before a date relevant to each medal or star. The latest date was 2 September 1945. This provision was repealed in 1951.

#### *QR&AI 1953*

171. The provisions in A 562a were now found in A 1956(3). Restoration was now found in A 1957 and A 2072. The provisions relating to the LSGCM were found in A 1959 and had not changed in any material sense. Article 1931 of Section V dealt with summary punishments.

#### *Commonwealth Navy Orders*

172. On 23 March 1959 Commonwealth Navy Orders (CNO) 231-261/59 were promulgated. Article 237 provided for the forfeiture of medals. After noting that the Naval Discipline Act no longer made provision for the forfeiture of medals and decorations as a consequence of desertion, it was noted *Medals and Decorations will continue to be liable to forfeiture but each case should be submitted to the Naval Board for direction.* This advice was repeated in the CNOs of 1960 and 1962. The Tribunal notes that the old Naval Discipline Act continued to apply to the RAN until 1964 and thus the forfeiture provisions continued to apply until that date.

#### *QR&AI 1 January 1959*

173. The Act referred to in this Chapter is the Naval Discipline Act 1957. This Act did not apply to the RAN until 1964. Article 2070 provides for the restoration of



forfeited medals other than LSGCM. In summary these medals could have been restored if the person completed at least three years' service with 'Very Good Conduct'. However if the desertion took place during hostilities the medals would only have been restored if the further service was during the period of hostilities when the person deserted. Article 2071 set out a procedure for having 'R' removed from a person's file.

174. Article 2211 noted that there was no longer provision for the forfeiture of medals in the Act, other than the LSGCM. Forfeiture of all other medals was pursuant to the Instrument establishing the medal. The Article provided that a person convicted by court-martial of treason, sedition, mutiny, desertion, offences committed with the intent of assisting the enemy or cowardice, or having been dismissed with disgrace, would forfeit campaign or commemorative medals in his possession or to which he was entitled up to the date of his conviction. (The particular offences were set out in ss 2, 3, 4, 5, 9, 10, 16, 36, and 37 of the Naval Discipline Act 1957.) A medal, decoration or order for gallantry would not be forfeited as a result of a conviction. Instead the Admiralty would decide whether the medals would be forfeited.

#### *QR&AI 1960*

175. The rules relating to the LSGCM were set out in Article 1977 and provided that a rating would be deprived of the medal for imprisonment, dismissal, detention, etc., as well as for the deprivation of two or more good conduct badges. The medal would be forfeited for desertion or the classification of less than 'Very Good'. Pursuant to A 1978 the LSGCM may have been restored on the same grounds as set out in earlier versions of the QR&AI.

#### *Australian Navy Order (ANO 542/67)*

176. ANO 542/67 was issued on 21 December 1967 after the new Naval Discipline Act applied to the RAN. Chapter 19 of Appendix B deals with the deprivation of LSGCM. The grounds for mandatory deprivation were imprisonment, dismissal, detention, reduction in rank or the deprivation of two or more good conduct badges. The medal was also deprived for desertion or if his conduct was assessed as less than 'Very Good'. The medal could have been restored for special service or the completion of five years 'Very Good' conduct. The person would not have forfeited the LSGCM for minor offences such as not answering muster or carelessness with respect to arms.

177. Similar provisions were set out in Australian Books of Reference (ABR) 5016 of 7 July 1970, 5 January 1973 and July 1974.

#### *QR&AI 1977*

178. Articles 2211 and 2227 repeated the provisions of 1959.

#### *The Manual of Naval Law – April 1984*

179. Article 2136(15) provided that a person sentenced to a period of more than two years imprisonment would be dismissed with disgrace and the person would forfeit the LSGCM. A sentence of imprisonment carried with it the forfeiture of LSGCM.

180. Forfeiture of medals and decorations applied to a conviction for treason, sedition and the most serious offences under the Naval Discipline Act 1957 or the person had been dismissed with disgrace. The Commanding Officer had the power to deal with certain offences summarily.

#### *Conclusion*

181. In relation to the Navy's power to order forfeiture of medals, the Tribunal must consider:

#### *Ordinary and Active Service*

- Defence Act
- Defence Force Discipline Act
- Naval Defence Act
- Naval Discipline Act (UK) old and new
- King's/Queen's Regulations and Admiralty Instructions
- Naval Board Orders including the Admiralty Fleet Orders, the Australian Navy Orders and the Manual of Naval Law
- Defence Instructions including Naval Instructions
- Letters Patent and Royal Warrants
- Defence Honours and Awards Manual

182. As mentioned in paragraphs 124 and 125, the ND Act became responsible for the administration of the Navy on 25 November 1910. Significant amendments were made to the Defence Act at this time, although many sections continued to apply to the Navy. The Naval Board remained the administrator of the Navy and the Governor-General had the power to make regulations for the good order and discipline of the Navy. Most significantly s 36 applied the UK Naval Discipline Act and the King's and then Queen's Regulations and Admiralty Instructions to the Navy.

183. In 1956 the Naval Discipline Act was replaced by a new Act. In 1964 s 36 of the ND Act was repealed and replaced with a new s 34 which applied the Naval Discipline Act in force on 6 November 1964, which was the new Naval Discipline Act. This is in sharp contrast to the Army (and the Air Force) where the old Imperial Acts continued to apply.

184. The Naval Board was removed from the Naval Defence Act in 1975. All references to offences and disciplinary procedures in the Act were removed on 3 July 1985 when the DFDA came into force.

185. The Imperial Naval Discipline Act set out the offences and penalties that were applicable to the Navy. The penalty for desertion to the enemy was imprisonment and included the forfeiture of medals (mandatory). At other times the penalty was imprisonment or detention and included the possibility of forfeiture of medals (discretionary).

186. The penalty for the offence of AWL was detention or a lesser punishment. Included in the lesser punishments was the possibility of forfeiture of medals and decorations granted to the offender (discretionary). If a person was dismissed with disgrace from the Navy, they would also forfeit their medals (mandatory). These

provisions remained in force with minor amendments until the new Naval Discipline Act replaced the Act in 1964.

187. The new Act came into force in 1957 but did not take effect in Australia until 1964. So between 1957 and the 6 November 1964 the old Imperial Act continued to apply. From 1964 the penalties for particular offences and more generally, no longer included forfeiture of medals. For a rating imprisonment of two or more years would have involved forfeiture of a LSGCM and badges.

188. Under the Naval Regulations the powers exercised by the Admiralty were vested in the Naval Board and the powers exercised by the King were vested in the Governor-General. These provisions were repealed in 1965. Under reg 155 a person could have been deprived of the Conspicuous Gallantry Medal if approved by the Governor-General and it could similarly have been restored.

189. Until 1964 A 562a1 of the QR & AI provided that the punishment awarded for *treason, sedition, mutiny, cowardice or disgraceful conduct of an unnatural kind should always include the forfeiture of any campaign and commemorative medals* (mandatory); however medals for gallantry would not be forfeited automatically (discretionary). The LSGCM was forfeited for desertion, imprisonment by a civil power, and various misconduct offences. The medal could have been restored following five years and later three for 'Very Good' conduct. Certain lesser offences could have been tried summarily.

190. The process for desertion was to record 'RUN' in the ship's books if a person was absent for more than 7 days. A person found to be a deserter could have forfeited their medals at the discretion of the service tribunal. Desertion on active service would have resulted in forfeiture of medals (mandatory). Gallantry medals may have been forfeited at the discretion of the Naval Board if the desertion was in the face of the enemy. If the deserter was not 'reclaimed' they were disqualified from receiving campaign medals. If a person was found guilty of desertion summarily a decision needed to be made and recorded as to whether the person would have forfeited their medals (discretionary). A court-martial could have remitted the decision on forfeiture of medals (discretionary). This meant that the Naval Board would have made the decision. If a person deserted a second time his medals would have been forfeited (mandatory). Medals could have been restored if certain service conditions were met. A person dismissed with disgrace, forfeited their medals because they were considered unworthy to serve (mandatory).

191. From 1957 the QR&AI obtained its authority from the new Naval Discipline Act 1957 although the repealed Naval Discipline Act continued to apply in Australia. The new Act did not impose the penalty of forfeiture of medals set out in the former Act. Rather it referred to the Instrument creating the medal as the source of the power to forfeit medals. A conviction by court-martial for certain offences would have resulted in the forfeiture of campaign medals. In 1977 the number of these offences was reduced. There was provision for the restoration of any forfeited medals. Medals for gallantry were not forfeited. Similar provisions continued to apply to the LSGCM under the Australian Naval Orders and the Manual of Naval Law.

## **The Air Force**

### **The Air Force Act 1923<sup>46</sup>**

192. The *Air Force Act* 1923 received Royal Assent on 1 September 1923 and authorised the formation of the Royal Australian Air Force (Air Force) and applied the Defence Act to its operations. By 15 December 1939 s 3 of the Act applied the same provisions of the Defence Act as was applied by the Naval Defence Act. However the Imperial Army Act was specifically excluded from applying to the RAAF (s 5).

193. The Air Force Act was amended on 15 December 1939 so that the Imperial Air Force Act applied to the Air Force as modified by the Air Force Regulations. The Governor-General was given the power to make regulations for the discipline and good government of the Air Force (s 9). There was no reference to the forfeiture of medals in any version of the Air Force Act. The Imperial Air Force Act as amended over the years continued to apply to the Air Force until 3 July 1985. In the United Kingdom the Imperial Air Force Act was repealed and replaced in 1955. This new Act, the Air Force Act 1955, did not apply to the Air Force. The old Act continued to apply until 1985.

### **Imperial Air Force Act**

194. Part 1, headed Discipline, of the Imperial Air Force Act set out the offences and penalties applicable to the Air Force. The offences set out in this Act were similar to the offences set out in the Army Act and the Naval Discipline Act. Offences on active service were punished more severely than at other times (s 6). Section 12 dealt with desertion. On active service a person convicted by a court-martial could be sentenced to penal servitude or the lesser sentence of imprisonment. Section 15 dealt with AWL. The punishment for an officer was to be cashiered and for an airman, imprisonment or such lesser punishment as appropriate. Section 18 dealt with disgraceful conduct and s 19 with drunkenness. There were a number of offences specifically related to the Air Force set out in s 39A.

195. The punishment regime was set out in s 44. The penalties for officers ranged from death, cashiering, imprisonment, dismissal, to reprimand. The punishment for airmen ranged from death, imprisonment, detention, discharge with ignominy, forfeiture, fines and stoppages. A proviso to these punishments in paragraph (11) stated that in addition to any other punishment imposed by court-martial, a member might forfeit any naval, military or air force decoration. The Air Force Act allowed for certain offences to be heard summarily in a similar way to the Army Act (ss 46 and 47).

### **Air Force Regulations**

196. The Air Force Regulations 1927 (AFRs) were set out in a similar format to the AMRs. The definitions were set out in reg 4. *Active service* meant service while

---

<sup>46</sup> The hierarchy of law that applies to the Air Force is set out in Appendix 7c.

engaged in operations against the enemy, including in another country. The Air Board was the Board administering the Air Force and was constituted on 9 November 1920 under the Air Board Regulations 1920. *Time of War* meant any time between when a proclamation of war was made and a proclamation that the war had ended. War service was active service. Pursuant to reg 5 the AMRs did not apply to the Air Force.

197. Regulation 24 enabled the Governor-General to constitute a Board of Administration known as the Air Board and set out its membership. Regulation 7 provided that the Minister may delegate any power, duty or other function conferred on him to the Air Board. The functions of the Air Board were described as the control and administration of the Air Force (reg 26).

198. Part VI of the Regulations provided for discipline in the RAAF and set out in detail the offences, punishments and procedures that applied. Regulation 182 made the disposal or destruction of decorations an offence with a penalty of up to £20. A number of offences were set out in reg 190 and applied whether or not a member was on war service. Included in those offences were desertion, AWL, wilful misconduct and drunkenness. Regulation 191 set out the offences when not on war service and reg 192 set out the offences on war service.

199. As in the other services, the Commanding Officer was given the power to investigate offences (reg 211). Regulation 221 and following set out the procedures in relation to summary and minor punishments. For example, AWL is dealt with in reg 225. Regulation 229 dealt with summary punishments on war service. Summary punishments on active service were dealt with in reg 230 and involved either field punishment or forfeiture of ordinary pay.

200. A court of inquiry would be convened if an airman was AWL for more than 21 days (reg 224). If the airman did not surrender or was not apprehended, a conviction of desertion would be recorded. If the airman was returned to service and he served for a further three years *in an exemplary manner* he would not be tried for desertion. Regulation 364 set out the penalties that could be imposed on an officer and an airman by a court-martial. An officer or an airman could be discharged with ignominy from the Air Force. Regulation 364(2)(e) provided:

*In addition to, or without, any other punishment in respect of any offence an offender convicted by court-martial or civil court may be subjected to forfeiture of any deferred pay, air-force decoration or air force reward (subject to the conditions under which such was issued) or to any deduction in his pay authorised by these Regulations.*

*Air force decoration* was defined in reg 4 as any medal, clasp, good conduct badge or decoration. This regulation was repealed on 17 July 1940.

201. In 1933 the Regulations were amended so that *Part XIII Medals* was added. This Part dealt with the qualifications and conditions for the LSGCM. Regulation 682 provided that if an airman was sentenced to death, discharged on several grounds including ignominy or an officer was dismissed for misconduct, he would forfeit his

LSGCM. The medal could be restored on the recommendation of the Air Board. This regulation was repealed on 23 February 1961.

202. Regulation 684 provided that war medals could be forfeited on the same grounds as for forfeiture of the LSGCM. Regulation 684 provided:

*(1) Any person who suffers death by sentence of court-martial, or, if an officer, is dismissed or removed for misconduct from the Air Force, or if an airman, is discharged in consequence of having been convicted by the civil power of a felony, or misconduct, or a sentence of penal servitude or imprisonment exceeding two years, shall forfeit all war medals of which he is in possession or to which he may be entitled.*

*(2) Any member who is convicted by the civil power or is discharged by a Court in pursuance of any law enabling it to discharge an offender without recording a conviction, shall be liable to forfeit, at the discretion of the Air Board, any war medal of which he is in possession or to which he may be entitled.*

The forfeiture under (1) was mandatory and under (2) was discretionary. The Air Board could restore those medals. This regulation was repealed on 5 February 1976.

203. On 17 July 1940 reg 13B was added to the Regulations. It provided that from the date the amendment came into effect, the King's Regulations and Air Council Instructions (KR&ACI) applied to the Air Force with modification. Those modifications were that the following sections applied - Sections I to V of Chapter XV (Discipline), Chapters XVI (Courts-Martial) and XVII (Courts of Inquiry), paragraph 2820 of Chapter XXXV (Financial Services) and paragraphs 3464, 3465 and 3467 to 3476 of Chapter XXXIX (Pay). This regulation was repealed on 3 July 1985.

204. The KR&ACI provided more detail to the procedures set out in the Regulations. The provision applying to the Air Force did not include the provisions on the forfeiture.

## **Air Force Orders**

### *1921-1939*

205. Under its charter, the Air Board issued from time to time Air Board Orders (ABOs), Air Force Orders (AFOs), and Weekly Orders (WOs), as well as a number of more specific orders not related to medals. These are collectively known as Air Force Orders. In December 1927, the Air Board issued its Principal Weekly Orders that covered the forfeiture and restoration of medals under sections 6/C/1 to 6/C/8. These aligned with the corresponding Australian Military Regulations made for the Army.

206. The Air Board issued an amendment to Weekly Orders on 15 May 1933 as No. 262 of 1933, to align with the 1933 Regulations. This amendment consolidated the rules of forfeiture and restoration into 6/C/1 to 6/C/6. While there were further amendments in 1937 and 1941, there were no further changes regarding forfeiture and restoration until well after the war. The applicable orders were:

6/C/1 – Forfeiture and Restoration of Orders

- 6/C/2 – Decorations and Medals Awarded for Gallantry
- 6/C/3 – Long Service and Good Conduct Medal – Forfeiture (cross reference R.682)
- 6/C/4 – Long Service and Good Conduct Medal – Restoration (cross reference R.683)
- 6/C/5 – War Medals – Forfeiture (cross reference R.684)
- 6/C/6 – War Medals – Restoration (cross reference R.685)

207. These orders directed that in no circumstances should a court-martial deal with forfeiture of orders, decorations and medals. With regard to forfeiture and restoration of war medals, the orders repeated verbatim regs 684 and 685 of the Air Force Regulations.

#### *World War II*

208. In 1939, the Department of Air was established and assumed the administrative support function previously carried out by the Department of Defence. The Air Board continued its duties as before, but now reported to the Minister for Air. By the start of World War II, rules for forfeiture and restoration were well established and were generally consistent across the three Services.

209. There were no changes to the Air Force Orders, with regards to withholding, forfeiture or restoration of medals between 1937 and 1954. WO 1039 of 1 June 1954 superseded previous orders relating to medals and reissued 6/C/1 to 6/C/6 inclusive. Later amendments in 1956 and 1964 added further medals to the list.

210. On 4 October 1971, WO 1409 cancelled all sections relating to medals and referred to ABOs (New Series), which provided for forfeiture and restoration under section P10/1 to P10/5. Again, orders relating to war medals were aligned with AFR 684 and AFR 685. The final remnants of *Air Force Orders* Section 6/C regarding Cadet Forces medals were cancelled by WO 1553 of 20 August 1980 as they were specifically covered by Defence Instruction (Air Force) ADMIN 3/80.

## Medals

211. The law in relation to forfeiture of medals is not only found in the Acts of the Australian Parliament, the Imperial Acts, the Regulations made pursuant to those Acts and the Orders of the three Services Boards and the UK Services Boards, but also in the Warrants and Letters Patent creating the medals. Since 1975 when the Australian system of Honours and Awards was introduced, the subordinate legislation creating a medal contained provisions usually in the form of regulations for the withholding, forfeiture and restoration of medals.

212. The following medals are some examples of how those medals were introduced and the withholding, forfeiture and restoration provisions contained in the instruments creating the medal. At Appendix 8 there is a longer list of the medals created since 1856 that apply to the Australian Armed Force and whether the power to withhold, forfeit and restore was included in the instrument creating the medal.

### Imperial Honours

#### *Victoria Cross*

213. This decoration was created by Queen Victoria on 29 January 1856 to reward *individual gallant service*. Rule 15 provided that to *preserve pure this most honourable distinction* if a person in receipt of this decoration was convicted of treason cowardice, felony or any infamous crime, then his name would be erased from the register. The Queen retained the right to erase the person's name and to restore the decoration.<sup>47</sup>

214. Between 1861 and 1908 eight warrants were issued for the forfeiture of the Victoria Cross. The 1920 revision was the same as the 1856 Warrant, with the addition that forfeitures and restorations would in future be published in the London Gazette. Also in 1920, King George V expressed his strong opinion that the expulsion clause should not be used no matter the crime committed. Although the monarch's power both to cancel and restore awards is still contained within the Victoria Cross warrant in clauses 14 and 15 in the 1961 revision, no awards have been forfeited since 1908 and none of the eight forfeited awards have been restored.<sup>48 49</sup>

#### *Military Cross*

215. On 28 December 1914 King George V instituted the Military Cross to be awarded to officers for distinguished and meritorious service.<sup>50</sup> Under regulation 8 the King reserved the right to order forfeiture of the decoration. In 1920 the

---

<sup>47</sup> *London Gazette*, no. 21846, 5 February 1856.

<sup>48</sup> Although the 1953 official War Office *Alphabetic list of recipients of the Victoria Cross* lists the names of the eight who forfeited their awards this does not indicate that the awards have been restored. What is overlooked including that no restorations have been published in the London Gazette is the note at the end of the list: 'The undermentioned whose names are included in the preceding list forfeited the Victoria Cross under authority of the Royal Warrant quoted in each case'. All eight who forfeited their awards are listed.

<sup>49</sup> For a paper developed for the Defence Honours and Awards Appeals Tribunal by Anthony Staunton: *Relevant law and administrative process for awarding the Victoria Cross and how did the process change over time*, May 2011.

<sup>50</sup> *London Gazette*, no. 29015, 29 December 1914.



regulations were amended and the grounds for forfeiture were expanded in regulation 10<sup>51</sup> and in 1931 in regulation 12<sup>52</sup>.

### *Military Medal*

216. On 25 March 1916 King George V instituted the Military Medal to be awarded to non-commissioned officers and men for individual acts of bravery.<sup>53</sup> On 5 February 1931 under regulation 11 the King reserved the right to order forfeiture and to restore the decoration.<sup>54</sup>

## **Imperial Awards**

### *World War II Medals*

217. In June 1946 the King approved in Command Paper 6833 the award of campaign medals and stars for service in World War II.<sup>55</sup> Paragraph 17 provides that the award of these medals had been agreed to by the Dominion Governments (including Australia), although the details were still to be settled. In December 1948 the Australian Government set out the conditions for the award of the campaign stars and medals in a paper known as the Dedman Paper<sup>56</sup>. There are no provisions for the withholding, forfeiture or restoration of these medals in either paper.

### *The Australia Service Medal 1939-45*

218. The Royal Warrant promulgating the Australia Service Medal 1939-45 (ASM 1939-45) was published on 30 November 1949 in the Government Gazette.<sup>57</sup> The criteria were that the person had to serve between 3 September 1939 and 2 September 1945 in either the Australian Armed Forces, the Mercantile Navy or be civilian members of the Air Force. Members must serve full time for at least 18 months or three years part time. On 16 August 1996 the 18 month period was reduced to 30 days and the three year period was reduced to 90 days.<sup>58</sup> A further requirement is that *only those who have received, or would be entitled to receive, an honourable discharge shall be eligible*. The Governor-General has the power to cancel, annul and restore the award.

## **Australian Honours**

### *Victoria Cross for Australia*

219. The Victoria Cross for Australia was created under Letters Patent by Queen Elizabeth II on 15 January 1991 and promulgated in the *Commonwealth of Australia Gazette*, No. S25, of 4 February 1991. Under Regulation 12, the Governor-General may cancel an award of the medal and may reinstate a cancelled award.

### *Australian Gallantry Decorations*

220. The Australian Gallantry Decorations (comprising the Star of Gallantry, the Medal for Gallantry and the Commendation for Gallantry) were created under Letters Patent on 15 January 1991 for the purpose of 'according recognition to members of

---

<sup>51</sup> *London Gazette*, no 32130, 19 November 1920.

<sup>52</sup> *London Gazette*, no 33700, 20 March 1931.

<sup>53</sup> *London Gazette*, no 29506, 25 March 1916.

<sup>54</sup> *London Gazette*, no 33700, 20 March 1931.

<sup>55</sup> Committee on the Grant of Honours, Decorations and Medals, Command Paper 6833, June 1946.

<sup>56</sup> *Summary of the Conditions of Award of the Campaign Stars, the Defence medal and the War Medal*, Issued by authority of the Hon. John J. Dedman MP, Minister of State for Defence, December 1948.

<sup>57</sup> *Commonwealth of Australia Gazette* no. 91, 30 November 1949.

