

s47E(c)

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**From:** s47E(c)  
**Sent:** Monday, 14 September 2015 8:56 AM  
**To:** s47E(c) s47E(c)  
**Cc:** s47E(c) s47E(c) s47E(c)  
**Subject:** RE: VERY URGENT ; MC15-002744 - Defence Honours and Awards Appeals Tribunal - Inquiry into the Refusal to Issue Entitlements to, Withholding and Forfeiture of Defence Honours and Awards [SEC=UNCLASSIFIED]

UNCLASSIFIED

Hi s47E(c)

The Tribunal's report and recommendations from the WFR Inquiry are complex and have multiple implications that need to be considered.

Also, due to the nature of the recommendations, including amendments to the *The Defence Act 1903* and the suggestion of creating a DIG (vis DHAM "authority") will need to be consulted with Defence Legal and the MECC Branch (Directorate Administration Policy, Director s47E(c)) for their input and advice, noting the current reform environment including DIGs. s47E(c) is aware of this coming his way - I spoke with him last Friday afternoon as we discussed the DHAM.

I understand that there has been some to-ing and fro-ing between MECC and DL concerning the DIGs issue as well(differing views perhaps?) and I suspect that the timeframe suggested by PARLSEC's office is not achievable.

We definitely need to include s47 in discussions on this one. s22

Cheers

s47

E( )

s47E(c)

Assistant Director  
Policy & Tribunal  
Directorate of Honours and Awards  
People Solutions Division  
Department of Defence

s47E(c) |  
s47E(c) | Campbell Park Offices  
| PO Box 7952 | Canberra BC | ACT 2610

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**From:** s47E(c)  
**Sent:** Friday, 11 September 2015 18:10  
**To:** s47E(c)  
**Cc:** s47E(c)

**Subject:** VERY URGENT ; MC15-002744 - Defence Honours and Awards Appeals Tribunal - Inquiry into the Refusal to Issue Entitlements to, Withholding and Forfeiture of Defence Honours and Awards [SEC=UNCLASSIFIED]

**Importance:** High

UNCLASSIFIED

Hi s47E  
( )

As discussed on Friday afternoon, we have received the following tasking in response to the Tribunal handing the forfeiture/withholding report to the ParlSec.

Hi Team, Request advice by 1200, 21 Sep 15. PARLSEC has received the attached report from DHAAT. Request the Dept's advice on the Tribunal's recommendations. Please include advice regarding any options available/next steps for individuals affected. Please include a letter for PARLSEC signature to the Chair of the DHAAT advising the recommended position. Please also include TPs and a Media Release reflecting the recommended position. If possible, within the media release and/or TPs, PARLSEC would like a tangible example of a case where a medal was withheld. This is to provide context for the public e.g 'Joe Bloggs was released to undertake cropping and was advised he needn't return, however this was not noted on his record and therefore ...'. Happy to discuss. s47E(c)

It is due on Monday 21 Sep 15. I have spoken with s47E(c) re the short timeframe and explained that it might not be possible to meet the deadline. s47E( ) understands but asked that we try and to be in touch later next week to advise how we are going.

As I mentioned, s47E( ) might be best placed to respond to this one - given he prepared the Defence submission. s47E( ) do you agree? I am happy to help with the final response but I am not able to do it solo!!!

Cheers

s47E( )

s47E(c)

Assistant Director Stakeholder Engagement  
Directorate of Honours and Awards  
People Services Division  
Department of Defence

s47E(c) | Campbell Park Offices | PO Box 7952 | Canberra BC | ACT 2610

P: s47E(c)

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**From:** s47E(c)  
**Sent:** Tuesday, 15 September 2015 11:31 AM  
**To:** s47E(c)  
**Cc:** s47E(c) s47E(c) s47E(c) s47E(c)  
**Subject:** RE: VERY URGENT ; MC15-002744 - Defence Honours and Awards Appeals Tribunal - Inquiry into the Refusal to Issue Entitlements to, Withholding and Forfeiture of Defence Honours and Awards [SEC=UNCLASSIFIED]  
**Attachments:** image001100140.jpg

UNCLASSIFIED

Good morning s47E( )

In follow up to yesterday's meeting to discuss the way ahead for Defence's consideration, and response to, the Tribunal's report into its *Inquiry into the Refusal to Issue Entitlements to, Withholding and Forfeiture of Defence Honours and Awards*, and recommendations, the following information is provided to inform the response to Office ParlSec:

Overall, the Tribunal's recommendations will likely have significant legal and administrative implications and consequences.

These will require thorough consultation with Defence Legal Division and Ministerial and Executive Coordination and Communication (MECC) Division (Estate and Infrastructure Group) for the following reasons:

Broadly, the Tribunal's recommendations cite a number of Acts which currently set out offences that would be considered as warranting mandatory medallic forfeiture. Based on an initial review of the recommendations, further analysis is required on whether the Tribunal's aim to align 'desertion' with a broader 'disgraceful or serious offences' category runs counter to 'desertion' is currently an offence that results in a mandatory medallic forfeiture.

Recommendation 1, (1): overall, this recommendation applies to Army cases, and it is unclear about what authority Defence can apply when reconsidering Navy and RAAF applications. This overall recommendation can only be implemented based on assessments of applications obo individuals to check their service records and recorded reasons for discharge).

In regard to Recommendation 1 Part 3 c,d, and e, these run contrary to current medal policy and need further consideration.

Recommendations 2, 3 and 4 are interlinked and require consultation and consideration.

There are other organisational factors that make it difficult to agree outright to Recommendation 3 at this time. It is understood that the Tribunal wants to achieve a level of overarching