<sup>58</sup> *Commonwealth of Australia Gazette* no. S309, 21 August 1996.

the Defence Force and certain other persons who perform acts of gallantry in action'. Under regulation 13, the Governor-General may cancel an award of the medal and may reinstate a cancelled award.

#### *Distinguished Service Decorations*

221. The Distinguished Service Decorations (comprising the Distinguished Service Cross, the Distinguished Service Medal and the Commendation for Distinguished Service) were created by Letters Patent on 15 January 1991 for the purpose of 'according recognition to members of the Defence Force and certain other persons for distinguished command and leadership in action or distinguished performance of their duties in warlike operations'. Under regulation 13, the Governor-General may cancel an award of the medal and may reinstate a cancelled award.

### **Australian Awards**

#### *The Australian Service Medal*

222. The Australian Service Medal (ASM) was instituted by Letters Patent on 13 September 1988 for the purpose of 'according recognition to members of the Defence Force and certain other persons who render service in certain non-warlike operations'.<sup>59</sup> The Governor-General on the recommendation of the Minister may declare a non-warlike operation, in which members of the Defence Force are or have been on or after 14 February 1975, engaged, to be a prescribed operation for the purposes of these Regulations. These are recognised by the award of a clasp. Under regulation 9, the Governor-General may cancel an award of the medal and may reinstate a cancelled award.

#### *The Australian Active Service Medal*

223. The Australian Active Service Medal (AASM) was instituted by Letters Patent on 13 September 1988 for the purpose of 'according recognition to members of the Defence Force and certain other persons who render service in certain warlike operations'. The Governor-General, on the recommendation of the Minister, may declare a warlike operation in which members of the Defence Force are, or have been on or after 14 February 1975, engaged to be a prescribed operation for the purposes of these Regulations. These are recognised by the award of a clasp. Under regulation 9, the Governor-General may cancel an award of the medal and may reinstate a cancelled award.

#### *Australian Defence Medal*

224. The Australian Defence Medal was created under Letters Patent on 8 September 2005 for the purpose of 'according recognition to Australian Defence Force personnel who have served for a minimum period of six years since the end of World War II'.<sup>60</sup> Under regulation 8, the Governor-General may cancel an award of the medal and may reinstate a cancelled award.

---

<sup>59</sup> *Commonwealth of Australia Gazette* no. S336, 2 November 1988.

<sup>60</sup> The qualifying period was reduced in March 2006, *Commonwealth of Australia Gazette* no. S48, 30 March 2006.

## CHAPTER 3

### Approaches of the Services and the Defence Department

1. The second task set out in the Terms of Reference directs the Tribunal to:

*investigate the approaches adopted over time by the Royal Australian Navy, the Australian Army, the Royal Australian Air Force and the Department of Defence in respect of the refusal to issue an entitlement to, withholding and forfeiture of such defence honours and awards*

### The Department of Defence

2. On 23 April 1970 the Defence Military Law Sub-Committee prepared a report on the forfeiture and restoration of war medals.<sup>61</sup> The Committee was concerned that there had not been a proper legal basis for past decisions on forfeiture and restoration. Three categories of war medals were noted:

- a. those issued for gallantry or meritorious service;
- b. those issued for long service, efficiency etc.; and
- c. those issued in commemoration of a war campaign.

3. They found that the provisions regarding forfeiture and restoration of medals in paragraphs a. and b. are generally found in the Royal Warrants or Letters Patent creating them or the attached Regulations. The medals in paragraph c. do not have specific regulations applicable to them. The Committee noted that the authorities in 1970 were:

Navy – Queen’s Regulations and Admiralty Instructions Article 2227,  
Army – Military Board Instructions 102–1, and  
Air Force – Air Force Order 6/C/5 and 6/C/6 (Air Force Regulations 684 and 685).

4. In relation to MBI 102-1, it was noted that there was some confusion as to the authority for this Instruction – the AMRs or UK Instructions or Warrants. In the Committee’s opinion there needed to be a uniform process for forfeiture and restoration of war medals that covered the three services and this could be achieved by issuing a new Royal Warrant. It was recommended that there should be mandatory and discretionary forfeiture of medals depending upon the offence. It also recommended that there should be clear guidelines for the restoration of war medals. No action was taken.

5. A Minute Paper dated 12 December 1984 again dealt with the forfeiture and restoration of war medals.<sup>62</sup> The Paper questioned whether the World War II medals awarded under Command Paper 6833 and the ASM 1939-45 had been validly forfeited and whether those medals could be restored. The Paper set out a history of

---

<sup>61</sup> Defence Military Law Sub-Committee Report 1/1970, *Forfeiture and Restoration of War Medals*, 23 April 1970, obtained from loose files, Directorate of Honours and Awards.

<sup>62</sup> Defence Legal Services Minute 1241/84, *Forfeiture and Restoration of War Medals*, 12 December 1984.

forfeiture of medals noting that until 1955 medals could be legally forfeited under Reg 799 of the AMRs. After that date war medals could be legally forfeited under MBI 102-1. The same laws applied to the ASM 1939-45.

6. The Paper recommended that MBI 102-1 be revoked and replaced with a new Defence Instruction (Army), which provided for the forfeiture and restoration of war medals. The Governor-General should continue to restore the ASM 1939-45 pursuant to paragraph 12 of the Royal Warrant. The Paper adopted the recommendation of Defence Military Law Sub-Committee report. No action was taken.

7. In 1985 the Services Personnel Policy Committee further considered the forfeiture and restoration of war medals. The Committee defined war medals as:

*'collective' awards issued in recognition of war service ie. awards for which all members of the Services and other eligible persons may qualify subject to meeting certain minimum requirements, usually service, for a specified period of time within defined geographical areas.*

8. Once again the Committee referred to there being no common policy for the three Services. A person could qualify for a war medal if a member of the Defence Force, served with the Defence Force and was under their administration or served with or to the Defence Force but was under some external administrative control. The committee recommended that there should be mandatory forfeiture for certain offences and discretionary forfeiture for lesser offences. Guidelines should be issued for restoration. The Chiefs of Staff Committee (COSC) considered this comprehensive submission on 6 February 1985 and adopted the recommendations for the most part.<sup>63</sup> After amendments to the recommendations a brief was put to the Minister.

9. A further Minute Paper was prepared on 28 June 1991 requesting that the Commanding Officer, Soldier Career Management Agency (CO SCMA) be delegated with the power to restore forfeited medals.<sup>64</sup> Although this did not eventuate until 1996, this paper illustrated some confusion regarding the legal power to forfeit World War II war medals.

10. In 1996, guidelines were developed and authority was given by the Assistant Chief of Personnel – Army (ACPERS-A) to CO SCMA and Staff Office Grade One Central Army Records Office (SO1 CARO) to restore forfeited war medals and badges to a number of veterans of the Defence Forces.

11. On 10 April 2000, the Minister endorsed the recommendation that there should be a standardised policy on forfeiture and restoration and that there should be *a single and more liberal tri-Service policy*. This resulted in the draft of a Defence Instruction (General), which was eventually approved and promulgated on 17

---

<sup>63</sup> Chiefs of Staff Committee Minute 5/1985, *Forfeiture and Restoration of War Medals*, 6 February 1985.

<sup>64</sup> Minute A91-11583, SO2 MIL LAW (Major D.W. Daley) to DALs [Defence Army Legal Service], 28 June 1991.

September 2002.<sup>65</sup> The substance of the Instruction followed the earlier recommendations.

12. In October 2005 the Instruction was elaborated on by publication of a policy – *Posthumous Issue and Replacement of Service Awards*.<sup>66</sup> The policy stated that only the member who had earned the award was entitled to claim the medal. However *an unclaimed Service award may be gifted to a family in a gesture of respect to a deceased member and in good faith that it would be highly regarded*. The policy also outlined who could claim the award – an Executor, an Administrator or a sole beneficiary.

13. From 2004 onwards World War II medals were restored to at least six former members of the Defence Force and one set of medals was restored to a deceased member's immediate family. Anecdotal evidence indicates that more veterans and families have had war medals restored or gifted to them.

14. The policy with respect to forfeiture set out in Chapter 46 of the DHAM was applied twice in 2013.<sup>67</sup> A medal was cancelled /forfeited because it was not in the interest of the service to retain the member and as a result it was decided to cancel the member's entitlement to a medal. Another member was not awarded a medal (withheld) as a result of a serious allegation of misconduct. The Tribunal understands that these members did not forfeit any other medals awarded to them previously.

## **Army**

### *Pre-World War II*

15. In 1926 war medals were described as – *campaign and commemorative medals which are awarded, not for individual merit under statute or warrant, but given with His Majesty's approval to large classes as a token of service*. Memoranda and letters in the 1920s illustrate the difficulties faced by the Australian authorities regarding forfeiture and restoration of World War I medals following that war. The power to forfeit and restore war medals seemed to reside with the UK Army Council. Following requests by the Australian authorities, on 19 May 1922 the UK Army Council delegated the powers of forfeiture and restoration of war medals in relation to the Australian Military Forces to the Military Board. It was emphasised by both the UK and the Australian authorities that medals awarded for individual merit would only be forfeited in extreme circumstances.<sup>68</sup> In a cablegram sent on 1 February 1929 from the Secretary of State for Dominion Affairs to the Prime Minister it was agreed that the UK and Australia would follow a similar policy with respect to the forfeiture and restoration of war medals.<sup>69</sup> It is of significance that in 1927 the Australian Government promulgated the AMRs which clarified the powers and functions of the

---

<sup>65</sup> Defence Instruction (General) Personnel 31-8 – *Forfeiture, Restoration and replacement of Decorations, Medals and War Badges*.

<sup>66</sup> Directorate of Honours and Awards Policy Statement: *Posthumous Issue and Replacement of Service Awards*, 17 October 2005.

<sup>67</sup> Information provided to the Tribunal in the Defence Submission of 30 November 2014.

<sup>68</sup> Cablegram, Secretary of State for the Colonies, London, 19 May 1922, held in loose files, Directorate of Honours and Awards.

<sup>69</sup> Cablegram, Secretary of State for Dominion Affairs, London, to the Prime Minister, 1 February 1929, NAA: MP367/1/0, and NAA:A816 66/301/388.

Military Board and the disciplinary offences and proceedings that applied to the Army.

### *World War II*

16. In 1943 the possibility of providing a Certificate of Discharge to those members of the Military Forces who were beginning to be discharged for various reasons was raised. It was noted in a memorandum of 13 September 1943<sup>70</sup> that the reason for discharge should not be recorded on the certificate because it was confidential, but that it would need to be recorded in the member's file by the Records Office.

17. Memoranda in 1944 discussed the necessity of introducing 'honourable' and 'dishonourable discharges'.<sup>71</sup> It was noted that the reasons for dishonourable discharges should be those set out in regs 184 and 184A of the AMRs. In a later memorandum in December 1944 it was decided that if a person had been dishonourably discharged the reason for discharge recorded on the Discharge Certificate would be 'other'. On 9 May 1944 the War Cabinet decided that only those members with an honourable discharge would be entitled to receive benefits following their discharge. Legislation was introduced in 1945 to reflect this decision.<sup>72</sup> The Adjutant General explained in a memorandum of 22 March 1945 that a member would only be dishonourably discharged for making a false attestation if the purpose of the false claim was to conceal 'previous discreditable conduct'.

### *Dishonourable Discharge*

18. In a memorandum dated 2 July 1947 the Secretary to the Military Board advised Commanding Officers that all members illegally absent on 30 June 1947 (AWL) would be discharged in absentia.<sup>73</sup> No action would be taken to apprehend members discharged in absentia for absences, which commenced before 1 July 1947, or to bring them to trial if they surrendered. The files of each member would be endorsed 'Discharged in absentia for misconduct (because of illegal absence)'. A member's absence was declared illegal after 21 days (reg. 184A(1)(e)). A later memorandum noted that these discharges would be dishonourable.<sup>74</sup> A member would be declared to be an illegal absentee after a declaration by a Court of Inquiry or an Investigating Officer. This approach was abandoned some time in 1948.<sup>75</sup> In relation to annotating a member's service record with the term 'dishonourable' it was not the Army's policy to do so except in the period from July 1949 to January 1953.<sup>76</sup>

---

<sup>70</sup> Adjutant-General's Minute, *Form of Certificate Discharge*, 21 September 1943.

<sup>71</sup> For the full record of correspondence, see NAA: MP742/1, 84/1/299.

<sup>72</sup> *Re-Establishment and Employment Act* 1945 Royal Assent 28 June 1945 and the *War Service Land Settlement Agreements Act* 1945 Royal Assent 11 October 1945.

<sup>73</sup> Army Headquarters (Military Board) memorandum 22126, *Disposal of Illegal Absentees*, 2 July 1947.

<sup>74</sup> Response to Question on Notice, Notice Paper 70, Department of the Army, 26 September 1947, NAA: A1608, K45/1/1.

<sup>75</sup> Director Personal Services Minute to the Director Personal Administration, *Amendments to AMR&O Reason for Discharge*, NAA: MP742/1, 84/1/1077

<sup>76</sup> Military Board Instruction 115/1949, *Classification of Termination of Appointment of Officers and Discharge of Other Ranks – Loss of Benefits*, 8 July 1949; Army Melbourne Signal A236, 191455K, 19 January 1953, NAA:MT1131/1, A251/5/47; Military Board Instruction 55/1953, *Discharges in Time of Peace*, 6 February 1953.

## *Post-World War II*

19. In early 1946 it was decided that if a member was AWL on 1 January 1946 and by 30 September 1946 he had been absent for at least 90 days, the member would be discharged in absentia on disciplinary grounds, that is, misconduct. His Discharge Certificate would be endorsed discharged in absentia for illegal absence and the member would lose his entitlement to benefits. On 30 July 1946, Army Headquarters, acting on directions from the Minister, decided that those found guilty of being AWL and serving a period of detention would be released after three months.<sup>77</sup> On 27 May 1946 all members AWL prior to 1 January 1946 were declared illegal absentees and discharged in absentia on disciplinary grounds. This was elaborated on 3 February 1948 when the Director of Personal Services advised that members who went AWL after 2 September 1945 were entitled to receive their campaign medals.<sup>78</sup>

20. On 21 May 1947 the Adjutant-General decided that those members of the Military Forces who were AWL on 1 January 1946 would be discharged in absentia and not issued with a discharge certificate. A certificate would be issued if the member personally applied. That certificate would be endorsed with 'discharged in absentia for misconduct'.<sup>79</sup> By 25 May 1948 the Director of Personnel Administration advised that a Discharge Certificate should show whether the member's discharge was 'honourable' or 'dishonourable'.<sup>80</sup>

21. In January 1951 the Army had decided to promulgate an MBI on the forfeiture and restoration of war medals. Following consultation it was agreed that the grounds for forfeiture and restoration generally should be the same as the grounds set out in the King's Regulations and Admiralty Instructions.

## **Navy**

### *Forfeiture of Medals*

22. Following a query in 1944 from the Commanding Officer of HMAS *Shropshire*, as to whether the 1939-43 Star<sup>81</sup> should be issued to ratings who had been punished summarily for desertion, the Commander of Task Force 74<sup>82</sup>, Commodore John Collins, advised that A 589 of the KR&AI applied. In a memorandum of 15 June 1944 Commodore Collins stated that if the desertion occurred during hostilities it was not necessary for the service tribunal to record whether or not the medals were to be forfeited: they were forfeited automatically.<sup>83</sup> A copy of

---

<sup>77</sup> Draft Director Personal Services Minute to the Adjutant-General, *Proposed Action in Respect of Unapprehended Illegal Absentees*, September 1946, NAA:MP742/1, 85/1/900.

<sup>78</sup> Director Personal Services Minute 2719, 3 February 1948 (See Appendix 8).

<sup>79</sup> Minute from the Adjutant-General to the Secretary, 21 May 1947, NAA:MP742/1, 84/1/1041.

<sup>80</sup> Minute from the Director of Personal Administration to the Director Personal Services, *Amendments to AMR&O Reason for Discharge*, 25 May 1948, NAA:MP742/1, 84/1/1077.

<sup>81</sup> The 1939-43 Star was originally established through Command Paper 6463 in 1943. The Star changed its name in 1948 (through the authority of Command Paper 6833) to the 1939-45 Star to reflect the dates of World War II.

<sup>82</sup> Task Force 74 was the Australian Naval Squadron operating in the Pacific during the latter years of World War II.

<sup>83</sup> Memorandum AF291/35, *Issue of 1939-43 Star to Recovered Deserters*, 15 June 1944, NAA:MP151/1, 448/201/1901.

Commodore Collins' memorandum was sent to the Naval Board who later indicated their agreement.<sup>84</sup>

23. In a memorandum of 28 September 1945 the Vice Admiral (Administration) of the British Pacific Fleet noted that it was *the practice of all ratings convicted of desertion to forfeit all campaign medals, but not necessarily decorations*. Following the cessation of hostilities it was no longer appropriate to follow this practice and this decision should now be left to the discretion of the Senior Officer *approving the warrant*.<sup>85</sup>

#### *Discharge*

24. On 8 February 1944 the Secretary of Navy was advised that the War Cabinet *had laid down* that post war benefits would only be paid to servicemen who had received an honourable discharge. Therefore it was desirable that the discharge certificate should record this. The Australian Commonwealth Naval Board advised that the following persons were considered to come under the category of discharges other than honourable:

- a) deserters;
- b) those dismissed from H.M.A. Naval Service;
- c) those discharged 'services no longer required'.<sup>86</sup>

25. On 13 October 1947 a memorandum set out the policy and procedure with respect to the discharge of illegal absentees.<sup>87</sup> Deserters would have 'Run' recorded after an absence of seven days. Warrants would be issued for their arrest. If apprehended the deserter can be claimed for further service or not. The Naval Board would make this decision. In September 1947 it was decided not to reclaim deserters from the Royal Australian Naval Reserve and Royal Australian Navy who were absent as at 31 December 1946.<sup>88</sup> The Navy rejected the proposal from the Military authorities, that a person should be discharged after 21 days absence. In peacetime the Navy discharged a person after two years absence and the naval authorities saw no reason to change this policy.

26. In a paper prepared on 22 October 1969 it was noted that QR&AI A 2211 dealt with forfeiture and restoration of medals.<sup>89</sup> Because the forfeiture of medals was generally dealt with in the instrument creating the medal this Article applied to the Conspicuous Gallantry Medal and the LSGCM for the most part. The paper noted that there was no longer any provision in the Naval Discipline Act for a penalty to include forfeiture of medals. The only medal that could be forfeited under the Act was the LSGCM (s 43(1)(m)).

---

<sup>84</sup> Navy Office Memorandum 60144, *Issue of 1939-43 Star to Recovered Deserters*, 5 July 1944, NAA:MP151/1, 448/201/1901

<sup>85</sup> Memorandum 1505/26, *Forfeiture or Retention of War Medals Issued on Desertion*, NAA:MP151/1, 448/201/2101.

<sup>86</sup> Navy Office Memorandum 65264 to the Director-General Post War Reconstruction, *Members Discharged from the Forces other than Honourably*, 26 July 1944, NAA:MP151/1, 451/201/172.

<sup>87</sup> Navy Office Memorandum 85393 to the Joint Secretary, Principal Administrative Officers committee (Personnel)

<sup>88</sup> *Ibid.*

<sup>89</sup> DNLS [Director Navy Legal Services] Minute, *Forfeiture and Restoration of Awards in the RAN*, 22 October 1969, held in loose files, Directorate of Honours and Awards



27. Article 2227 provided that any person convicted of treason, sedition and the serious offences set out in a number of sections of the Naval Discipline Act or who had been dismissed with disgrace would be deprived of any campaign or commemorative medals in their custody or forfeit an entitlement to them. Gallantry medals and decorations were treated differently. A report would be made to the Naval Board where a decision on their forfeiture would be made.

28. In 1975 the Australian system of Honours and Awards was introduced and the LSGCM was replaced by the National Medal for members of the Defence Force.

#### *Restoration of Medals*

29. In October 1940 the procedure and criteria for the restoration of war medals forfeited because of a finding of desertion were set out in Article 589(8). Restoration relied on re-engagement in the Naval Forces. A question had arisen because ex-naval ratings who had forfeited their World War I medals, had enlisted for active service with the Military Forces in World War II and there was no authority to restore their medals as a result of this service. On 1 October 1942 the Secretary to the Navy was advised that the Admiralty considered that if evidence could be obtained from the Army or the Air Force that the person had satisfied the criteria for restoration in that service, the medals should be restored.

#### **Air Force**

30. The Tribunal was not provided with any files concerning the approach of the Air Force to the forfeiture and restoration of medals. The Tribunal notes that the Air Force authorities participated in and endorsed the various reports on this issue produced from the late 1960s onwards. Those papers are referred to in the 'Department of Defence Approach' (Chapter 2, paragraphs 191 – 209).

## Submissions to the Tribunal

32. The Tribunal wrote to a number of organisations and individuals seeking their views on the issues raised by the terms of reference (Appendix 1). A number of these organisations and individuals advised that they did not have an opinion on this matter. Some organisations and individuals misunderstood the terms of reference and provided submissions on matters that were outside the terms of reference. The Tribunal invited those organisations and individuals who had expressed a view that pertained to the Terms of Reference for this Inquiry, to attend the hearings to explain those views.

### *Lieutenant General Peter Leahy AC (Retd) Former Chief of Army*

33. Lieutenant General Leahy provided a written submission dated 6 February 2014 and spoke to the Tribunal.<sup>90</sup> In his written submission Lieutenant General Leahy wrote that he agreed with the outcome of the Boyes' decision. He opined that the development and implementation of policy in this area *has been deplorable*. He believed that there had been an inability to understand and implement the intent of senior committees. And those senior committees did not manage the implementation of their decisions. Lieutenant General Leahy thought that the amalgamation of honours and awards administration, previously undertaken by the single services, into a single entity caused some of the problems with implementing the committees' decisions and recommendations. He did not think that the policies and procedures applied in the past were supported by legislation and in many cases the decisions appeared unsound. He thought that the Boyes' case illustrated the bias of the Department of Defence because the decision makers had allowed their personal views to cloud their judgement. He did not think that the Boyes' brothers' poor service record justified forfeiture of their medals. He thought there might have been cases of maladministration.

34. Lieutenant General Leahy told the Tribunal that the Boyes' brothers had earned their medals because those medals recognised their war service. He thought that past decisions should not be reviewed unless there was evidence of maladministration. Lieutenant General Leahy could not recall any instances of withholding or forfeiture of medals in his time in the Army. Finally General Leahy observed that any member who serves on operations deserves their medals.

### *Rear Admiral Ken Doolan AO, RAN (Retd) National President Returned and Services League of Australia*

35. Rear Admiral Doolan provided a written submission dated 28 February 2014 in which he wrote that he thought the authority to make decisions on forfeiture of medals must be unambiguous and established by law. The person making the decision must be authorised to do so and the person affected by the decision must be given adequate notice and be able to put their case, that is, comply with the rules of natural justice. Any decision made must be made by an unbiased decision maker.

---

<sup>90</sup> Lieutenant General P. Leahy AC (Retd), submission received 24 February 2014; and oral submission Canberra public hearing 24 February 2015.

36. Rear Admiral Doolan told the Tribunal<sup>91</sup> that his concern was in relation to the refusal to grant medals to Australians involved with the British Commonwealth Occupation Forces in Japan and those troops deployed to the Malay Peninsula. The Tribunal explained that this issue was not within its terms of reference. Rear Admiral Doolan said that he was not aware of any medals being withheld or forfeited during or after the Vietnam War.

*Air Marshal David Evans AC, DSO, AFC (Retd) Former Chief of the Air Force*

37. Air Marshal Evans wrote in his submission of 10 March 2014, the conclusions in the Boyes' case accorded very closely with his views. Air Marshal Evans thought that the term forfeit should cover all situations. He was of the opinion that it was time to amend the AMRs so that they set out the conditions that would justify the forfeiture of medals. Minor disciplinary breaches would not justify the forfeiture of medals. However behaviour that could jeopardise success in the operation or a future operation, such as cowardice, treason, sedition or mutiny would justify forfeiture of medals. With respect to Imperial Awards Air Marshal Evans acknowledged that the conditions of the Royal Warrant would continue to apply. Because there is no longer a Military Board, an appropriate authority should be appointed to make decisions on forfeiture and restoration of medals.

38. Air Marshal Evans told the Tribunal<sup>92</sup> that he accepted this was a difficult area because the Imperial system intermingled with the Australian system. The system of forfeiture and restoration should be set out in the AMRs. He submitted that the system should be simplified so that all procedures are in the AMRs. The Royal Warrants would be considered but not necessarily applied. Forfeiture of medals would be rare. If a member of the Defence Force earned a medal he or she should be allowed to keep it. Forfeiture should be restricted to situations where the nation was put in jeopardy. The decision about forfeiture of medals should be made at the highest level such as by the CDF or the Chiefs of Service.

*Professor Peter Stanley Military Historian*

39. Professor Stanley provided a written submission dated 17 February 2014 in which he strongly disagreed with the notion that this Tribunal could or should change past decisions about forfeiture of medals. He argued that the decisions were made as a result of human, legal and social processes of their time. It was not appropriate for this Tribunal to find that those past decisions were unjust or unfair. In Professor Stanley's opinion governments should not even open the possibility of reviewing long closed legal matters such as this. Professor Stanley admitted that mistakes were made when military justice was applied in the both World War I and World War II. Some members did deserve to lose their medals and the Boyes' brothers were not treated unjustly in the context of attitudes prevailing at the time. The military justice that prevailed at that time dealt with their conduct.

40. Professor Stanley told the Tribunal<sup>93</sup> that he is a military historian who has specialised in the application of military justice before 1945. He agreed that when a

---

<sup>91</sup> Oral submission, Rear Admiral K. Doolan AO, RAN (Retd), Canberra public hearing 25 February 2015.

<sup>92</sup> Oral submission, Air Marshal D. Evans AC, DSO, AFC (Retd), Canberra public hearing 25 February 2015.

<sup>93</sup> Oral submission, Professor P. Stanley, Canberra public hearing 25 February 2015.

member of the Defence Force forfeited his or her medals, it was most distressing for the family. However he did not believe that the military law related to honours and awards should be changed retrospectively. We cannot change the past because we do not understand the conditions that prevailed at that time and why those decisions were made. The past is full of injustices that we cannot change.

*Major General J. Paul Stevens AO (ret'd) Former Assistant Chief of Personnel - Army*  
41. Major General Stevens provided a written submission dated 18 February 2014 in which he noted that he had been the Assistant Chief of Army Personnel from 1993 to 1997. He held the delegations for the forfeiture and restoration of medals during that period. Major General Stevens advised that the vast majority of matters he dealt with were requests for the restoration of World War II medals. Most of those cases had involved members who had been convicted of desertion. He noted that most of the cases involved soldiers, who had enlisted early in the war, served conscientiously and then had gone AWL after they returned to Australia. Major General Stevens thought that the reasons for discharge of these soldiers did not fall within the category of dishonourable discharge. His staff recommended to him that the medals should be issued to the former members because their absences had occurred in Australia and this was a mitigating factor. After examining a number of cases he developed a policy so that a consistent approach could be taken to the restoration of war medals. Major General Stevens did not recall a policy that war medals could only be restored to living veterans.

42. Major General Stevens told the Tribunal<sup>94</sup> that he was delegated with the power to restore medals to a person where those medals had either been withheld or forfeited. He recalled that the first case he had reviewed was a member who had been found to be a deserter but who had not been convicted by court-martial. He did not believe that he was classified as dishonourable discharge. His staff attempted to identify whether the basis for the decision was mandatory or discretionary. He recognised that if the decision had been mandatory he could not change the decision. He also recognised that what might be considered reasonable in the 1940s might not be considered reasonable in the 1990s. Major General Stevens said that he attempted to introduce a 'merits review process' when he reviewed the hundreds of cases that were referred to him. He argued that guidelines should be introduced to deal with the situation where the veteran was dead.

#### *The Defence Submission*

43. Defence provided three detailed and comprehensive submissions with extensive attachments that were of great assistance to the Tribunal. The first submission dealt with the law in relation to the forfeiture of medals, the second dealt with dishonourable discharges and the third dealt with when the Defence Force could be considered to be on 'active service'.

#### *The First Submission – The Legal Basis*

44. The submission noted the reservations concerning whether there was a legal basis for the forfeiture and restoration of medals expressed in various papers from the 1960s onwards and referred to the desire for a Royal Warrant to rectify any legal deficiency. A number of papers were written on the information that should be

---

<sup>94</sup> Oral submission, Major General J.P. Stevens AO (Retd), Canberra public hearing 25 February 2015.

included in such a Warrant and any policy guidelines that might apply. A whole of Defence policy was developed in 2001 that became the DI(G) PERS 31-8. This Instruction was cancelled and replaced by the DHAM in 2012.

45. Defence noted that there were very few instances of deprivation of gallantry or meritorious service awards since 1939. Four known cases were outlined. In each case the Sovereign, under the provisions of the Warrant granting the medal, approved the forfeiture.

46. Most cases of forfeiture arose out of service in World War II. In relation to the Navy the decisions were made under the Naval Discipline Act and the KR&AI in particular after a member had deserted and had not been reclaimed by the end of the war. In relation to the Army those members discharged in absentia for misconduct forfeited their medals. Little is known about how the Air Force made decisions about forfeiture of medals. The submission then set out the legal provisions relating to each service. The Tribunal has used this information in developing the details set out in Chapter 2.

#### *The Second Submission – Dishonourable Discharge*

47. Besides dealing with dishonourable discharges the submission also covered desertion and illegal absences. The submission noted that a dishonourable discharge was particularly relevant to establishing entitlement to the ASM 1939-45. The medal was not forfeited but rather the veteran had no entitlement to the medal.

48. The concept of an honourable discharge became an issue as a result of the introduction of the Commonwealth Reconstruction Training Scheme that was introduced in 1944. The term *dishonourable discharge* had not been used by the Defence Force and so the administrator of the scheme defined dishonourable discharge as a desire to avoid the implications of service in a way considered dishonourable. In 1944 the Navy advised that it considered deserters, those dismissed from the service, those discharged as *service no longer required*, and those discharged for misconduct, as other than honourable discharges.

49. The Military Board issued an Instruction 115/1949 referring to reg 184A(1) for classifying a member's discharge as dishonourable. This followed discussion from 1944 on what conduct would result in a dishonourable discharge. The submission explained in detail how the Army dealt with *dishonourable discharge* until 1973.

50. The Air Force classified a discharge with ignominy, for misconduct, after being convicted by a civil power for a felony or sentenced to penal servitude for disciplinary reasons as dishonourable. The Air Force also discharged illegal absentees and deserters dishonourably. The Defence submission then explained the different procedures for dealing with illegal absentees and deserters. The Tribunal has referred to these processes in Chapter 2 and acknowledges the assistance provided by this submission and its attachments.

*The Hearing*

51. Representatives of Defence attended the hearing<sup>95</sup> and told the Tribunal that the Regulations, Instructions and Orders operating during World War II reflected the policies and expectations of that time. Unfortunately many records had been destroyed and so there had been difficulty locating the relevant material. The decision to forfeit medals was administrative in nature and based in the two MBIs of 1951. Before then it was the policy based on the 1946 DPS Instruction. The forfeiture of medals was not designed to punish a member but rather to protect the integrity of awards. The representatives undertook to provide further information to the Tribunal on the periods of active service since 3 September 1939.

*Third Submission – Periods of Active Service*

52. The submission referred to the definitions of ‘active service’ in the Acts and Regulations. In particular the proclamations by the Governor-General were set out which revealed that World War II officially began on 3 September 1939 and ceased on 15 May 1952. Further proclamations set out the period of the Korean War and various operations carried out by the Armed Forces in the 1950s and 1960s.

---

<sup>95</sup> Oral submissions by Defence Representatives, Canberra public hearing 24 February 2015.

## Case Studies

53. Included amongst the submissions to the Inquiry were seven submissions from family members whose relative had been a member of the Armed Forces during World War II. The veterans had their medals forfeited. These submitters were invited to talk to their submissions at hearings in Canberra and Melbourne.

### *Private RG (dec)*<sup>96</sup> – Australian Army

#### Background

54. RG was born on 19 May 1917 in a country town in Tasmania. He enlisted in the Army as a volunteer on 13 June 1940 when he was 23 years old and single. He married on 27 February 1943. His trade on enlistment was recorded as 'clerk'.

#### Service History

55. On his enlistment RG was allotted to the 7<sup>th</sup> Division. In the first two months RG was granted leave, once on compassionate grounds and two further periods of leave before he left for training. On 18 October 1940 he embarked from Sydney as part of the 7<sup>th</sup> Division to the Middle East and disembarked at el Kantara on 24 November 1940. In the Middle East he served with the Australian Army Services Corps. He embarked the Middle East on 31 January 1942 and disembarked 4<sup>th</sup> Military District South Australia on 22 March 1942. After a period of approved leave RG absented himself without leave for 11 days. He was awarded a fine of £3, seven days confinement to barracks and forfeited 11 days' pay.

56. On 7 August 1942 RG embarked Brisbane for New Guinea. He disembarked at Port Moresby on 14 August 1942. After a period of service in New Guinea RG embarked Port Moresby on 7 February 1943 and disembarked Cairns on 9 February. On 7 April 1943 RG was admitted to hospital with malaria. RG absented himself without leave from 27 April 1943 to 30 April 1943. He was fined £2 and forfeited 3 days' pay. He was reassigned for duty in Tasmania.

57. RG absented himself without leave on 17 May 1943 to 21 May 1943. He was found guilty and awarded a £2 pound fine. He again absented himself without leave from 12 July 1943 to 13 July 1943. He was found guilty and awarded a £3 fine and forfeited 2 days' pay.

58. RG absented himself without leave on 6 August 1943. A warrant for his arrest was issued on 26 September. On 27 September 1943 RG was declared an illegal absentee. On 27 November 1944 RG was apprehended and was held in custody. RG was charged with desertion. A district court-martial was held at Hobart where RG was found not guilty of desertion but guilty of AWL. He was sentenced to detention for one year. On 27 February 1945 his sentence was suspended.

59. RG was then posted to 1 Army Personnel Staging Centre, Yeerongpilly, Queensland. On 2 April 1945 RG was recorded as AWL and was declared an illegal absentee on the same day. On 2 September 1945 RG was apprehended and held in

---

<sup>96</sup> All of the following case studies are veterans who are now deceased, but their names and those of their families have been withheld to protect identifications.

custody. RG was charged with AWL. A district court-martial was held at Grovely on 17 September 1945. RG was found guilty of AWL and sentenced to six months detention.

60. RG was discharged under reg 184A(1)(mm) (sentenced to a period of detention of more than six months). RG's service record is stamped 'Campaign Medals Withheld' dated 9 July 1946.

The submission by RG's son HG

61. RG's son, HG provided a written submission in which he advised that he had contacted the Directorate of Honours and Awards of the Department of Defence about his father's war medals. He was told that his father's medals had been forfeited because he was dishonourably discharged. RG's son wrote that he believed his father was entitled to those medals because forfeiture of his medals was not a 'valid punishment'. He requested that the war medals be issued to him on behalf of his father. HG also served in the Army, and retired at the rank of Lieutenant Colonel.

62. At the hearing HG submitted that his father's medals should be restored to him. When he was alive his father did not speak about his war medals even though HG was aware that he had served overseas in the Middle East. HG said that he had obtained his father's service record and was now aware that he had been convicted of being AWL.

63. HG recalled his father as being a gentle and quiet man. His mother said that his father was not the same when he returned from the war – he had been hurt physically and mentally. He would probably have been diagnosed as suffering from Post-Traumatic Stress Disorder these days. His father's mood affected the whole family after he returned.

64. HG said that his father had died when he was 52 years old, possibly as a result of his war service. He thought that his father suffered from the on-going stigma of having his war medals forfeited. HG surmised that other people thought that his father had been a coward even though he had fought for his country. HG's sons are in the Navy and HG would like to show them their grandfather's war medals so that they could be proud of his service. HG said that RG never had anything to do with Anzac Day.

65. According to HG his father had had to carry the stigma of not having his war medals until he died. Those medals should be restored to the family so that they do not have to bear the shame associated with the medals having been forfeited. The medals should have been awarded to his father when he was discharged from the Army. When his father returned to his hometown to serve his sentence, HG said that he was sent to clean the local camp. Nobody noticed when he did not turn up. He was not being paid. The newspaper in his hometown published his convictions and sentence at the time. HG found the old newspaper in the Archives.



## *Gunner RK (dec) – Australian Army*

### Background

66. RK was born on 29 January 1920 at Bundaberg, Queensland. He enlisted into the Army as a volunteer at Townsville in Queensland on 15 April 1941. He was single when he enlisted but married before leaving the Army. His trade on enlistment was recorded as a truck driver.

### Service Record History

67. After RK completed his training with the 41<sup>st</sup> Field Training Battery he embarked from Melbourne on 18 September 1941 to the Middle East and disembarked on 20 October 1941. He embarked the Middle East on 13 March 1942 and disembarked Ceylon on 10 April 1942. After a period of service in Ceylon, RK and his unit embarked Ceylon on 12 July 1942 returning to Australia disembarking at Melbourne.

68. On 29 October 1942 RK was charged with Conduct to the Prejudice of Good Order and Military Discipline. He was found guilty and awarded a fine of £1. RK absented himself without leave on 11 November 1942. He was charged with being AWL and found guilty on 12 November 1942. RK was awarded a fine of 10/-. RK absented himself without leave from 18 November 1942 to 21 November 1942. RK was charged with being AWL and on 21 November 1942 he was found guilty of AWL. He was awarded 72 hours detention and forfeiture of 4 days pay.

69. On 18 December 1942 RK embarked Townsville to New Guinea. On 24 December 1942 RK disembarked at Fall River New Guinea. On 8 December 1943 RK embarked Buna, New Guinea disembarking Townsville on 13 December 1943.

70. At Brisbane on 15 January 1944, after failing to report at the expiration of his leave on the previous day, RK was declared an illegal absentee. RK surrendered himself at Newcastle NSW on 11 January 1946 where he was taken into custody. RK subsequently faced a district court-martial and was found guilty of desertion (AWL from 2400 hours on 28 January 1944 until his surrender at 1800 hours on 11 January 1946). He was sentenced to 15 months detention and discharged from the Defence Force. RK was discharged under AMR reg 184A(1)(mm). RK's service record is stamped 'Campaign Medals Withheld' dated 9 July 1946. Defence records show that in October 1954 RK wrote to Army seeking his medals. On 21 October 1954 he was advised by the Officer in Charge of the Central Army Records Office that 'by reason of the nature of your discharge, you are not eligible to receive any awards'.

### The submission by RK's daughter PE

71. PE spoke to the Tribunal via telephone on 27 February 2015. PE stated that her father went off to war and did his duty and when he came back from the war he was a broken and disturbed man. She explained that her father did not drink before he went to war; however after the war he became a drunk and was also drug dependent. PE stated that her father would physically abuse her mother and his children on a regularly basis. Her father left the family when she was young. Her mother tried to look after the children but it became too much for her and the children were placed in an orphanage where they remained until they reached the age of eighteen.

72. In her written statement PE said ‘at the time of his AWL, in 1944 he found out that his lady friend (who later became our mother) was pregnant. At the time this lady was married to an Army officer with 3 other children. I am not making excuses for them or my father but I believe in my whole heart that her present (first) husband did have something to do with my father not being allowed to have his medals. My father spent at least two to three years overseas fighting the enemy and later causing him to become an alcoholic and drug addict after getting depression from the things that happened over there and no one doing anything to help him along with other soldiers that came back the same way. I believe the Army along with the Australian Government said to these men “you have done what you were told to do; your time is up see you”. When they tried to get help later in life all you people could say was we didn’t cause this’. Later in her life PE obtained information from her uncle about how her father had suffered as result of his service during the war.

*Private IE (dec) – Australian Army*

Background

73. IE was born on 24 March 1920 in rural New South Wales. He enlisted in the Army as a volunteer on 4 June 1940 when he was 20 years old. He was single when he enlisted. His trade was recorded as baker.

Service History

74. On his enlistment IE was allotted to the Artillery and posted to the Artillery Wing. After three months he was taken on strength into the Royal Australian Regiment before being transferred to the 2/15 Field Regiment. During this training period he failed to appear at the place of parade on 12 December 1940 and was subsequently charged with Disobeying a Lawful Command and AWL between 2200 hours on 22 January 1941 and 0830 hours on 23 January 1941. He embarked for the Middle East on 27 June 1941 to return to Melbourne, via Ceylon, on 19 April 1942. While in transit in Ceylon he committed the offence, Disobeying a Lawful Command.

75. On 2 December 1942 IE embarked for New Guinea to be detached to 2/7 Field Battery. On 8 January 1943 he embarked in New Guinea and disembarked in Cairns on the same date.

76. Between 3 and 30 September 1943 IE committed three AWL offences for which he forfeited 51 days’ pay. Between 22 January and 2 April 1944 he committed two more AWL offences. On the 15 May 1944 IE was declared an ‘illegal absentee’ and again on 1 February 1946. On discharge in absentia on 16 July 1946, his campaign medals were forfeited.

The submission by IE’s daughter PT

77. IE’s daughter, PT, provided a written submission in which she laid out a case that the entitlement to her father’s war medals should be restored. The family was aware that her father’s medals had been forfeited because of his extended AWL. PT outlined the anguish the family has experienced over this, and how painful it had been for her father over the years until he died in 2001, despite receiving a war pension when in his 60s.

78. At the hearing PT again submitted that her father's medals should be restored to him. She told the Tribunal that he had joined up in 1940 together with his brother, but that his brother had been killed in action in Tobruk. Her father became feisty and angry, wanting to avenge his brother's death. Meanwhile, their mother had become unwell due to her son's death. Finally, PT submitted that during the times of her father's AWL offences, his address was in the records. He also developed some mental impairment through having a drinking problem and was physically and mentally abusing the family.

*Private JL (dec) – Australian Army*

**Background**

79. JL was born on 10 September 1917 in Melbourne. He enlisted in the Army as a volunteer on 11 June 1940 when he was 22 years old. His occupation on enlistment was Timber Worker and he was single.

**Service History**

80. Throughout his service, JL repeatedly committed military offences which comprised a long list and which began a month after enlistment and continued until he was discharged in 1944. Such offences included Disobeying a Lawful Command, AWL, Drunkenness, Using Indecent Language, Absent from Place of Parade and Desertion, for which he was repeatedly fined, forfeited pay, was Confined to Barracks and served in detention.

81. JL faced two courts-martial. The first, in Darwin, was held on 20 November 1941 at which JL was charged with 'Deserting His Majesty's Service and While Being Under Arrest, Escaping'. He was found guilty of the first charge only and sentenced to 90 days detention. After being declared an Illegal Absentee on 11 September 1944, he again faced the charge of Desertion at a second court-martial in Puckapunyal on 11 October 1944. On being found guilty, he was sentenced on 2 November 1944 to be discharged from the Defence Force and to serve 6 months detention, which he presumably served after leaving hospital the following month, having been treated for malaria.

**The submission by JL's great nephew CJ**

82. JL's great nephew, CJ, provided a written submission in which he asked that the family receive information about the manner in which JL was discharged and whether the matter of forfeiture of his medals could be revisited. The family understands that JL, after returning from New Guinea, went AWL and was later charged with desertion. Consequently, he was 'dishonourably discharged' from a hospital bed.

83. At the hearing CJ told the Tribunal that his great uncle had been raised in 'wharfie stock', and others in the family and in the area had refused to serve during World War II. He had an older brother, who also joined the Army. This older brother went missing in action and that seems to have started the emotional problems JL developed, despite the fact that his brother eventually returned from the Burma Railway, where he had worked as a prisoner of war. After the war JL became alcohol dependent and turned into a recluse, never working, with a war service pension denied

to him. He had no contact with any family or friends, except his older brother until his death on 13 October 1984.

*Private ECH (dec) – Australian Army*

Background

84. ECH was born on 4 February 1918 in rural Queensland. He enlisted in the Army as a volunteer on 20 December 1941 when he was 24 years old. He was single when he enlisted. His trade was recorded as labourer.

Service History

85. ECH enlisted in the CMF and served with the militia until 1 August 1942 when he transferred to the 2nd AIF for duty overseas. ECH served in New Guinea as a cook with the Australian Army Catering Corps attached to the 2nd Australian Calvary Regiment.

86. While overseas, ECH was charged with a number of offences including AWL on three occasions. On 26 November 1943, ECH was wounded in action and evacuated to the 2/3rd Australian General Hospital where he recovered. On 31 January 1944, ECH embarked New Guinea for Townsville, arriving on 7 February. While based in Townsville, ECH again went AWL a further three times, for which he was duly punished.

87. On 19 March 1945, ECH absented himself for a final time and was declared an illegal absentee on 10 April 1945. Eventually, ECH was Discharged in Absentia for Misconduct (Because of Illegal Absence) on 20 June 1946 under the provisions of AMR&O 253(q) (reg 184A(1)(q)) (services no longer required). His file was marked Campaign Awards Withheld.

The Submission by ECH's son EH

88. On 19 October 2010, EH wrote to the Directorate seeking medals of his father ECH and was advised 'due to the nature of your father's service, he does not qualify for any awards as his entitlement to service awards was denied'. EH then wrote to his local Federal member to make representations to the Minister for Veterans' Affairs who advised that ECH's medals had been withheld. EH then decided to provide a submission to the Tribunal.

89. EH appeared before the Tribunal by telephone on 25 February 2015. EH stated that he was the eldest of eight children and that his father had died when they were young. He stated that he had never seen any of his father's medals so had applied for them in October 2010. He received a letter from the Department of Defence that stated the medals had been 'denied'. The Tribunal has a copy of that letter. He went on to say that the Department of Veterans' Affairs (DVA) had previously recognised his father's death as 'war related injury'.

90. EH told the Tribunal that he himself had served for 20 years in the Army and his brother had served in the Navy, so he knew about service life and about Army regulations. He stated that his father completed his war service and was wounded in action in New Guinea. After recuperating in the Australia General Hospital in Townsville, his father went absent without leave. EH explained to the Tribunal that

the family 'would dearly like to have his [father's] medals as a memory of our father whose life was tragically cut short by a DVA recognised war related injury'.

*Private WFK (dec) - Australian Army*

Background

91. WFK was born on 20 March 1922 in Mackay, Queensland. He enlisted in the Army as a volunteer on 15 December 1942 when he was 19 years old. He was single when he enlisted and his trade was recorded as a spring maker.

Service History

92. After training, WFK was posted to the 29<sup>th</sup> Infantry Battalion as an infantryman. On 19 July 1943, WFK embarked in Townsville for Port Moresby, arriving on 22 July. After contracting malaria, WFK was eventually evacuated to Australia on 16 February 1944.

93. Prior to embarkation, WFK was charged and found guilty of being AWL on two occasions and punished accordingly. After his return to Australia, he went AWL on four further occasions and faced court-martial twice. At the first court-martial on 23 May 1945, he was found guilty and awarded 120 days detention (30 days remitted) and forfeited 151 days pay. On the second occasion on 23 May 1946, he was found guilty, sentenced to 15 months detention and forfeited 368 days pay. This sentence was remitted and he was discharged on 2 September 1946. His file is annotated forfeit all awards citing MBI 22/1954 (2a)(iv) (sentenced to at least six months detention) as the authority.

The Submission by WFK's daughter SM

94. In her written submission to the Tribunal SM said that WFK had applied for his medals in 1955 and received a letter dated 1956 that stated 'by reason of the nature of your discharge you are not eligible to receive any awards'. Many years later, the family wrote to their local Federal Member of Parliament in an effort to claim their late father's medals. They received a reply stating that their father had been discharged under the provisions of AMR 184A(1)(mm) 'for going AWOL for extended periods'.

95. SM and her two brothers, AK and JK, appeared before the Tribunal by telephone on 27 February 2015. SM acted as spokesperson and began by summarising her father's service. SM stated that her father had passed away in 2012 and that the family now sought his war medals that had been forfeited. She stated that her father had never pursued his medals and he never went to Anzac Day parades.

96. SM continued that as 'our children want the medals' the family had applied for and received WFK's service file and now sought that 'the 1955 decision be set aside'. She stated that the family felt a sense of shame that her father had not got his medals and that it 'took away our time with dad on Anzac Day'. She said the family was proud of their father and that he had received his DVA benefits. They were critical of the fact that he received 'no treatment after he came home'. That their father went absent without leave for six months after he returned to Australia because of the birth of a son, did not warrant him losing his medals. SM felt that the military regulations of 1946 were 'no longer relevant' in today's world. The fact the family could not get

the medals ‘came as a big shock’. In closing, SM and her brothers stated that they want ‘all families to get their [forfeited] medals’.

*Private EJR (dec) – Australian Army*

Background

97. EJR was born on 23 February 1923 in Melbourne. He enlisted in the Army as a volunteer on 8 January 1940 when he was 16 years old. He was single when he enlisted. His trade was recorded as enamel sprayer. On 24 February 1943, EJR transferred to the 2nd AIF so he could serve overseas.

Service History

98. EJR served in New Guinea as a rifleman with the 58/59<sup>th</sup> Australian Infantry Battalion. While overseas, EJR was twice wounded by gunshot and caught both malaria and dengue fever for which he was treated by the Australian Field Ambulance in New Guinea.

99. EJR had been charged with a number of offences including AWL on seven occasions before he went overseas. He returned to Australia on 30 July 1944 after which he again went AWL twice. On 24 December 1944, the 58/59<sup>th</sup> Battalion again embarked for New Guinea, but EJR went AWL and was declared an illegal absentee on 21 February 1945. Eventually, EJR was ‘Discharged in Absentia for Misconduct (Because of Illegal Absence)’ on 21 June 1946 under the provisions of AMR&O 253(q) (reg 184A(1)(q)) (services no longer required). On 16 August 1946, EJR applied for his discharge certificate that presumably he received after providing the Army the appropriate forms. There was no notation on EJR’s file indicated his medals had been withheld.

The Submission by KR on behalf of EJR’s daughter MH

100. KR provided a written submission. In early 2012, MH wrote to KR of the RSL seeking help to obtain her father’s medals after she had received his records and a letter from the Department of Defence which advised ‘due to the nature of your father’s service discharge, his entitlement to service awards were withheld, consequently he does not qualify for any awards’. KR advised MH of the circumstances, and then lodged a submission with the Tribunal seeking a review.

101. Subsequently, KR appeared before the Tribunal on 21 May 2015. KR stated that he had served throughout World War II and in Vietnam, so he understood what the men went through in New Guinea and in other theatres. KR served for 39 years of which 12 years were in the ranks. KR explained that some soldiers were terrified of the jungle, especially those who had served in the desert. He described what it was like to serve in New Guinea in 1943 and 1944 and specifically that the 58/59<sup>th</sup> Battalion were ‘thrown back into it within a month’. KR stated that they should not have been withdrawn because they were ‘vulnerable’ and would have been better off continuing on.

102. He recalled that by the end of the war, the 9th Division was ‘war weary’ and that these days, mental problems such as PTSD are well known. KR suggested that the Government should ‘forgive all World War I (*sic*) crimes as a gesture’. He recalled a case of a World War I soldier who faced a court-martial on a number of

occasions, jailed after the end of the war and escaped, but still received all his medals. KR suggested: 'Can't we get rid of the rule which says we can't look into it after they are dead? Then we can pick up individual cases'. The families should be able to claim the medals.

## CHAPTER 4

### Inconsistencies between Approach and Law

1. The third task set out in the Terms of Reference directs the Tribunal to:  
*determine whether those approaches were consistent with the legal provisions*
2. The Tribunal first considered the law in relation to each of the services and whether that service had followed the law. It then considered the approach taken by Defence while acknowledging that from 1939 to the present day the Department of Defence, as it is presently constituted took many different forms. It is still possible to consider the attitudes of 'Defence' to the issue of forfeiture of medals through looking at the files from the war years and then the papers prepared from the mid-1960s onwards on what was a worrying issue.
3. It is appropriate for the Tribunal to recognise that the interaction of the laws of the UK and the laws of Australia was a confusing problem for many including this Tribunal. At time there seemed to be a belief that only the Sovereign directly or the Army Council, the Admiralty or the Air Force Council could make laws about honours and awards. Presumably this reasoning was based on the premise that the Sovereign had created the award and had only given authority to those administrative councils to make regulations about the disposition of the awards. In the Tribunal's opinion this logic was flawed. Once the Sovereign agreed that the award would apply to Australia, that award fell under the Australian legal system, particularly after 3 September 1939. Australia alone made laws for its citizens. UK laws would only apply if the Australian Parliament authorised those laws to apply.
4. The Australian Parliament had the power to make laws for the Armed Forces, which it did by passing the Defence Act. The Defence Act set up the Military Board and the Naval Board and authorised the Governor-General to make regulations for the discipline and good government of the Army and the Navy. Later similar provisions were made for the Air Force. The regulations (the AMRs, Naval Regulations and the AFRs) authorised the Military Board, the Naval Board and the Air Force Board to make orders for the governance of the Army, Navy and Air Force respectively. The Military Board made orders in the form of Instructions for the administration of the Army and the Naval and Air Force Boards made Orders for the Navy and Air Force. It was in both the regulations and the Instructions and Orders that rules were made with respect to the withholding, forfeiture and restoration of those medals where there was no provision in the Instrument creating the medal. All these laws including the subordinate legislation were valid.

### Army

#### *Forfeiture under the Defence Act*

5. From 1917 the Defence Act provided that medals and decorations could be forfeited under s 80B for the statutory offence of disposing of or destroying that medal. This provision continued in different forms until 1977. The Tribunal was not aware of any medals having been forfeited under these sections. Given that the Defence Act is legislation of the Australian Parliament, the Tribunal is satisfied that



Defence or a court-martial had the power to order forfeiture of the medals referred to in these sections of the Act if the above statutory offence was committed.

*Forfeiture under the AMRs*

6. Regulations 799 and 800 provided for the forfeiture and restoration of war medals from 2 September 1939 until 23 March 1943 when the regulations were repealed and replaced. The new regulations were repealed on 10 May 1955. Both forms of the regulation provided that war medals in the person's possession could be forfeited in certain circumstances. For an officer those circumstances were:

- sentenced by court-martial to death, being cashiered or dismissed from the Defence Force;
- sentenced by a civil court to death, penal servitude or imprisonment; or
- his commission was cancelled for misconduct.

7. A soldier could forfeit his war medals if:

- sentenced by court-martial to death, penal servitude imprisonment, discharge with ignominy from the Defence Force; or
- sentenced by a civil court to death, penal servitude or imprisonment.

The medals could be forfeited at the discretion of the Military Board and also restored at their discretion.

8. Questions were raised about the Governor-General's power to make such a regulation. (See the 1922 delegation by the Army Council to the Military Board, paragraph 15, Chapter 3) When this regulation was made the Governor-General had the power to make regulations for the discipline of the Military Force under s 124 of the Defence Act. That power was retained until 1985 when the Defence Force Discipline Act came into force. A further question was raised as to whether the Australian Government could make regulations for the forfeiture of medals granted by the King in the Command Paper 6833. The Tribunal notes that the King then extended the grant of medals in the Command Paper to the Dominions including Australia. Unfortunately some of the original papers have been lost but copies of the Dedman Paper and some correspondence are still available. The Command Paper grants of war medals were extended to Australia through the Dedman Paper. Regulations 799 and 800 were in force before 1939 and remained in operation albeit in a different form for the duration of the war and ten years beyond. The Tribunal accepts that the Governor-General had the power to make regulations for the good discipline of the Military Forces and the regulations concerning forfeiture of war medals was within this power as a disciplinary measure. Once the grant of war medals in the Command Paper was extended to the Military Forces, the administration of those medals became subject to Australian law including the AMRs. If an officer or soldier met the circumstances set out in reg 799, the Military Board at its discretion could order the forfeiture of those medals. The Tribunal is not aware of any medals forfeited under this regulation between 2 September 1939 and 10 May 1956. The Tribunal finds that if medals have been forfeited under this regulation according to the conditions set out in the regulation, then those medals have been lawfully forfeited.

### *The Imperial Army Act*

9. The Army Act applied to the Army when members were on active service. The period of active service in World War II was from 3 September 1939 to 15 May 1952. Further periods of active service occurred during the Korean War and operations in Malaya and Indonesia. The active service in the Vietnam War was from August 1962 until 11 January 1973 a period when the Army Act would have applied. The next operation did not occur until 1991, after the Army Act ceased to operate.

10. As noted earlier the Army Act that continued to apply in Australia was the Imperial Army Act. The amendment to the Defence Act in 1956 meant that the new Army Act 1956 did not apply in Australia. The Tribunal was aware of only one medal that was cancelled (forfeited) during the Vietnam War. The medal was a gallantry award and it was cancelled under the specific provisions of the warrant granting the honour. Two other gallantry awards were cancelled in the 1950s in similar circumstances. The Tribunal is not aware of any other medals that were forfeited arising out of periods of active service after World War II.

11. Section 44(11) of the Army Act provided that medals could be forfeited as a penalty following a conviction or finding of guilt for an offence described in the Army Act. This penalty could be imposed in addition to any other penalty. Those offences included AWL, desertion and conduct to the prejudice of military discipline. Penalties could be imposed as a result of a court-martial or as a result of the summary process as set out in the Act. The Tribunal is not aware of any orders made under s 44(11) to forfeit medals. However it is possible that such Orders were made by courts-martial and under the summary process. Any such Orders would be legally valid unless it was shown by a court of law that there was a serious procedural defect or the law had been applied incorrectly.

### *World War II*

12. All the instances of forfeitures or withholdings of war medals drawn to the attention of the Tribunal arose out of World War II service and affected soldiers in the Army.

13. All of the instances of forfeiture referred to the Tribunal involved either discharge under a provision of reg 184A of the AMRs if the discharge was after 24 July 1942 or before that date, discharge under reg 184. A number of these discharges provided the grounds for the member's service to be categorised as not approved. From 8 October 1948 a discharge could be classified as dishonourable based on a number of the grounds set out in reg 184A.

14. The authority to order forfeiture of medals was set out in Instruction 01/1/760. This Instruction was not issued as an MBI but was issued by the Military Board as an Instruction to the Director of Personal Services (DPS). It came into effect on 9 July 1946 and the decisions the Tribunal considered were made after that date. This Instruction authorised the forfeiture of medals if a member had not rendered approved service. The Tribunal concluded that the Instruction was valid because it was an order of the Military Board issued under its power to make orders for the administration of the Army. Despite the fact that it appeared to be based on the UK Pay Warrant it was nonetheless a valid legal Instruction of the Military Board.

15. A member was deemed not to have rendered approved service if the member had been sentenced as a result of the usual very serious offences (treason, sedition, mutiny, cowardice or disgraceful conduct of an unnatural kind) or if sentenced to penal servitude or imprisonment (at least six months) or had been cashiered, dismissed or discharged for misconduct. A member who was discharged as incorrigible (numerous offences) would have his medals withheld at the discretion of the DPS. The Tribunal observed that in the case studies most of the decisions on forfeiture were made either on or after 9 July 1946 for the reasons set out in the Instruction and thus were valid.

16. A member was also deemed to have not rendered approved service if a Court of Inquiry or an Investigating Officer declared him an illegal absentee. The process for declaring a member an illegal absentee was outlined in the AMRs and simply provided that being AWL for more than 21 days and not being recovered, would mean that the member was deemed to be an illegal absentee. In 1949 this ground was modified so that if a person had been discharged in absentia because of an illegal absence before 2 September 1945, his medals would be forfeited. This Instruction remained in force until 21 September 1951 when an MBI 148 came into force.

17. The term dishonourable discharge arose out of legislation in 1945 granting certain benefits to returned servicemen. Those servicemen would only be entitled to benefits if they were honourably discharged. The correspondence at the time revealed that the services did not use this term when discharging members. The GRO of 15 February 1946 denied members who were dishonourably discharged the right to discharge benefits. The MBI 187/1948 replaced the GRO. Both the Instruction and the Order set out the grounds for being declared dishonourable which were a number of the grounds for discharge outlined in reg 184A.

18. The Warrant promulgating the ASM 1939-45 contained a provision for the forfeiture and restoration of the medal. To be entitled to the medal the person must have an honourable discharge. So many veterans were not awarded the medal because they did not satisfy the requirements, not because the medal was forfeited.

#### *Post-World War II*

19. On 21 September 1951 a new MBI 148/1951 was issued in relation to the forfeiture and restoration of medals. The grounds for forfeiture were much the same although the ground of illegal absentee had been removed. This could be explained by the correspondence in 1946 asserting that absences after 2 September 1945 would no longer be considered illegal absences.<sup>97</sup> Members would just be discharged. A new MBI later in 1951 added that discharges pursuant to certain paragraphs of reg 184A and being classified dishonourably discharged would lead to the forfeiture of campaign medals. This Instruction was reissued during the 1950s and eventually became MBI 102-1 on 24 January 1963. This MBI and the Army Act were the only authority for the forfeiture of medals, other than the Warrant creating the Vietnam Medal<sup>98</sup>. The Instruction continued in effect until 2002 when the DI(G) PERS 31-8 was issued. The Tribunal is not aware of any decision made under this MBI in relation to the Vietnam War. Medals may have been forfeited under the specific

---

<sup>97</sup> From files including NAA:MP742/1, 85/1/957.

<sup>98</sup> Royal Warrant, *The Vietnam Medal*, 8 June 1968.

provisions of a Warrant or Letters Patent or pursuant to a court-martial or summary process under the Army Act.

20. In 1975 the Australian system of Honours and Awards came into effect. All awards created under this system have been issued under a Warrant or Letters Patent, and included in the regulations is the authority to forfeit and restore those awards.

21. From September 2012 the DHAM set out the law and policy in relation to Defence honours and awards. The relevant DI(G) was repealed. As discussed in Chapter 2 the exact status of the DHAM is not clear. The introduction to the document describes the document as policy. If it is policy it does not carry the force of law. The Tribunal has concluded that the document is a policy, which sets out the law as well as guidelines. This means that the guidelines in relation to forfeiture and restoration set out in the DHAM is policy and should be applied with the freedom and restrictions explained by the courts in relation to policy. Because the authority to forfeit and restore medals is now located in the Warrants and Letters Patent, it is appropriate for the Directorate to develop a policy guiding decision makers on how they should exercise the discretion to forfeit or restore medals. However the Tribunal doubts that the Directorate has the power to order the mandatory forfeiture of medals for certain serious offences in a policy. To make the forfeiture mandatory the Directorate should ensure that the authority to order mandatory forfeiture is at least contained in subordinate legislation. The same comments apply with respect to restoration.

## **Navy**

22. In many respects ascertaining the law applying to the Navy was simpler than for the Army. The Australian legislation was brief and basically applied the UK Naval Discipline Act and the K/QR&AI to the Navy. Unlike the Army and the Air Force the Navy did apply the new Naval Discipline Act 1957, but from 1964. The Naval Discipline Act and the K/QR&AI applied to the Navy until 3 July 1985. This meant that the Naval Discipline Act and the K/QR&AI as modified by Australian acts and regulations applied to the Navy as if it was Australian law.

### *The Legislation*

23. There are no provisions in the Naval Defence Act dealing with forfeiture of medals. The Act set up the Naval Board for the administration of the Navy and Governor-General was given the authority to make regulations for the good governance and discipline of the Navy. The provisions in the Defence Act dealing with the destruction and disposal of medals applied to naval members.

24. The Imperial Naval Discipline Act sets out the offences applicable to members of the Navy both on war service and in peacetime. Included are the offences of desertion and AWL. Section 52 set out the penalties that could be imposed in addition to the penalties imposed in the individual offence sections. Included in the penalties was the authority to forfeit medals and decorations granted to the offender. Dismissal with disgrace would always involve forfeiture of medals and decorations (s 53(6)).

25. The Naval Discipline Act 1957 which came into force for the Navy in 1964 removed the penalty of forfeiture of medals and decorations. The LSGCM was the only medal that could be forfeited if the member had been convicted of an offence and sentenced to two or more years' imprisonment. Decisions by court-martial until 1964 and as a result of a summary process, ordering the forfeiture of medals and decorations following a conviction of an offence under the Act, were valid. If a member was dismissed with disgrace up until 1964, he would forfeit his medals as a matter of law. The only medal that could be validly forfeited under the Naval Discipline Act after 1964 was the Long Service and Good Conduct Medal (LSGCM). No decisions under these Acts have been brought to the Tribunal's attention.

#### *The Regulations*

26. The Naval Regulations gave power to the Naval Board to make orders for the administration and conduct of the Navy. The Naval Board could restore the LSGCM if certain circumstances were met. The creation of the Conspicuous Gallantry Medal in the regulations included the provision that this medal could be forfeited or restored by the Governor-General if appropriate. Any such decision would be valid if it was made under this provision.

#### *King's/Queen's Regulations and Admiralty Instructions*

27. Medals would be forfeited under these regulations for the usual offences of *treason, sedition, mutiny, cowardice or disgraceful conduct of an unnatural kind*. Medals for gallantry would not be forfeited automatically for these offences but would be referred to the Naval Board for a decision.

28. The regulations set out a procedure to be applied if a person was absent without leave. If the process was followed correctly and the member was not reclaimed the member could have been found guilty of desertion by a service tribunal (both a court-martial and a summary process). As a result of this conviction the member may have forfeited his medals. The service tribunal needed to record whether it had ordered that the medals be forfeited (discretionary). If the desertion is in the face of the enemy the medals would have been forfeited (mandatory). Gallantry medals were not automatically forfeited but were referred to the Naval Board for a decision (discretionary). Any decision made under these regulations would have been valid if the correct process was followed.

28. The Captain of a ship had the power to order the forfeiture of the LSGCM for certain offences. This medal could have been restored if the member displayed good conduct subsequently.

29. As mentioned above in paragraph 20, the authority to forfeit and restore medals under the Australian system of Honours and Awards can be found in the Royal Warrants and Letters Patent. The same reservations apply as expressed above with respect to the DHAM.

#### **Air Force**

30. By 1939 the Air Force Act applied the Imperial Air Force Act to the Air Force. The Governor-General under the Air Force Act made extensive regulations.

These regulations were similar to the AMRs but did not provide for the forfeiture and restoration of medals.

#### *The Legislation*

31. There was no provision for the forfeiture of medals in the Air Force Act. The Imperial Air Force Act allowed for the forfeiture of medals and decorations as a punishment by court-martial or pursuant to a summary process under the Act. The provisions in the Defence Act dealing with the destruction and disposal of medals applied to air force members. Decisions made under the Imperial Air Force Act if the correct procedure was followed, were valid.

#### *Regulations*

32. The Air Force Regulations provided in reg 364(2) that medals could be forfeited if ordered by court-martial following a conviction for an offence. The provisions in relation to the LSGCM introduced in 1933 echoed the requirements for forfeiture in the Naval Regulations.

#### *Air Force Orders*

33. The Orders provided that campaign medals would be forfeited for any sentence of death following a conviction, a finding of misconduct and if an airman had been sentenced to at least two years imprisonment having been found guilty of a felony (mandatory). A member could forfeit their campaign medals following a conviction by a civil power or a finding of guilt (discretionary).

### **Royal Warrants and Letters Patent**

34. Under these Legislative Instruments the authority to forfeit and restore medals rests with the Sovereign or the Governor-General on advice from officials of the Department of Defence. In providing that advice, the discretion has usually been unfettered requiring only that the person should be worthy of the award. However since DI(G) PERS 31-8 came into effect, it would be appropriate for those providing the advice to have considered the guidelines set out in the policies on forfeiture and restoration. Since 2012, the guidelines have been available in the DHAM.

### **Conclusion**

35. The Tribunal is not able to make a definitive statement that there were or were not inconsistencies between the legal provisions and the approaches of the three services. Each service had the legal authority to order the forfeiture of war medals either under the Instructions of the Military Board, the K/QR&AI or the AFRs and Orders of the Air Board. Provided the appropriate procedures were followed and the forfeiture was based on the provisions of those Instructions or Orders, the decisions were valid.

36. The Tribunal has no doubt that mistakes were made when these provisions were applied by the three services. Those errors would have been individual errors and there is no evidence that any such errors were as a result of 'maladministration'. Rather the files and submissions show that the authorities did not make peremptory decisions. The services had the power to order forfeiture of medals and exercised that power with some care. For example, in 1948, the Instruction was modified so that a

member was no longer an ‘illegal absentee’ if the absence began after 2 September 1945. Members were still on active service at that time, but it is clear from the files that the authorities did not consider it appropriate to deem a member to be an illegal absentee if the absence commenced after hostilities had ceased. The Government and the public made it clear to Defence at the end of hostilities that it expected the services to take action when members misbehaved and/or when they went AWL. The decisions made by the three services at that time reflected that expectation. This is discussed further in Chapter 7.

## CHAPTER 5

### Restoration

1. The terms of reference to this Inquiry do not include a referral to the Tribunal to consider whether decisions made since 1939 about the restoration of medals, were made according to law. Nonetheless the Tribunal was of the opinion that it must address the role of restoration in relation to the issue of forfeiture of medals. The Tribunal is conscious of the fact that it would not be appropriate for it to make recommendations with respect to how medals have been restored since 1939. However it would not be exceeding the terms of reference for the Tribunal to make observations about how the law in relation to the restoration of medals has had an impact on the forfeiture of medals.
2. For the most part medals were restored by the Department of Defence in the 1980s and 1990s because those in authority at that time were of the opinion that there was an inherent unfairness in the system that had operated following the cessation of hostilities in World War II. There was some doubt about whether the Army, Navy and Air Force had had the power to decide on the forfeiture or withholding of medals. Given this uncertainty, Major General Stevens (in his role as Assistant Chief of Personnel – Army) developed guidelines to assist him to make decisions about whether medals should be restored to World War II veterans who applied to have their medals restored. Those guidelines were based on the preceding investigations and reports from the mid-1960s to the 1980s, which had made recommendations to government about the development of a new Warrant on Forfeiture and Restoration. A number of veterans received their medals under the guidelines developed by Major General Stevens.
3. In 2002 DI(G) PERS 31-8, and reiterated in the DHAM after repeal of the DI(G) in 2012, stated that medals would not be restored if the forfeiture had been mandatory under the Instruction. In other cases consideration would be given to the following matters when deciding whether medals should be restored:
  - the veteran's age;
  - the physical and mental condition of the veteran;
  - any mitigating circumstances that lead to the forfeiture;
  - whether by applying contemporary standards, the forfeiture would not have occurred; or
  - the veteran's conduct subsequently.
4. The Tribunal would endorse this policy and the matters that can be taken into account when considering whether to restore a medal, with one proviso. With respect to the mandatory forfeiture of medals, the Tribunal would suggest that the forfeiture of a medal not be considered mandatory if the offence is no longer an offence under military or civil law and the medal should be restored to the veteran on this basis alone.
5. When considering the restoration of medals in 2015 and beyond the Directorate must take into account that most veterans of World War II have died and it is their families who are seeking the restoration of a veteran's medals. As advised



in the Directorate's policy paper of 2005, it is the veteran who is entitled to be awarded a medal if the requirements have been satisfied, not his family. In this Inquiry it is the families who have made submissions to the Tribunal for the medals to be awarded to them because the veteran has died. This does present a dilemma for the Directorate because the family has no entitlement to the medals and if it is decided that they should be 'restored', to whom should the medals be given?

6. The Directorate's policy of 2005 explained that a medal would be 'gifted' to the family of a veteran if the family showed that the medal would be highly regarded. The medal was 'gifted' as a mark of respect to the veteran. The 'family' was defined as the Executor under the veteran's will, a Public Trustee Administrator if the veteran died intestate or a sole beneficiary. Under the now repealed *War Services Estates Act 1942*<sup>99</sup>, medals and decorations would be either disposed of through the veteran's will or to a person approved by the Minister (ss 13 & 14). In the Tribunal's opinion this policy is a useful starting point for the development of a policy with respect to the 'gifting' of medals to the families of deceased World War II veterans. This argument is further developed in Chapter 7.

---

<sup>99</sup> Ceased 1 September 1989.

## CHAPTER 6

### Psychosocial considerations in the withholding and forfeiture of medals

#### Introduction

1. It became clear to the Tribunal that psychosocial issues of the veterans needed to be considered during its deliberations through both reading submissions provided by individuals and families in addition to listening to some of their stories in person during the hearings held in Canberra and Melbourne. The fact that many of the personal stories involved a late father, grandfather or uncle coming back from war a 'different person', often developing addictions and other negative behaviours which would have previously been out of character, needs to be considered. In addition, why several generations of a family can be adversely affected by a forfeiture decision made some 70 years before, warrants some examination. This Chapter, therefore, looks at some of the reasons why these family reactions would occur, in parallel with changes in the understanding of Post-Traumatic Stress Disorder (PTSD) over time.

2. In the first instance, however, it is useful to paint the context in which members of the Armed Forces have had their medals withheld. There is a culture of military service which provides the framework for the regimented behaviours which in turn allows Armed Forces personnel to do the jobs they are expected to do during operational service. There is, in other words, a 'system' whereby one is expected to meet obligations and perform in line with standard procedures. We must also remember that most Armed Forces personnel in Australia met their obligations despite being adversely affected in some way. There is nevertheless the likelihood that a group of those who had their medals forfeited may have either had existing mental illnesses and/or experienced adverse psychological reactions to being at war, many of which may have not been recognised at the time.

#### Understanding Post-Traumatic Stress Disorder

3. It is reasonable to expect that people put into extraordinary circumstances as during battle and war, would somehow react emotionally to the experience. Even highly trained professional military personnel can succumb to adverse emotional reactions as a result of war. So it should be no surprise that a man who was a baker, banker or candle maker and six months later was fighting a war in the Pacific or the Middle East, would also succumb to the stress of battle. A survey of PTSD statistics indicates conservatively that around 30 percent of people who experience battle first hand, will develop some form of the condition.<sup>100</sup>

4. PTSD is a label which is relatively recent, despite evidence that the condition has existed in war veterans throughout history. A deterioration in psychological state has been documented in accounts as early as the Battle of Marathon (490BC) and the Spartan stand at Thermopylae. A 14<sup>th</sup> century treatise has been uncovered in which a

---

<sup>100</sup> Tanielian, T. & Jaycox, L., (2008) Invisible wounds of war: Psychological and cognitive injuries, their consequences and services to assist recovery. Center for Military Health Policy Research, RAND National Security Division, RAND Corporation, Santa Monica, CA.

knight instructs young soldiers on how to defeat melancholy and stress associated with battle.<sup>101</sup>

5. These days, the symptoms and aetiology of PTSD are well documented. There are generally four types of symptoms: intrusive memories, avoidance, negative changes in thinking and mood, and/or changes in emotional reactions. These symptoms can appear as early as three months after a traumatic event, they may not appear until many years later, and/or they may reoccur. We now know that if untreated, this condition can lead to profound psychological damage, which may be as detrimental to an individual as to those people closest to this person.

6. Despite fairly accurate descriptions of PTSD symptoms over time, an understanding of *why* they occur has been reflective of particular periods in history. The physician Johannes Hofer postulated in 1688 that during the Seven Years War, the symptoms were due to soldiers longing to return home. During the American Civil War, PTSD sufferers were simply left to be claimed by family members or cast into the countryside to wander, because no one really understood what was happening to them. Physician Jacob Mendes Da Costa in 1874 explained Civil War PTSD symptoms as simple cardiovascular actions, or ‘disorderly action of the heart’, leading to one of the early labels of PTSD, ‘soldier’s heart’.<sup>102</sup>

7. During World War I, Western commanders seemed oblivious to the idea of combat stress. At the time, PTSD was explained as a result of the new high calibre artillery and explosives which were deployed. It was thought that the impact of shells caused concussions which disrupted normal neural functioning, hence the term, ‘shell shock’. During the Korean conflict, combat stress was explained as ‘operational exhaustion’, distancing it from psychological factors. It was not until the aftermath of the Vietnam War that PTSD was appreciated as a discreet syndrome with a logical explanation. The first appearance of the term PTSD was in the American Psychiatric Association’s Diagnostic and Statistical Manual of Mental Disorders III in 1980.<sup>103</sup> The general public is much more aware of the condition in the present day, with the psychological effects of recent wars in the Middle East and Afghanistan being evident in a number of returned servicemen as publicised through the subsequent media coverage which has highlighted this.

8. The impression grew over the years from World War I that the condition of PTSD only afflicted men of weak character, which is the reason why more stringent screening processes were developed to apply at recruitment. Still today a significant aspect of recruitment screening in Western military organisations involves psychological assessment, implying a need to select for mental resilience in those who will ultimately become military personnel.

9. During World War II, despite a greater understanding of how war may affect some individuals, there was nevertheless a prevailing idea that PTSD sufferers were in some way weak. For example, in the Royal Air Force Bomber Command (under

---

<sup>101</sup> Jones, J. (2013) A brief history of PTSD: The evolution of our understanding. <http://www.military1.com/army/article/405058-a-brief-history-of-ptsd-the-evolution-of-our-understanding>

<sup>102</sup> Ibid.

<sup>103</sup> Ibid.

which many Australian pilots served), battle stress reactions often led to a stamp of 'LMF' (Lack of Moral Fibre) on the airman's file, together with stripping of rank, banishment to specified purpose built quarters and the accompanying disgrace. This occurred in the United Kingdom but was reflective of the values of an era in which many of the personal stories elicited through the process of this Inquiry, evolved.

### **Families and their reactions to withholding and forfeiture**

10. Since 25 April, 1916, when Anzac Day was declared a day of remembrance in Australia, people over the country and in New Zealand have every year commemorated the fighting spirit of the soldiers in Gallipoli. But it has not been until relatively recent times that Anzac Day, the 'ANZAC legend' and war service in general has been so revered particularly by families of previously serving members, culminating in record crowds attending dawn services during the recent 100th anniversary of the landing at Gallipoli. These crowds comprise not only veterans, but families, including small children proudly displaying the medals earned by their forebears.

11. So profound is this reverence that it has become intrinsically linked with the idea of a national culture - what it means to be Australian. Some explanation may be in the fact that World War I was so soon after Federation and it served to consolidate the fledgling nation's feelings of national pride and tragic loss of family and friends. Yet in the words of one of the less sympathetic opinion writers, this is not necessarily a positive thing:

*It's a sense that stirs in these recent Anzac days, a sense of Australia's desperate lunge for significance, our collective quest for a military history that we can drape around us, like a flag cape at a Gallipoli dawn service: a sense of defiant national self.. Sometimes we seem a young land a little too eager to share in the gnarled old-world history of storied conflict. Here look ... we had one too.<sup>104</sup>*

12. There was something which is more obvious in recent times, perhaps as a result of the celebrations of the bicentenary of British settlement in Australia in 1988, the 'Australia Remembers' year in 1995, and the later 2000 Sydney Olympics, which seems to have resurrected a sense of national pride, whether that be expressed in a nationalistic feeling towards sporting prowess, or military service. The Tribunal acknowledges that such a discussion is more the domain of historians and sociologists than is suitable for further analysis in this decision report.

13. Whatever best explains the historical and sociological framework for family pride in an ancestor's war service, the fact remains that in current times, there are a growing number of families who are keen to commemorate it. In line with this trend is the ease of public access to veterans' service records. When such a search ends with the discovery that a beloved father, grandfather, great grandfather or uncle had his medals withheld or forfeited, this can lead to understandable distress, because in likelihood in most cases, the veteran himself had not spoken about it. Such a

---

<sup>104</sup> Green, J. (2014) Why must a war define us? Australian Broadcasting Corporation, opinion. <http://www.abc.net.au/news/2014-04-24>

discovery could feasibly question the understanding and foundation of one's family history at least, and at most, one's sense about 'being Australian'.

## **Conclusions**

14. The Tribunal acknowledges that psychosocial factors play an important part in understanding both some of the potential reasons for, as well as the continuing adverse effects of, the withholding and forfeiture of medals. The consideration of these factors complements the analyses of military law and history which are covered in previous chapters.

## CHAPTER 7

### Tribunal Consideration

1. The following quotation from a Minute Paper prepared by the Department of Air in December 1973<sup>105</sup> sets out the challenge faced by all decision makers when considering the ethical issues associated with forfeiture of medals.

*There is no doubt that a persuasive, philosophical case against the forfeiture of war medals can be made out based on the apparent injustice of having a meritorious act of the past negated by an unrelated act of a later date. However, while the Serviceman continues to serve, he remains part of a disciplined and principled community whose standards govern his actions and whose values he is required to uphold. In this regard he cannot be equated to a member of the civilian community. He is well aware of the moral and Service obligations and responsibilities implicit in his oath of allegiance and of the consequences of deliberately failing to uphold the dignity of his profession through disgraceful conduct.*

*Service loyalties, values and traditions have been built on the integrity and conduct of the men who wear the uniform. Part of this image is also the winning and wearing of medals and all that they signify within the Service. Under normal circumstances uniforms and medals are inseparable: the stripping of one for disgraceful conduct must be accompanied by the loss of the other. The medals are awarded while serving in uniform; if the right to wear uniform is withdrawn so must the right to wear medals be withdrawn. Any other action would deny the purpose in awarding medals while in military service and would be repugnant to those remaining Servicemen, (the majority), who wear their medals with pride and dignity.*

2. In Chapter 4 the Tribunal concluded that Defence and the three Services had the legal authority to make decisions about the forfeiture of medals in certain defined circumstances. The Tribunal could find no evidence of ‘maladministration’ or institutional injustice. However the Tribunal could not say that no incorrect or unjust decisions were made in the years following the cessation of hostilities in World War II. Rather, the Tribunal would be almost certain that incorrect and unjust decisions were made. It was inevitable that mistakes would be made by members of the Armed Forces attempting to make numerous decisions in a short period of time. It was also inevitable that some decision makers would feel resentful because of the pressure they were under and that resentment could be reflected in their decision-making resulting in unfair decisions.

3. The approaches by Defence and the three Services revealed that the policies upon which the Instructions and Orders were made reflected the prevailing community attitude. After reading the files of the era, the Tribunal concluded that attempts were made to make the policies fair. The memoranda showed that there was much discussion about the procedures and requirements for a person to be declared an

---

<sup>105</sup> Minute to the Chief Executive Officer, Services Personnel, from the Primary Executive Officer, Air Office, 6 December 1973.

illegal absentee. The Navy disagreed with the Army. It argued that if the absence occurred in non-operational periods a seaman could be absent for two years before action would be taken. It pointed out that the Navy had had success recovering absent seamen, disciplining them and returning them to their posting. The Army argued that disciplinary proceedings should commence after 21 days absence. The services chose to go their own ways, although the Tribunal notes different provisions applied to the offence of being AWL in the Navy if it occurred during hostilities.

4. Defence and the Services were also subject to public and Government pressure. Letters to the Government during and just after the war indicated that the members of the Returned Sailors', Soldiers' and Airmen's Imperial League of Australia (the League)<sup>106</sup> and the public thought that members of the Armed Forces should be punished if they had misbehaved on service. A resolution of the League referred to those who misbehaved on service, were discharged and returned to their communities and then seemed to suffer no disadvantage.<sup>107</sup> The prevailing view was that a member who had been honourably discharged deserved support but a member who had been dishonourably discharged did not. Society may no longer hold these views but they were genuinely held in 1945. The society of today did not face the threats of World War II nor has it witnessed the many deaths and serious injuries arising out of a world war. It is difficult to imagine the shock and sorrow felt by the community following the return of prisoners of war. That is, today's society cannot put itself in the shoes of Australians at the end of World War II and understand the emotions that lay behind their views. The Tribunal accepts that the penalty of forfeiture of campaign medals imposed at the end of World War II on illegal absentees and veterans convicted of other military offences, was a policy endorsed by the Government and the public.

5. For the above reasons the Tribunal concludes that it would not be appropriate to recommend that the decisions made following World War II to forfeit campaign medals in certain circumstances, be overturned. For the most part these decisions were legally valid and made according to a policy that was publicly endorsed. The Tribunal considered whether it should recommend that individuals who had forfeited their medals should be contacted and advised that they could apply to have the decision reviewed by this Tribunal. This would enable any incorrect or unjust decisions to be overturned. There would be several problems with such a recommendation. Many of those veterans are now dead and while a relative could request review, the Tribunal could at best set aside the original decision and state that the veteran was entitled to the medal. It could not order that the medal be given to the relative for the reasons set out in Chapter 5 paragraph 5. It would be difficult to establish who had had their medals forfeited and how to contact them. The Tribunal could restore medals but it would be more difficult to find the evidence to satisfy the policy on restoration. And finally it would be difficult and time consuming for both Defence and the Tribunal to locate the evidence (files) and consider each matter. In the Tribunal's opinion this process would be difficult, time consuming and may not result in a fair decision.

---

<sup>106</sup> Reply of Minister for Army 20 September 1947.

<sup>107</sup> Resolution 147 of 26<sup>th</sup> Annual Conference of the League.

## **Rationale / Findings**

6. During World War I Australia put out the call for men to join up and serve their country overseas and they answered the call in their thousands. These were ordinary folk with almost no previous experience of military service and in particular, limited understanding of military discipline. They were trained quickly and just as quickly found themselves at the front a very long way from home.

7. Australia never fully recovered from the carnage of World War I. So when Australians were again called to fight in World War II, just 20 years after the end of World War I, those marching away had no doubt about the realities they would soon face. This group, as part of a national population significantly less than that today, had grown up in communities in which there were obvious effects from World War I. It would not have been uncommon to have had personal experience with damaged and maimed men of World War I with their missing limbs, their drinking problems and their inability to recover from the horrors of war. Yet thousands of people served with courage and a singular determination in another world war.

8. While there is no real way to thank someone for sacrifices made in war; recognition is shaped as a small symbolic token – a medal with a ribbon. Worth little in monetary terms, medals pay respect and acknowledge what an individual gave in the service of their country. To anyone who has ever served, a medal spiritually connects the wearer to all those who served beside them, the living and the dead. There is probably no piece of metal with greater meaning, nor greater symbolic worth, than a war medal.

9. During both World War I and World War II there were members who were never given their medals at the end of the war. In many cases this was not due to cowardice, aiding the enemy or a failure to perform their duty in fighting the enemy. Rather, it was because they failed a different test – the test of discipline. Some let alcohol and/or drugs get the better of them, others disobeyed routine orders, others overstayed the time allowed away from their units for which they were duly punished (see Chapter 2).

10. The Tribunal heard evidence that individuals without medals tended to avoid all situations where questions would be asked about their war service. They did not join returned servicemen's clubs, they avoided Anzac Day celebrations and they kept away from reunions. Regardless of their experiences of war, this group stayed away from their peers.

11. Evidence given to the Tribunal has highlighted the number of family members who never even knew their parent or grandparent served in World War I or World War II. Individuals without medals seem to have been more reluctant than most to discuss their war history, presumably out of fear that they would be judged. Quite likely the humiliation of being denied medals contributed further to a sense of isolation and shame that would have seemed inexplicable to those who did not know their story. It is difficult to imagine the emotional havoc caused to a vulnerable person denied even the limited public understanding of knowing they had gone to war.



12. The Tribunal found evidence that many of the veterans themselves and the veterans' families have undergone considerable emotional hardship as a result of forfeiture decisions at the end of World War II and this is continuing today. In Chapter 6, psychosocial factors were examined, including an overview of the changing understanding of PTSD over time.

13. The consequences of war on veterans on operational service are now well known and Defence was aware of possible injustices as a result of veterans having their medals forfeited. Since the 1960s, a number of papers discussed these injustices, but nothing was done to rectify any injustice until the 1990s. The Tribunal has seen firsthand the emotional impact on these families who now ask us to right a wrong and grant the issue of the medals that were rightfully earned (see the case studies in Chapter 3).

14. The practice of forfeiture of medals rarely occurs today. This type of punishment for committing a minor offence declined after World War II. But this has not helped the veterans who fought for Australia, and their families, who have been denied recognition. The Tribunal believes it is time to rectify this situation. The Tribunal is aware of the June 2015 restoration of Mr John Hingley's World War II medals which appear to have been forfeited because he was *an illegal absentee*. The Army presented to Mr Hingley his medals on his 101<sup>st</sup> birthday after 66 years.<sup>108</sup>

#### *Recommendation 1*

15. Given the above observations the Tribunal is of the opinion that any *injustices arising from any improper refusal to issue an entitlement to, withholding and forfeiture of such defence honours and awards* could be overcome by gifting all withheld or forfeited medals to the veteran who earned the medal or medals, or if the veteran is deceased, to the family of the veteran. However the Tribunal does not believe that it would be appropriate to gift withheld or forfeited medals that have been subject to mandatory forfeiture to either the veteran or the veteran's family. The only exception to this rule would be if the offence which resulted in the withholding or forfeiture is no longer an offence under military or civil law. In these cases the medals should be restored to the veteran or gifted to the family to overcome an injustice (see Chapter 5 paragraph 4).

16. The Tribunal notes that gifting the withheld or forfeited medals does not require Defence to overturn the decisions of the past. Rather those decisions will remain extant and the later decision to gift the medals will simply reflect a change in attitude based on today's values rather than a statement that the decisions of the past were wrong.

17. In Chapter 5 the Tribunal considered the issue of who should receive medals when they are gifted to the families of veterans. The Directorate's guidelines for the gifting of medals to the families of veterans, state that the medal is to be given to the executor under the veteran's will, a Public Trustee Administrator if the veteran died intestate or a sole beneficiary. In the Tribunal's opinion this is a good starting point but does not cover many family situations. A deceased veteran's medals should be gifted to the family member nominated in writing by the immediate descendants of

---

<sup>108</sup> ABC News, 1 June 105, <http://www.abc.net.au/2015-06-01/> accessed on 1 June 2015.

the veteran. If there are no immediate descendants the medal should be gifted to a member of the family nominated in writing by the family at large. Finally, if there is a dispute in the family about who should be gifted the medal, the medal should not be gifted.

18. The Tribunal notes that the eligibility criteria for the ASM 1939-45 include the clause: *only those who have received, or would be entitled to receive, an honourable discharge shall be eligible.*<sup>109</sup> If this medal was not awarded because the person did not meet the eligibility criteria, then it cannot be restored to the veteran or gifted to the family.

#### *Recommendation 2*

19. Over the years, the lists of reasons for mandatory and discretionary forfeiture of medals have been modernised according to contemporary beliefs and the standards expected of servicemen and women. The Tribunal considered the most current circumstances for mandatory forfeiture of medals<sup>110</sup> and has made some suggestions to streamline this list in light of a more modern context. The current list of offences for mandatory forfeiture of awards is:

- treason;
- receiving or assisting a person known to be guilty of treason, or for not preventing treason;
- treachery;
- inciting mutiny;
- assisting prisoners of war to escape;
- sabotage of assets;
- aiding the enemy;
- communicating with the enemy with the intention of assisting;
- taking part in a mutiny;
- sedition in time of war;
- cowardice in the face of the enemy; or
- convicted of desertion in the face of the enemy from an operational area or while on recreational leave from an operational area.

20. After examining this list in the light of modern standards and expectations, the Tribunal concluded it is necessary to align mandatory forfeiture offences to the *Defence Force Discipline Act (DFDA) 1982* and current criminal law. According to the DFDA, the most serious offences attract a penalty of either life imprisonment or imprisonment of up to 15 years. The Tribunal noted that desertion nowadays only attracts a penalty of up to 5 years imprisonment. Consequently, the Tribunal decided that conviction for the offence of desertion should not attract a mandatory forfeiture if found guilty. In addition, the Tribunal considered that offences related to terrorism should now be added to the list. Consequently, below is the suggested list of offences for the mandatory forfeiture of awards is:

- treason and related offences; (see for example s 9A of the *Crimes Act 1958* (Vic));

---

<sup>109</sup> Royal Warrant, Australia Service Medal 1939-45, Clause 6.

<sup>110</sup> Defence Honours and Awards Manual (DHAM), Chapter 46, paragraph 46.6

- mutiny and related offences (see s 20 of DFDA 1982);
- sabotage of own and allied assets (see s 15A of DFDA 1982);
- aiding the enemy (including assisting prisoners of war) and related offences (see ss 15D, 15E, 16 of DFDA 1982); and
- conviction of serious terrorist related offences (see s 3(1) of the *Crimes Act 1914* (C'th), *Criminal Code Act 1995*).

21. The Tribunal accepts that there should be discretionary forfeiture of medals in strictly defined circumstances. The current list of reasons for discretionary forfeiture of awards is<sup>111</sup>:

- conviction for a crime or offence or for acts which are considered to be so disgraceful or serious that it would be improper for the offender to retain the award;
- gallantry and distinguished service decorations would only be forfeited in extreme situations;
- a decision that one award should be forfeited does not mean that any other award should be forfeited;
- the quality of the member's entire service should be taken into account;
- a dishonourable or disciplinary discharge or termination would not of itself be a reason for forfeiture of awards but may be taken into account; and
- an award should be forfeited if it was obtained by making a false declaration.

22. The Tribunal has examined this list and concluded that there are two steps in the exercise of the discretion to forfeit medals. The first step is to identify the offences which could attract the penalty of forfeiture of medals. The second step is to decide whether the discretion to forfeit a medal should be exercised in accordance with the guidelines. The Tribunal recommends that convictions for offences satisfying the following criteria should be the basis for considering whether a member should have a medal withheld or forfeited:

- conviction for an offence which is considered to be so disgraceful or serious that it would be improper for the offender to retain the award; and
- if an award was obtained by making a false declaration.

23. When exercising that discretion, the Tribunal suggests the following guidelines adapted from the original list, as well as an additional guideline, be taken into account:

- gallantry and distinguished service decorations would only be forfeited in extreme situations;
- a decision that one award should be forfeited does not mean that any other award should be forfeited;
- the quality of the member's entire service should be taken into account;
- a dishonourable or disciplinary discharge or termination would not of itself be a reason for forfeiture of awards but may be taken into account; and

---

<sup>111</sup> DHAM, Chapter 46, paragraphs 46.7 to 46.10.

- consideration should be given to variables such as mental health, physical condition and any other mitigating circumstances (new).

### *Recommendation 3*

24. In Chapter 2 the Tribunal considered the legal status of the DHAM and concluded that the DHAM reiterates the law set out in the delegated legislation and the applicable policy. In particular the decision-making with respect to forfeiture of medals was changed from being set out in a Defence Instruction made pursuant to s 9A of the Defence Act to being incorporate in a ‘Policy Manual’ that does not purport to be delegated legislation. The Tribunal found that the DHAM sets out the policy in relation to honours and awards and as such it cannot prescribe mandatory decisions. Policy, by its very nature is discretionary. The Tribunal has concluded that in certain circumstances medals should be mandatorily forfeited (Recommendation 2) and in the Tribunal’s opinion these mandatory decisions would not be enforceable if only found in the DHAM. The authority for mandatory forfeiture must be placed in delegated legislation such as a Defence Instruction, or in regulations under the Defence Act.

25. The power to forfeit medals will, for the most part, be found in the regulations attached to the Letters Patent creating the medal. However that authority is discretionary. Unless the wording of the regulation specifically states that the medal will be forfeited in certain circumstances such as the offences referred to in Recommendation 2, the decision will be discretionary.

26. In relation to the discretionary forfeiture of medals the Tribunal notes that these could be authorised by policy because they are discretionary decisions. However in the Tribunal’s opinion this could leave any decisions made under this policy open to challenge in the courts. It could be argued that a discretionary decision made to deprive a person of their medals under a policy, would be an attempt to deprive a person of a right under law by a policy. The Tribunal acknowledges that for the most part, the discretionary forfeiture of medals would be made pursuant to the regulations attached to Letters Patent and thus would be valid. However if there is no such power in the regulations, the decision could be challenged. The policy set out in the DHAM would be very useful to a decision maker because it sets out the matters the decision maker should take into account when making the decision.

27. The Tribunal recommends that the authority to order the mandatory or discretionary forfeiture of any medals be placed in a Defence Instruction or in regulations under the Defence Act. The Instruction or regulation must state the requirements for the mandatory forfeiture of any medals (Recommendation 2). The DHAM should contain the policy guidelines on how the discretionary decisions should be exercised.

### *Recommendation 4*

28. A number of submitters argued that it was unfair that the forfeiture of a medal was forever. The relatives argued that a sentence of imprisonment is for a defined period, whereas the forfeiture of a medal is forever and affects the veteran’s family forever. In the past, family members did not have access to information about their forbears and possibly were not aware that a relative had forfeited their campaign medals. Now families can access their relative's war service record online and find out that their relative's medals have been forfeited. The families argued at the

hearings that they did not understand why the decision was made that their relative should forfeit their medals. They acknowledged that their relative had committed military offences, but argued that this should not have affected their entitlement to the campaign medals. They had earned those medals!

29. The Tribunal discussed earlier in this Report the significance of medals to the families of veterans. In the past families regarded these medals as belonging to the veteran. Now the descendants of World War II veterans wear the medals of their relatives with pride. This has become particularly relevant on Anzac Day. All the relatives who appeared before the Inquiry spoke of their sorrow at not being able to wear their relative's medals on Anzac Day (see Chapter 6).

30. The Tribunal concluded that when a decision is made that medals should be forfeited, the forfeiture should be for a specific period. In the most extreme cases the forfeiture may be forever or for the life of the veteran. In other cases it may be for only a few years. When the decision maker decides that a medal should be forfeited he or she should also decide the period of the forfeiture. This would give the veteran and their family some certainty and might result in an acceptance that the decision was fair. It is an acknowledgement that the veteran earned the medal but also an acceptance that the veteran should be punished for unprofessional conduct.

31. The Tribunal recommends that when a decision is made that the member forfeit any medal, the decision maker should also decide the period of the forfeiture. The Tribunal would also recommend that the mandatory forfeiture of medals be forever or for the life of the veteran. These medals should also not be gifted to the families. The DHAM should contain policy guidelines on the appropriate period that should apply to the forfeiture of a medal.

#### *Recommendation 5*

32. Finally the Tribunal considered whether veterans and members should have a right to seek review of decisions on forfeiture and restoration. Under the Defence Act the Tribunal can review a decision if it is a refusal to recommend a person for a defence honour or award. A decision that a medal is forfeited or a decision to refuse to restore a forfeited medal, is a decision affecting a person's entitlement to a medal and in the Tribunal's opinion such a decision should be reviewable. It is of a similar nature to the decisions presently reviewable by the Tribunal. Providing a right to review would emphasise the legitimacy of the decision by showing the legal basis for the decision and how the policy had been applied according to the guidelines. The decision would be open to public scrutiny and Defence would be accountable for its decisions on forfeiture and restoration. If these decisions are subject to merits review there is far less likelihood of these decisions being questioned both within and outside Defence in later years.

33. The Tribunal recommends that the Defence Act be amended to include decisions on withholding, forfeiture and restoration of medals in s 110V(1).

## CHAPTER 8

### Conclusions and Recommendations

1. Finally, the Tribunal was asked to present to Government:

*any recommendations that the Tribunal considers appropriate to correct any injustices arising from any improper refusal to issue an entitlement to, withholding and forfeiture of such defence honours and awards.*

2. To ascertain the applicable law relating to the withholding and forfeiture of medals involved significant research by the Tribunal. It became apparent early in the piece that the complexity of the law and the combination of Australian law and Imperial law since 1939, meant that the Tribunal must also address the hierarchy of the law. For many veterans and current members of the Defence Force, the legal authority for decisions about forfeiture was the AMROs, a publication that combined regulations, instructions and explanations about how these operated. Such a publication was useful for a member in their everyday tasks, but it is not the law. Given the findings in the Boyes case it was important for the Tribunal to show the authority for the power to make decision on forfeiture and how that authority originated in an Act of Parliament. Explaining these fundamental concepts has led to a very detailed explanation of the law in relation to Defence, the Army, the Navy and the Air Force in Chapter 2.

3. In Chapter 3 the Tribunal set out the approaches of Defence and the three Services since 1939. Over the years a belief arose that these decisions were not made according to law and that the decision makers had made arbitrary decisions. These observations did a disservice to the officers and commanders at that time who gave careful consideration to the legal authority and the appropriate policy for making decisions on forfeiture of campaign medals. Certainly there was confusion about the role of the Pay Warrant in Australia during World War II. In 1927 Defence had clearly stated in the AMRs that the Pay Warrant did not apply to the Army. In spite of this the Pay Warrant continued to worry the decision makers and in 1946 it was used as the basis for the Instruction on forfeiture. The Military Board seemed aware that it could not rely on the Pay Warrant. The Navy relied on the Imperial Regulations and Instructions from the beginning and so their approach from 1939 onwards was consistent. Very little information was available on the Air Force's approach.

4. The Tribunal concluded that there was a legal basis for the decisions on forfeiture of medals. It also concluded that it seemed most likely that incorrect decisions were made that were either not based on the law or made arbitrarily. However these decisions were not an indication of 'maladministration' or institutional injustice, but rather individual decisions made by decision makers under pressure.

5. Finally the Tribunal considered the effect on the veterans of World War II and their families of the decisions to forfeit the veterans' medals. It was these observations that led to the Tribunal developing five recommendations. In the Tribunal's opinion these recommendations should result in better decisions that will achieve the purpose of maintaining military discipline and being fair to the veterans and their families. The recommendations will correct any injustices that arose as a

result of decisions made following World War II and hopefully ensure that those injustices will not be repeated in the future.

*Recommendation 1*

The Tribunal recommends:

1. that the medals forfeited by veterans pursuant to DPS Instruction of 9 July 1946 and MBI 148/1951 amended on 7 December 1951 and subsequently reissued a number of times, be restored to veterans or gifted to the families of deceased veterans;
2. that medals subject to certain mandatory withholding or forfeiture for offences not be restored to veterans or gifted to their families under point 1. Only those medals forfeited as a result of convictions for offences set out in Recommendation 2(1) should not be restored or gifted to veterans or their families. If the offence that resulted in the withholding or forfeiture is no longer an offence under military or civil law, the medals should be restored to the veteran or gifted to their family; and
3. medals gifted to deceased veterans' families are to be gifted according to the following rules:
  - a. to the executor under the veteran's will;
  - b. if the veteran died intestate, to the Public Trustee Administrator;
  - c. to a member of the family nominated in writing by the immediate descendants of the veteran;
  - d. if there are no immediate descendants, to a member of the family nominated in writing by the family at large; or
  - e. if there is a dispute in the family about who should be gifted the medals, the medals should not be gifted.

*Recommendation 2*

The Tribunal recommends:

1. that there be mandatory forfeiture of medals on conviction for the following offences:
  - a. treason and related offences; (see for example s 9A of the Crimes Act 1958 (Vic));
  - b. mutiny and related offences (see s 20 of DFDA 1982);
  - c. sabotage of own and allied assets (see s 15A of DFDA 1982);
  - d. aiding the enemy (including assisting prisoners of war) and related offences (see ss 15D, 15E, 16 of DFDA 1982); and
  - e. serious terrorism related offences (see s 3(1) of the Crimes Act 1914 (C'th), Criminal Code Act 1995).
2. a. that there be discretionary forfeiture of medals on the following grounds:
  - i. conviction for an offence which is considered to be so disgraceful or serious that it would be improper for the offender to retain the award; or
  - ii. if an award was obtained by making a false declaration.

- b. the guidelines to be applied when considering the discretionary forfeiture of medals are:
  - i. gallantry and distinguished service decorations should only be forfeited in extreme situations;
  - ii. a decision that one award should be forfeited does not mean that any other award should be forfeited;
  - iii. the quality of the member's entire service should be taken into account;
  - iv. a dishonourable or disciplinary discharge or termination would not of itself be a reason for forfeiture of awards but may be taken into account; and
  - v. consideration should be given to variables such as mental health, physical condition and any other mitigating circumstances.

*Recommendation 3*

The Tribunal recommends that the authority to order the mandatory or discretionary forfeiture of any medals be placed in a Defence Instruction or in regulations under the Defence Act. The Instruction or regulation must state the requirements for the mandatory forfeiture of any medals (Recommendation 2). The DHAM should contain the policy guidelines on how the discretionary decisions should be exercised.

*Recommendation 4*

The Tribunal recommends that:

- 1. a. when a decision is made that the member forfeit any medal, the decision maker should also decide the period of the forfeiture; and
  - b. the DHAM should contain policy guidelines on the appropriate period that should apply to the forfeiture of a medal.
- 2. a. the mandatory forfeiture of medals be forever or for the life of the veteran; and
  - b. that these medals should not be gifted.

*Recommendation 5*

The Tribunal recommends that the Defence Act be amended to include decisions on withholding, forfeiture and restoration of medals in s 110V(1).



## APPENDICES

1. List of persons and organisations from whom information was sought.
2. List of submissions.
3. Tribunal hearing dates and meeting dates.
4. Additional material examined by the Tribunal.
5. Extract from *Kenneth Stephens and the Department of Defence [2012] DHAAT (18 October 2013)* (War service of Mr Archibald Boyes and Mr John Boyes).
6. DPS Staff Instruction of 9 July 1946 – War Medals (in Commemoration of a Campaign): Withholding of Grant: Forfeiture and Restoration.
- 7a. Hierarchy of Army Legislation.
- 7b. Hierarchy of Navy Legislation.
- 7c. Hierarchy of Air Force Legislation.
8. Tables of Imperial and Australian Honours and Awards with the authority to withhold, forfeit and restore.

## **APPENDIX 1 - List of Persons and Organisations from whom information was sought**

### **Former Chiefs of Defence Force**

- Admiral Christopher Barrie AC, RAN (Retd)
- General Peter Cosgrove AC (Retd)
- General Peter Gration AC, OBE (Retd)
- Air Chief Marshal Angus Houston AC, AFC (Retd)

### **Former Chiefs of Air Force**

- Air Marshal Leslie Fisher AO (Retd)
- Air Marshal Raymond Funnell AC (Retd)
- Air Marshal Ian Gration AO, AFC (Retd)
- Air Marshal Errol McCormack AO (Retd)
- Air Marshal Geoff Shepherd AO (Retd)
- Air Marshal David Evans AC, DSO, AFC (Retd)

### **Former Chiefs of Navy**

- Vice Admiral Russ Crane AO, CSM, RAN (Retd)
- Vice Admiral David Leach AC, CBE, LVO, RAN (Retd)
- Vice Admiral Ian MacDougall AC, AFSM, RAN (Retd)
- Vice Admiral Christopher Ritchie AO RAN (Retd)
- Vice Admiral David Shackleton AO RAN (Retd)
- Vice Admiral Russ Shalders AO, CSC, RAN (Retd)

### **Former Chiefs of Army**

- General Sir Phillip Bennett AC, KBE, DSO, (Retd)
- Lieutenant General H.J. Coates AC, MBE, (Retd)
- Lieutenant General K.J. Gillespie AC, DSC, CSM (Retd)
- Lieutenant General J.C. Grey AC (Retd)
- Lieutenant General F.J. Hickling AO, CSC (Retd)
- Lieutenant General P.F. Leahy AC (Retd)
- Lieutenant General L.G. O'Donnell AC (Retd)
- Lieutenant General J.M. Sanderson AC (Retd)

### **Defence, other Government Departments and Organisations**

- General David Hurley AC, DSC, Chief of Defence Force to July 2014
- Air Chief Marshal Mark Binskin AC, Chief of Defence Force from July 2014
- Mr Simon Lewis PSM, Secretary Department of Veterans' Affairs
- Brigadier W. Rolfe, Chair, Prime Ministers' Advisory Council on Ex-Service Matters
- Major General J.P. Stevens, former Assistant Chief of Personnel – Army (ACPERS-A)

**Authors**

- Mr Michael Carlton
- Mr Les Carlyon
- Mr Peter Fitzsimons
- Mr Paul Ham
- Mr Hugh Mackay
- Dr Michael McKernan
- Dr Peter Stanley

**Veterans' Associations**

- Naval Association of Australia
- Navy League of Australia
- Partners of Veterans Association
- Returned and Services League of Australia
- Royal Australian Air Force Association
- Vietnam Veterans Association of Australia
- Vietnam Veterans Federation of Australia
- War Widows Guild of Australia

**Others**

- Mr Kenneth Stephens – applicant in *Kenneth Stephens and the Department of Defence [2012] DHAAT (18 October 2013)*

## **APPENDIX 2 - Individuals and organisations who provided submissions to the Inquiry**

In response to advertisements in major national newspapers on 11 January 2014, both giving notice of the Inquiry and calling for submissions, the Tribunal received a total of 162 submissions. Amongst those were 33 written submissions relevant to the Terms of Reference, and those submitters are listed below. Some individuals and organisations provided more than one submission.

Crawford, Rear Admiral Ian AO, RAN (Retd)  
Department of Defence  
Doolan, Rear Admiral Ken AO, RAN Retd  
Espeland, Air Vice-Marshal Brent AM (Retd)  
Evans, Air Marshal David AC, DSO, AFC (Retd)  
Evans, Ms Pauline  
Foster, Mr Ken  
Funnell, Air Marshal Ray AC (Retd)  
Gold, Professor Edgar  
Gration, General Peter AC OBE (Retd)  
Gregory, Mr Henry  
Hatchman, Mr Edward  
Hinshaw, Mr Michael  
Houston, Air Chief Marshal Angus AC, AFC (Retd)  
Johnson, Mr Carl  
Leahy, Lieutenant General Peter AC (Retd)  
Lewis, Mr Simon PSM  
Miles, Mrs Sheryl  
O'Donnell, Lieutenant General L.G. AC (Retd)  
Pettis, Mr Russell FAIM  
Rae, Dr Darryl  
Ritchie, Vice Admiral Chris AO, RAN (Retd)  
Rossi, Brigadier Keith (Retd)  
Shackleton, Vice Admiral David AO, RAN (Retd)  
Shalders, Vice Admiral R E AO, CSC, RAN (Retd)  
Smith, Dr Andrew  
Stanley, Professor Peter  
Stephens, Mr Kenneth  
Stevens, Major General J.P. AO (Retd)  
Thomas, Mr David  
Tickle, Mrs Patricia  
Williams, Major Peter  
Wilson, Lieutenant Colonel David

## **APPENDIX 3 - Tribunal Hearing Days and Sitting Days**

### **TRIBUNAL MEMBERS**

Ms Christine Heazlewood (Presiding Member)

Dr Jane Harte

Air Commodore Mark Lax OAM, CSM

Mr Kevin Woods CSC, OAM

### **HEARING DAYS**

#### **24 February 2015 - Canberra**

##### **Submitters**

Department of Defence, represented by:

- Ms Emily Jacka, Director Honours & Awards
- Mr Brett Mitchell, Research Officer, Directorate of Honours & Awards
- Lieutenant Colonel David Bishop, Defence Legal
- Commodore Peter Laver, Chief of Staff, Navy Strategic Command
- Commander David Stevens RANR, SO1 Maritime Doctrine, Sea Power Centre Australia, Naval History rep
- Colonel Daniel Bennett, Director Personnel (J1), Headquarters Joint Operations Command
- Mrs Gillian Heard, Staff Officer Ceremonial-Army HQ
- Mr Martin James RAAF Historian, Air Power Development Centre

Lieutenant General Peter Leahy AC (Retd)

#### **25 February 2015 – Canberra**

##### **Submitters**

Mr EH via telephone conference

Rear Admiral Ken Doolan AO (Retd) - National President of the Returned and Services League of Australia

Air Marshal David Evans AC, DSO, AFC (Retd)

Professor Peter Stanley

Major General J. Paul Stevens AO (Retd)

**27 February 2015 – Melbourne, Victoria**

**Submitters**

Mrs PT via telephone conference

Ms PE via telephone conference

Mr HG

Mrs SM via telephone conference

Mr CJ

**12 May 2015 - Melbourne**

**Submitter**

Brigadier KR (Retd)

**SITTING DAYS**

**TRIBUNAL MEMBERS**

Mr Alan Rose AO (Chair and Presiding Member)

Dr Jane Harte

Ms Christine Heazlewood

Air Commodore Mark Lax OAM, CSM

Mr Kevin Woods CSC, OAM

The Tribunal (as constituted) sat on the following days:

- 2 February 2014
- 12 March 2014
- 1 July 2014
- 24 July 2014
- 9 September 2014

**TRIBUNAL MEMBERS**

Ms Christine Heazlewood (Presiding Member)

Dr Jane Harte

Air Commodore Mark Lax OAM, CSM

Mr Kevin Woods CSC, OAM

The Tribunal (as constituted) sat on the following days:

- 8-9 December 2014
- 12-13 January 2015
- 23 February 2015
- 21-22 May 2015
- 28-29 May 2015
- 29-30 June 2015
- 1-2 July 2015

## **APPENDIX 4 - Additional Material Examined by the Tribunal<sup>112</sup>**

### **Acts**

*Acts Interpretation Act 1901* (Cwlth)  
*Air Force Act 1923* (Cwlth)  
*Army Act 1881* (UK)  
*Army Act 1955* (UK)  
*Crimes Act 1914* (Cwlth)  
*Crimes Act 1959* (Vic)  
*Criminal Code Act 1995* (Cwlth)  
*Defence Act 1903* (Cwlth)  
*Defence Force Discipline Act 1982* (Cwlth)  
*Defence Force (Miscellaneous Provisions) Act 1982* (Cwlth)  
*Defence Force Reorganisation Act 1975* (Cwlth)  
*Legislative Instruments Act 2003* (Cwlth)  
*Naval Defence Act 1910* (Cwlth)  
*Naval Discipline Act 1866* (UK)  
*Naval Discipline Act 1957* (UK)  
*Naval Discipline (Dominion Naval Forces) Act 1911* (UK)  
*Statute of Westminster Adoption Act 1942* (Cwlth)  
*War Services Estates Act 1942* (Cwlth)

### **Regulations**

*Australian Military Regulations 1927* (Cwlth)  
*Air Force Regulations 1927* (Cwlth)  
*Defence Force Regulations 1952* (Cwlth)  
*Naval Forces Regulations 1910* (Cwlth)

### **Royal Warrants**

*Royal Warrant for the Pay, Appointment, Promotion and Non-Effective Pay of the Army 1914* (as amended) (UK)  
*Royal Warrant for the Pay, Appointment, Promotion and Non-Effective Pay of the Army 1940* (as amended) (UK)  
*Royal Warrant for the Grant, Forfeiture and Restoration of War Medals 1950* (as amended) (UK)  
*Royal Warrant for the Australia Service Medal 1939-45*, 30 November 1949  
*Royal Warrant for the Vietnam Medal*, 8 June 1968

### **Commonwealth of Australia Gazettes**

*Commonwealth of Australia Gazette*, no 91, 30 November 1949  
*Commonwealth of Australia Gazette*, no S78, 27 April 1982

---

<sup>112</sup> Does not include all material provided with submissions from the Department of Defence.

*Commonwealth of Australia Gazette*, no S335, 2 November 1988  
*Commonwealth of Australia Gazette*, no S25, 7 May 1990  
*Commonwealth of Australia Gazette*, no S25, 4 February 1991  
*Commonwealth of Australia Gazette*, no S79, 10 March 1993  
*Commonwealth of Australia Gazette*, no S122, 3 April 1995  
*Commonwealth of Australia Gazette*, no S309, 21 August 1996  
*Commonwealth of Australia Gazette*, no S18, 19 January 1998  
*Commonwealth of Australia Gazette*, no S352, 10 July 1998  
*Commonwealth of Australia Gazette*, no S129, 17 March 2000  
*Commonwealth of Australia Gazette*, no S483, 7 December 2001  
*Commonwealth of Australia Gazette*, no S159, 30 March 2000  
*Commonwealth of Australia Gazette*, no S421, 22 October 2004  
*Commonwealth of Australia Gazette*, no S422, 22 October 2004  
*Commonwealth of Australia Gazette*, no S48, 30 March 2006  
*Commonwealth of Australia Gazette*, no S20, 3 March 2010

### **Defence Instructions, Orders and Manuals**

Australian Defence Force Publication 06.1.1, *Discipline Law Manual*, Fourth Edition, 2009  
Admiralty Fleet Orders (UK) (Series)  
Australian Navy Orders (Series)  
Air Board Orders (Series)  
Air Board Orders (UK) (Series)  
Australian Military Board Instructions (Series)  
Australian Military Board General Routine Orders (Series)  
Defence Instruction (General) Personnel 31-8, *Forfeiture, Restoration and Replacement of Decorations, Medals and War Badges*, 17 September 2002.  
*Defence Honours and Awards Manual 2012*  
*Manual of Military Law*, Australian Edition, 1941  
Kings Regulations and Admiralty Instructions (Series) (UK)  
Queen's Regulations and Admiralty Instructions (Series) (UK)

### **Australian Government Records**

National Archives of Australia  
NAA Series B883 (Australian Army Service Records)  
NAA Series A471 (Australian Army Courts Martial Records)

### **Other Documents**

*Army Council Agreement to grant the Commonwealth powers of forfeiture and restoration of war medals to officers and soldiers (of the) Australian Imperial Force*, 1922  
Committee on the Grant of Honours, Decorations and Medals, Command Paper 6833, June 1946



Director Personal Services (Australian Army) Instruction 9 July 1946 and 1948 amendment  
*Summary of the Conditions of the Award of the Campaign Stars, the Defence Medal and the War Medal (the Dedman Paper)*, 1948  
Army Legal Services Minute *War Medals – Forfeiture and Restoration*, 8 September 1969  
Defence Military Law Sub-Committee Report 1/1970, *Forfeiture and Restoration of War Medals*, 23 April 1970  
Defence Legal Services Minute 1214/84, *Forfeiture and Restoration of War Medals*, 12 December 1984  
Chiefs of Staff Committee Minute 5/1985, *Forfeiture and Restoration of War Medals*, 6 February 1985.  
Defence Legal Services Minute 144/1990, *Forfeiture and Restoration of War Medals*, 30 January 1990  
Assistant Chief of the General Staff Personnel Minute, *Authorisation to Reinstate Invalidly Forfeited Medals*, 23 February 1996.  
Ministerial Representation 35117, *Current Practice on the Replacement, Forfeiture and Restoration of Medals*, 31 March 2000.

### **London Gazettes**

*London Gazette*, no. 21517, 4 December 1854.  
*London Gazette*, no. 21846, 5 February 1856.  
*London Gazette*, no. 24120, 4 December 1874.  
*London Gazette*, no. 29015, 29 December 1914.  
*London Gazette*, no. 29255, 6 August 1915.  
*London Gazette*, no. 29506, 25 March 1916.  
*London Gazette*, no. 30727, 3 June 1918.  
*London Gazette*, no. 30780, 12 July 1918.  
*London Gazette*, no. 31212, 24 March 1919.  
*London Gazette*, no. 31678, 5 December 1919.  
*London Gazette*, no. 31946, 18 June 1920.  
*London Gazette*, no. 31996, 26 July 1920.  
*London Gazette*, no. 32126, 19 November 1920.  
*London Gazette*, no. 32280, 20 April 1921.  
*London Gazette*, no. 32788, 19 January 1923.  
*London Gazette*, no. 33700, 20 March 1931.  
*London Gazette*, no. 33731, 30 March 1931.  
*London Gazette*, no. 31946, 23 July 1931.  
*London Gazette*, no. 34350, 15 December 1939.  
*London Gazette*, no. 35060, 31 January 1941.

### **Books**

P Osborn, *A Concise Law Dictionary*, Fifth Edition Sweet & Maxwell, 1964.  
D Pierce & R Geddes, *Statutory Interpretation in Australia*, Third Edition, Butterworths, 1993.  
W Windeyer, *Lectures on Legal History, 2nd edition (revised)*, The Law Book Company, 1974.

## **APPENDIX 5 – Extract from *Kenneth Stephens and the Department of Defence [2012] DHAAT (18 October 2013)***

### **OVERVIEW OF THE WAR SERVICE OF THE BOYES BROTHERS**

...

#### **Mr Archibald Boyes' Service**

16. Mr Archibald Boyes enlisted in the Australian Army on 10 July 1940 and was allocated to the 2nd/48th Battalion. He embarked for overseas service on 17 November 1940. He served in North Africa and the Middle East from 17 December 1940 until 27 January 1943. During that time he took part in the defence of Tobruk; the fighting at El Alamein including the series of attacks at Tel el Eisa; and garrison duties in Palestine and Syria. Records show that up until September 1942, Mr Archibald Boyes had been convicted of 15 military offences. On 5 September 1942, Mr Archibald Boyes appeared before a Field General court-martial charged with the following military offence:

*Deserted His Majesty's Service, in that he, at Egypt absented himself without leave from 0800 hours, 4 August 1942 to 1715 hours, 8 August 1942 with the intent to avoid such service.*

17. Mr Archibald Boyes was found by the court to be not guilty of desertion but was found guilty of being absent without leave. He was sentenced to undergo detention for six months. The court-martial did not impose the punitive forfeiture of any medal entitlements.

18. Mr Archibald Boyes' sentence was suspended on 11 January 1943 and he was released from the 1st Australian Detention Barracks in Egypt. Mr Archibald Boyes along with the rest of his Battalion, embarked for passage back to Australia on 27 January 1943 and disembarked at Sydney on 27 February 1943.

19. On the return passage to Australia Mr Archibald Boyes was charged with two military offences. As a consequence, the suspension of his previous sentence was revoked and on arrival in Australia he completed the remainder of the sentence in detention. Mr Archibald Boyes subsequently served in the Army for another year, during which time he was charged with a number of military offences. He was administratively discharged from the Army on 22 May 1944 under Australian Military Regulations and Orders (AMR&O) 184(I)(e), 'that he is considered to be unsuitable for any further military service on account of discreditable service'.

20. Mr Archibald Boyes had met the eligibility criteria for all of the awards to which he became entitled by June 1942. His service record shows that sometime after 1946 each of those awards, listed below, was withheld:

The 1939-45 Star;  
The Africa Star;  
The Defence Medal;  
The War Medal 1939-45; and  
The Australia Service Medal 1939-45.

## Mr John Boyes' Service

21. Mr John Boyes enlisted in the Australian Army on 1 December 1939 and was allocated to the 2nd/10th Battalion. He embarked for overseas service on 5 May 1940. He initially served in the United Kingdom, then in the Middle East from 31 December 1940 until 11 February 1942 during which time he took part in the defence of Tobruk. After a period of garrison service in Palestine and Syria, Mr John Boyes returned to Australia with the rest of his Battalion, arriving in Adelaide on 29 March 1942. Records show that up until 8 December 1943 Mr John Boyes had been convicted of 20 military offences, none of which occurred during the period he was engaged in combat operations. On 8 December 1943 Mr John Boyes appeared before a District Court-martial in Cairns charged with the following military offences:

- a. when on active service using insubordinate language to his superior;
- b. when on active service disobeying a lawful command given to him by his superior officer;
- c. when on active service using threatening language to his superior officer; and
- d. when on active service striking his superior officer.

22. Mr John Boyes was found guilty on the first three offences and not guilty on the fourth offence. He was sentenced to and completed field punishment for 28 days and forfeited all ordinary pay for 28 days. The Court-martial did not impose the punitive forfeiture of any medal entitlements.

23. On 3 April 1944, Mr John Boyes was charged with another military offence. On 22 April 1944 he was administratively discharged under Australian Military Regulations (AMR) 184A(I)(k), 'by reason of numerous convictions he is considered to be incorrigible'. While this discharge reason was crossed off his Service and Casualty Form, the Regulation is nevertheless referred to on his Discharge Certificate.

24. Mr John Boyes had met the eligibility criteria for all of the awards to which he became entitled by January 1941. His service record shows that sometime after 1946 each of those awards, listed below, was withheld:

The Africa Star;  
The Defence Medal;  
The War Medal 1939-45; and  
The Australia Service Medal 1939-45.

25. The Campaign Awards stamp in Mr John Boyes' service record does not include an indication that he had qualified for the 1939/45 Star. Upon review this appears to be in error since he served for the qualifying period of six months in an operational command as defined by Command Paper 6833 of June 1946 and the Dedman Paper of 1948. The Tribunal therefore considers that he has also established an entitlement to that award.

26. Mr John Boyes' service record also indicates that he was issued the Returned from Active Service Badge on his discharge.

... [End of Extract]

**APPENDIX 6 – DPS Staff Instruction of 9 July 1946 – War Medals  
(in Commemoration of a Campaign): Withholding of Grant:  
Forfeiture and Restoration, and the 1948 Amendment**

AG12(a)  
81/1/760  
0 2E  
-----

2719

81/1/760

Military Board

9 APR 48  
D. P. S.

81/1/760

WAR MEDALS (IN COMMEMORATION OF A CAMPAIGN) :  
WITHHOLDING OF GRANT ; FORFEITURE AND RESTORATION.

1. Reference instructions in respect to the above subject forwarded under cover of AHQ memo 53085 of 9 Jul 46.

2. The following amendments are advised:-

(a) Page 2, paragraph 6.

Between "war medals" and "will be withheld from him" insert "and, when applicable, the G-in-C's Commendation Card."

(b) Page 3

After paragraph 6(d) insert -

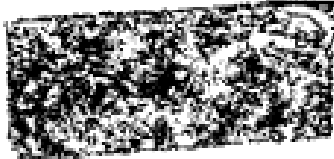
"(e) if, in the case of discharge in absentia on account of illegal absence, such illegal absence commenced before 2 Sep 45."

~~B.F.~~

Colonel  
Director of Personal Services.

43123(1)

1/760



Military Board.

(01/1/760)

XXXXXXXXXXXX  
Army

- 9 JUL 1946

Officer in Charge,  
Second Echelon.

10 JUL 1946  
O.P.S.

9461 707 6 -

WAR MEDALS (IN COMMEMORATION OF A CAMPAIGN) :  
WITHHOLDING OF GRANT : FORFEITURE AND RESTORATION.

Ref AER 34424 of 17 Apr 43.

- Attached hereto are two copies of an instruction for the administration of the granting forfeiture and restoration of war medals by O22 as amended and approved by the Adjutant-General.

nd 12 P.  
Lent 24  
A.

P.A.  
15/7/46

Colonel,  
Director of Personal Services.

9/

Officer - in-Charge,  
Sed ECHSLOH

WAR MEDALS (IN COMMEMORATION OF A CAMPAIGN) : WITHHOLDING  
OF GRANT : FORFEITURE AND RESTORATION

Part I - General.

1. Reference is made to the following, relative to the above :

Royal Warrant 1940 (Withholding - Arts 664, 1214  
Forfeiture - " 665, 1227  
Restoration - " 666, 1230)

→ AC1 348 of 31 Mar 45\*

Attached delegation to the Military Board by the Army Council in cable dated London 19 May 22.

2. In this instruction:

"War medals" means medals issued in commemoration of a campaign in the 1939-45 war and includes the 1939-45 Star, The Atlantic Star, The Air Crew Europe Star, The Africa Star, The Pacific Star, The Burma Star, The Italy Star, The France & Germany Star, The Defence Medal and any other medals or stars that may be instituted for the 1939-45 war, together with the clasps, emblems or ribbons pertaining thereto.

"the date of execution of the sentence" means:

- (a) In respect of a sentence of penal servitude, imprisonment, detention or field punishment, the date of completion of the sentence, as reduced by any remissions which may have been granted, unless the sentence was suspended before its completion and it remained suspended until its remission or the discharge of the person on whom it was imposed, in which latter case, "the date of execution of the sentence" means the date of suspension of the sentence.
- (b) In respect of any sentence of cashiering, dismissal from His Majesty's Service, discharge with ignominy from His Majesty's Service, discharge from the Defence Force of the Commonwealth, reduction in rank, forfeiture of seniority, severe reprimand, fine, forfeiture or stoppage of pay, the date of promulgation of the sentence to the person on whom the sentence was imposed, unless the sentence was imposed conjointly with a sentence mentioned in sub-para (a) of this paragraph, in which case the date of execution of the conjoint sentences will be the date of the execution of the sentence mentioned in sub-para (a) of this paragraph.

3. The withholding of the grant of war medals, the forfeiture of war medals and the restoration of forfeited war medals will subject to these instructions be administered by GSE.

PART II WITHHOLDING OF THE GRANT OF WAR MEDALS

4. This part is only applicable in cases where final approval to a person's claim for a war medal has not already been given. Final approval is given when the medal is issued to the proper person or he is in any other way notified that his claim has been finally, as distinct from provisionally, approved.

5. Under the Royal Warrant the ground for withholding the grant of war medals to a person is that he has not rendered approved service.

- (ii) if arising out of any misconduct or discreditable service on his part while serving in that area during the qualifying period he has been discharged or his services have been terminated by administrative action on any of the grounds mentioned in sub-para (c) (ii) of this paragraph and an appropriate entry to that effect appears in his record of service.

Provided that the grant of a war medal will not be withheld from a person under the provisions of this sub-paragraph if subsequent to the date of execution of the sentence mentioned in sub-para (c) (i) of this regulation or subsequent to his discharge or the termination of his service on any of the grounds mentioned in sub-para (c) (ii) of this regulation whichever last occurs, he serves for the qualifying period in a prescribed area and whether or not such service was irregular under DA 42A.

For the purpose of this paragraph, a person who has been discharged on the ground that he has been sentenced by court-martial to detention for six months or more, and whose record shows that he has received more than one sentence of six months or more that person will be deemed to have been discharged on account of the most recent of those sentences, and a person who has been discharged or whose services have been terminated on any of the other grounds of discharge mentioned in sub-para (c) (ii) will be deemed to have been discharged, or his services terminated in that area in which he was discharged or in which his services were terminated, unless he was removed to that area for the purpose of discharge or termination in which case the area from which he was removed will be deemed to be the area where the misconduct or discreditable service occurred.

7. (c) *If in the case of discharges and discharge on account of "illness" service with Special Branch is continued before 2nd Feb 45*  
 Notwithstanding anything contained in para 6 of this instruction, OSE will forward to DPS for decision as to whether a grant of war medals will be withheld, all relevant facts known to OSE, including a statement of the service of the person concerned in every case

- (a) where a person who would have been ineligible for a grant of war medals or any of them has been awarded a decoration or MID;
- (b) where a person otherwise entitled to a grant of war medals has been discharged on the ground that by reason of numerous convictions he is deemed to be incorrigible;
- (c) where an officer has by administrative act had his commission cancelled or has been retired on account of an offence or misconduct of any kind during his service and his record of service has been so endorsed.

8. The fact that the grant of any war medals has been withheld from a person under this Part, together with a list of the war medals withheld and the reasons therefore will be recorded on the record of service of the person concerned.

PART III - GRANT OF WAR MEDALS FORMERLY WITHHELD

- 9. (a) OSE will review any decision to withhold the grant of war medals under para 6. On receipt of an application or recommendation for reconsideration for decision to withhold the grant of war medals formerly withheld under para 6, OSE will dispose of the application or recommendation unless -

- (i) there is doubt as to whether the decision to withhold the grant of war medals is under the provisions of para 6;
  - (ii) the person concerned has not been convicted of an offence mentioned in sub-para (a) of para 6 and has rendered meritorious service (not necessarily resulting in a decoration) in the course of a campaign which renders the withholding of the war medal for that campaign inequitable, or
  - (iii) the person concerned, although convicted of an offence mentioned in sub-para (a) of para 6 has since that conviction rendered meritorious service (not necessarily resulting in a decoration) and whether on his original commission or enlistment or by reason of a subsequent commissioning or enlistment or of irregular service under DA 42A) which may be regarded as outweighing the stigma of the offence for which he was convicted. This sub-para will not apply to the case of a person who has been convicted of desertion from the battle field unless he has rendered meritorious service in actual combat with the enemy.
  - (iv) a decision has already been obtained from DPS under para 7.
- (b) OSE will forward to the appropriate headquarters for the consideration and recommendation of the person's formation commander or former formation commander any case under sub-para (a) of this paragraph, in respect of which no recommendation has been made by the formation commander or former formation commander.
  - (c) OSE will forward to DPS for decision, each case under sub-para (a) of this paragraph in which the person's formation commander or former formation commander has recommended a grant of war medals formerly withheld. A statement of service of the person concerned and the recommendation of his formation commander or former formation commander will be forwarded with the file to DPS.

10. The fact that a grant of war medals formerly withheld from a person has been made under this Part, together with a list of the war medals granted and the reasons therefor, will be recorded on the record of service of the person concerned.

#### PART IV - FORFEITURE OF WAR MEDALS

11. This part is applicable only where final approval of a person's claim for a war medal has been given by issue of the medal to him or otherwise (see para 4). Such approval confers on the person a right to the war medal so that the medal cannot be withheld or withdrawn except by forfeiture of the right to it.

12. A person who has not been awarded a decoration or MID shall forfeit all war medals granted to him or to which he is entitled :-

- (a) in respect of his service up to the date of his conviction or the date of the execution of the sentence imposed upon him after the conviction (whichever is the later) for treason, sedition, mutiny, cowardice, desertion, disgraceful conduct of an unnatural kind under 3.18(5) or 41 of the Army Act.



- (b) if he has been declared an illegal absentee by a Court of Inquiry or Investigating Officer in respect of his service up to the date of the declaration of illegal absence unless his illegal absence has terminated by his arrest or surrender before the recording of the forfeiture on his record of service. (Termination of his illegal absence will not cancel a forfeiture already made.).

13. Where a person has been awarded a decoration or MID has been convicted of an offence mentioned in sub-para (a) of paragraph 12 GSE will forward to DPS for decision as to whether that person's war medals will be forfeited, all relevant facts known to GSE including a statement of that person's record of service.

14. The fact that a person has forfeited under this part any war medals granted to him or to which he is entitled together with a list of the forfeited war medals and the reason for forfeiture will be recorded on the record of service of the person concerned.

#### PART V. - RESTORATION OF FORFEITED WAR MEDALS

15. Applications and recommendations for the restoration of forfeited war medals received from any source by H.Q. A.M.P. will be passed to GSE for examination as to whether they are cases for consideration under the following paras.

16. Consideration of applications and recommendations of restoration will be limited to those cases in which the person concerned has after conviction of an offence mentioned in para 12, rendered meritorious service (not necessarily resulting in a decoration and irrespective of whether on his original commission or enlistment, or by reason of subsequent commissioning or of irregular service under DA 42A) which may be regarded as outweighing the stigma of any offence of which he was convicted. In the case of a person who has been convicted of desertion from the battlefield, the restoration of his forfeited war medals will not be considered under this para unless he has rendered meritorious service in actual combat with the enemy.

17. Normally, consideration will not be given to the restoration of a forfeited war medal until the expiration of one year (exclusive of any time spent undergoing penal servitude, imprisonment or detention) from the date of forfeiture. Earlier recommendations may be made, however, when the person has rendered meritorious service and has -

(a) died on service, or

(b) been prevented by wounds or sickness or any other cause not due to his misconduct from completing a further year's service.

18. GSE will forward to the appropriate headquarters for the consideration and recommendation of the person's formation commander or former formation commander any case covered by paras 16 and 17 in respect of which no recommendation has been made by the formation commander or former formation commander.

19. GSE will forward to DPS for decision, each application or recommendation for the restoration of war medals to a soldier which appears to call for consideration under paras 16 and 17 on which the soldier or ex soldier's formation commander or former formation commander has made a recommendation. A statement of service of the soldier or ex soldier concerned and the recommendation of his formation commander or former formation commander, will be included in the file forwarded to DPS.

20. GBE will forward to DPS every application or recommendation for the restoration of war medals to an officer or ex officer and every such application or recommendation will, together with a statement of service of the officer or ex officer concerned and the recommendation of his formation commander or former formation commander be submitted to the Military Board and if approved by the Military Board forwarded to the Governor-General accompanied by the recommendation of the Military Board.

21. The fact that any forfeited war medals have been restored to a person, together with a list of the restored war medals together with the reason therefor, will be recorded on the record of service of the person concerned.

*Ag. Lieut. Col. J. J. ...* Colonel,  
Director of Personal Services.  
6/7/36

## APPENDIX 7A – Hierarchy of Army Legislation

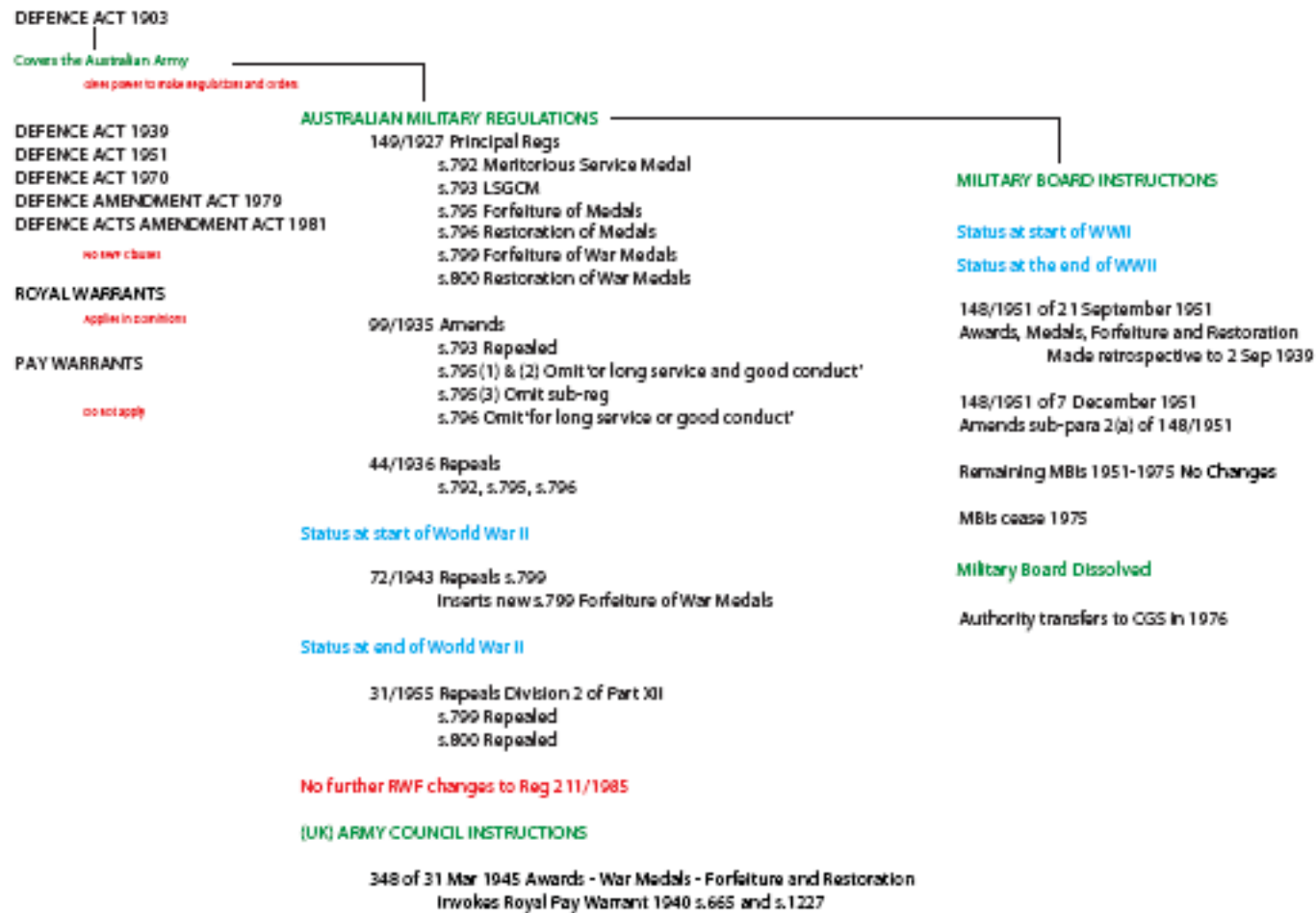


Figure 2: Hierarchy of Army Legislation

## APPENDIX 7B – Hierarchy of Navy Legislation

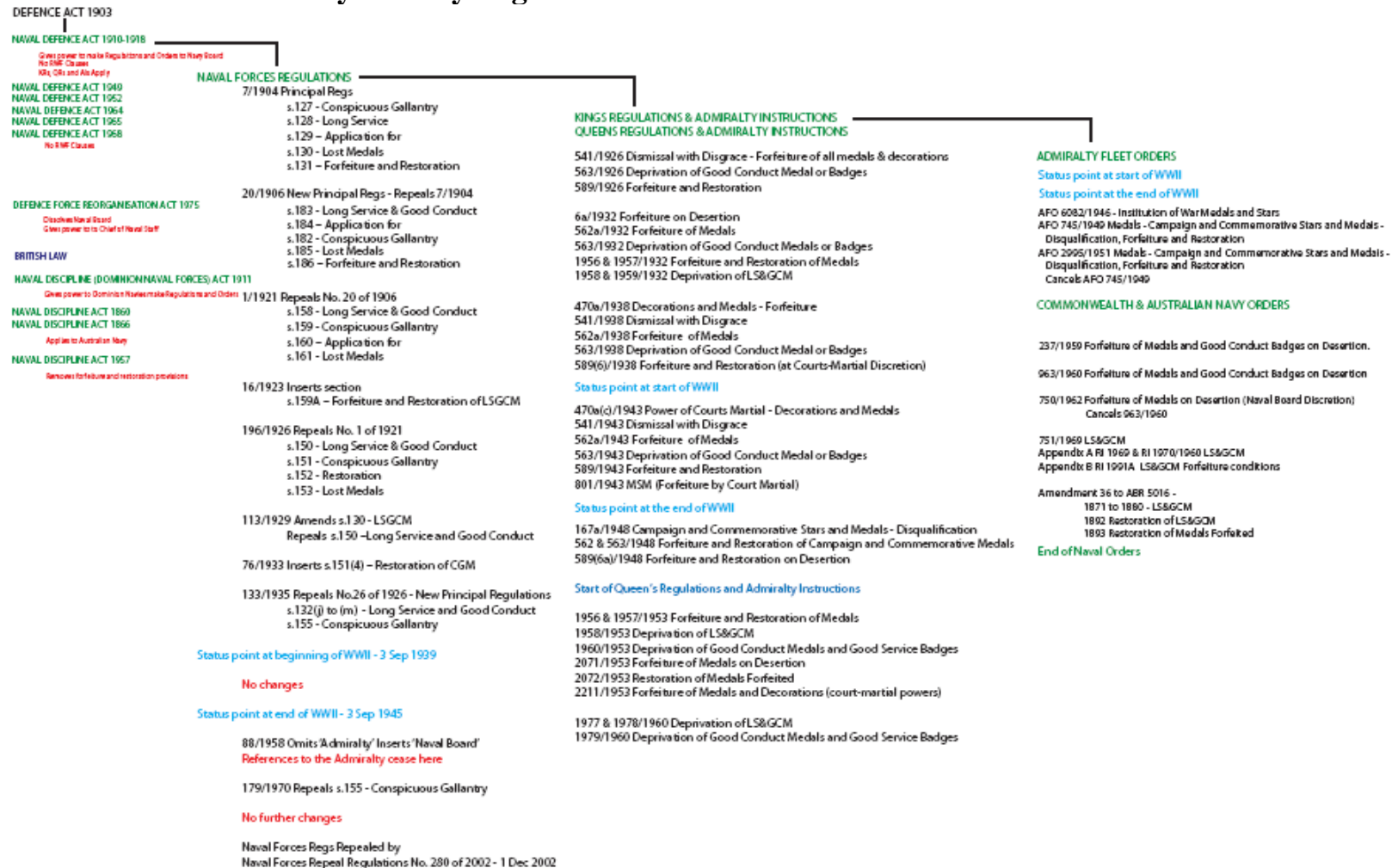
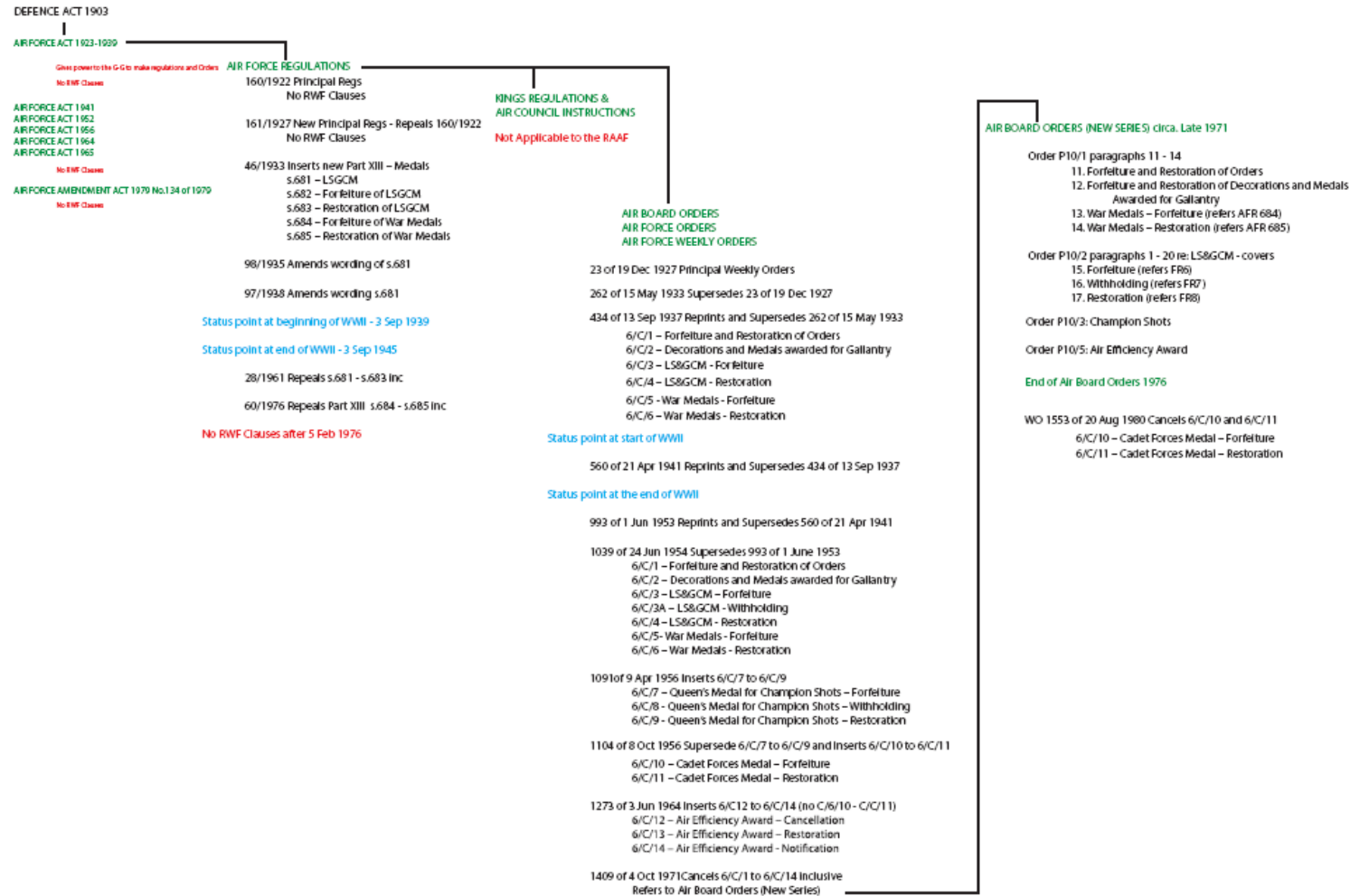


Figure 3: Hierarchy of Navy Legislation

## APPENDIX 7C – Hierarchy of Royal Australian Air Force Legislation



**Figure 4:** Hierarchy of Air Force Legislation

## APPENDIX 8 - Tables of Imperial and Australian Honours And Awards with the Authority to Withhold, Forfeit and Restore

### IMPERIAL HONOURS

Honour	Abbr	LG Date	Refusal Clause	Withholding Clause	Forfeiture Clause	Restoration Clause
Victoria Cross	VC	5 Feb 1856 18 Jun 1920 26 Jul 1920 30 Mar 1931	NR	NR	Yes, Clause 15 Yes, Clause 12 Clause revoked Yes, Clause 13	Yes, Clause 15 Yes, Clause 12 - Yes, Clause 13
George Cross	GC	31 Jan 1941	NR	NR	Yes, Clause 13	Yes, Clause 13
Distinguished Service Order	DSO	9 Nov 1886 12 Jul 1918 5 Feb 1931	NR	NR	NR Yes Yes	NR Yes Yes
Distinguished Service Cross	DSC	15 Jun 1901 19 May 1931 (OC)	NR	NR	NR Yes, at Sovereign's Pleasure	NR Yes, at Sovereign's Pleasure
Military Cross	MC	29 Dec 1914 19 Nov 1920	NR	NR	Yes, Clause 8 Yes, Clause 10	NR Yes, Clause 10
Distinguished Flying Cross	DFC	3 Jun 1918 5 Dec 1919  20 Apr 1921	NR	NR	Yes, Clause 20 Yes, Clause 20 amended Yes, Clause 20 amended	NR NR  NR
Air Force Cross	AFC	3 Jun 1918 5 Dec 1919  20 Apr 1921	NR	NR	Yes, Clause 20 Yes, Clause 20 amended Yes, Clause 20 amended	NR NR  NR
Distinguished Conduct Medal	DCM	4 Dec 1854	NR	NR	NR	-
Conspicuous Gallantry Medal	CGM	4 Dec 1854 7 Jul 1874 23 Jul 1931 (OC)	NR	NR	NR NR Yes, at Sovereign's Pleasure	NR NR Yes, at Sovereign's Pleasure
Conspicuous Gallantry Medal (Flying)	CGM	12 Jan 1943	NR	NR	Yes, Clause 8	Yes, Clause 8
Distinguished Service Medal	DSM	14 Oct 1914 23 Jul 1931 (OC)	NR	NR	NR Yes, at Sovereign's Pleasure	NR Yes, at Sovereign's Pleasure
Military Medal	MM	25 Mar 1916 24 Mar 1919	NR	NR	NR Yes	NR Yes
Distinguished Flying Medal	DFM	3 Jun 1918 5 Dec 1919  20 Apr 1921	NR	NR	Yes, Clause 20 Yes, Clause 20 amended Yes, Clause 20 amended	NR NR  NR

### IMPERIAL HONOURS (*continued*)

Honour	Abbr	LG Date	Refusal Clause	Withholding Clause	Forfeiture Clause	Restoration Clause
Air Force Medal	AFM	3 Jun 1918 5 Dec 1919  20 Apr 1921	NR	NR	Yes, Clause 20 Yes, Clause 20 amended Yes, Clause 20 amended	NR NR NR
Queen's Commendation for Brave Conduct	-	15 Dec 1939	NR	NR	NR	NR
Queen's Commendation for Valuable Service in the Air	-	1 Jan 1942	NR	NR	NR	NR
Mention in Despatches	MID	2 Mar 1843	NR	NR	NR	NR
Air Efficiency Award	-	11 Sep 1942	NR	NR	Yes, Clause 8	Yes, Clause 8

\*Other less common Imperial honours have not been included. Refer to the applicable Royal Warrant, Letters Patent or Command Papers.

#### NOTES

Honours are listed in Order of Wear or in date of Gazettal

Further Regulations and Determinations not affecting the table have been omitted

(OC) – Order in Council

NR – No Reference

LG date refers to publication of Royal Warrant

## AUSTRALIAN HONOURS

Honour	Abbr	CAG and Date	Refusal Clause	Withholding Clause	Forfeiture Clause	Restoration Clause
Victoria Cross for Australia	VC	S 25, 4 Feb 1991	NR	NR	Yes, (cancellation) Clause 12	Yes, (reinstatement) Clause 12
Star of Gallantry	SG	S 25, 4 Feb 1991	NR	NR	Yes, (cancellation) Clause 13	Yes, (reinstatement) Clause 13
Distinguished Service Cross	DSC	S 25, 4 Feb 1991	NR	NR	Yes, (cancellation) Clause 13	Yes, (reinstatement) Clause 13
Conspicuous Service Cross	CSC	S 108, 7 May 1990	NR	NR	Yes, (cancellation) Clause 12	Yes, (reinstatement) Clause 12
Nursing Service Cross	NSC	S 108, 7 May 1990	NR	NR	Yes, (cancellation) Clause 12	Yes, (reinstatement) Clause 12
Medal for Gallantry	MG	S 25, 4 Feb 1991	NR	NR	Yes, (cancellation) Clause 13	Yes, (reinstatement) Clause 13
Distinguished Service Medal	DSM	S 25, 4 Feb 1991	NR	NR	Yes, (cancellation) Clause 13	Yes, (reinstatement) Clause 13
Conspicuous Service Medal	CSM	S 108, 7 May 1990	NR	NR	Yes, (cancellation) Clause 12	Yes, (reinstatement) Clause 12
Commendation for Gallantry	-	S 25, 4 Feb 1991	NR	NR	Yes, (cancellation) Clause 13	Yes, (reinstatement) Clause 13
Commendation for Distinguished Service	-	S 25, 4 Feb 1991	NR	NR	Yes, (cancellation) Clause 13	Yes, (reinstatement) Clause 13

NR – No Reference

Honours are listed in Order of Wear or in date of Gazettal

Further Regulations and Determinations not affecting the table have been omitted



## IMPERIAL AWARDS

Award	Abbr	LG Date	Refusal Clause	Withholding Clause	Forfeiture Clause	Restoration Clause
Naval General Service Medal 1915-62	NGSM 1915-62	6 Aug 1915	**	**	**	**
General Service Medal 1918-62	GSM 1918-62	19 Jan 1923 By Army Order	**	**	**	**
1939-45 Star	-	CGHDM , May 1945 CMD 6833, June 1946 Dedman Papers, Dec 1948	NR	NR	NR	NR
Atlantic Star	-	CGHDM , May 1945 CMD 6833, June 1946 Dedman Papers, Dec 1948	NR	NR	NR	NR
Air Crew Europe Star	-	CGHDM , May 1945 CMD 6833, June 1946 Dedman Papers, Dec 1948	NR	NR	NR	NR
Africa Star	-	AMO A.755, 3 Aug 1943 CGHDM , May 1945 CMD 6833, June 1946 Dedman Papers, Dec 1948	NR	NR	NR	NR

**IMPERIAL AWARDS** (*continued*)

<b>Award</b>	<b>Abbr</b>	<b>LG Date</b>	<b>Refusal Clause</b>	<b>Withholding Clause</b>	<b>Forfeiture Clause</b>	<b>Restoration Clause</b>
Pacific Star	-	CGHDM May 1945 CMD 6833, June 1946 Dedman Papers, Dec 1948	NR	NR	NR	NR
Burma Star	-	CGHDM May 1945 CMD 6833, June 1946 Dedman Papers, Dec 1948	NR	NR	NR	NR
Italy Star	-	CGHDM May 1945 CMD 6833, June 1946 Dedman Papers, Dec 1948	NR	NR	NR	NR
France and Germany Star	-	CGHDM May 1945 CMD 6833, June 1946 Dedman Papers, Dec 1948	NR	NR	NR	NR
Defence Medal	-	CGHDM May 1945 CMD 6833, June 1946 Dedman Papers, Dec 1948	NR	NR	NR	NR

### IMPERIAL AWARDS *(continued)*

Award	Abbr	LG Date	Refusal Clause	Withholding Clause	Forfeiture Clause	Restoration Clause
War Medal 1939-45	-	CGHDM May 1945 CMD 6833, June 1946 Dedman Papers, Dec 1948	NR	NR	NR	NR
Australia Service Medal 1939-45	ASM 1939-45	CAG 91, 30 Nov 1949	Yes, Clause 6	NR	Yes, Clause 12 GG or dishonourable discharge	Yes, Clause 12
United Nations Service Medal for Korea	-	UN Reg, 17 Oct 1955	NR	NR	NR	NR
General Service Medal 1962	GSM 1962	MOD Order No 61 6 Oct 1964	**	**	**	**
Vietnam Medal	VM	Royal Warrant, 8 Jun 1968	NR	NR	Yes, Clause 12 GG only	NR
Vietnam Logistic and Support Medal	VLSM	S 79, 10 Mar 1993	-	-	Yes, (cancellation) Clause 9	Yes, (reinstatement) Clause 9

No Imperial long service awards are included in this table. Further, other less common Imperial awards have also not been included. The reader should refer to the applicable Royal Warrant, Letters Patent or Command Papers.

\*\* Covered by single service orders and instructions.

CGHDM – Committee on the Grant of Honours, Decorations and Medals  
Honours are listed in Order of Wear or in date of Gazettal  
Further Regulations and Determinations not affecting the table have been omitted

## AUSTRALIAN AWARDS

Award	Abbr	CAG and Date	Refusal Clause	Withholding Clause	Forfeiture Clause	Restoration Clause
Australian Active Service Medal 1945-75	AASM	S 18, 19 Jan 1998	NR	NR	Yes, (cancellation) Clause 9	Yes, (reinstatement) Clause 9
Australian Active Service Medal	AASM	S 335, 2 Nov 1988	NR	NR	Yes, (cancellation) Clause 9	Yes, (reinstatement) Clause 9
International Force East Timor Medal	-	S 159, 30 Mar 2000	NR	NR	Yes, (cancellation) Clause 7	Yes, (reinstatement) Clause 8
Afghanistan Medal	-	S 422, 22 Oct 2004	NR	NR	Yes, (cancellation) Clause 7	Yes, (reinstatement) Clause 8
Iraq Medal	-	S 421, 22 Oct 2004	NR	NR	Yes, (cancellation) Clause 7	Yes, (reinstatement) Clause 8
Australian Service Medal 1945-75	ASM	S 122, 3 Apr 1995	NR	NR	Yes, (cancellation) Clause 9	Yes, (reinstatement) Clause 9
Australian General Service Medal for Korea	-	S 20, 3 Mar 2010	NR	NR	Yes, (cancellation) Clause 6	Yes, (reinstatement) Clause 7
Australian Service Medal	ASM	S 336, 2 Nov 1988	NR	NR	Yes, (cancellation) Clause 9	Yes, (reinstatement) Clause 9
Rhodesia Medal	-	CGHD M, Aug 1980	NR	NR	NR	NR
Defence Force Service Medal	DFSM	S 78, 27 Apr 1982	NR	NR	Yes, (cancellation) Clause 22	Yes, Clause 22
Reserve Force Decoration	RFD	S 78, 27 Apr 1982	NR	NR	Yes, (cancellation) Clause 22	Yes, Clause 22
Reserve Force Medal	RFM	S 78, 27 Apr 1982	NR	NR	Yes, (cancellation) Clause 22	Yes, Clause 22
Defence Long Service Medal	DLSM	S 352, 10 Jul 1998	NR	NR	Yes, (cancellation) Clause 12	Yes, (reinstatement) Clause 13

**AUSTRALIAN AWARDS (continued)**

<b>Award</b>	<b>Abbr</b>	<b>CAG and Date</b>	<b>Refusal Clause</b>	<b>Withholding Clause</b>	<b>Forfeiture Clause</b>	<b>Restoration Clause</b>
Australian Cadet Forces Service Medal	ACFSM	S 129, 17 Mar 2000	NR	NR	Yes, (cancellation) Clause 12	Yes, (reinstatement) Clause 13
Australian Defence Medal	ADM	S 48, 30 Mar 2006	NR	NR	Yes, (cancellation) Clause 8	Yes, (reinstatement) Clause 9
Anniversary of National Service 1952-1972 Medal	ANSM	S 483, 7 Dec 2001	CDF has power to make award Clause 11	NR	Yes, (cancellation) Clause 7	Yes, (reinstatement) Clause 8

**NOTES**

Awards are listed in Order of Wear or in date of Gazettal

Further Regulations and Determinations not affecting the table have been omitted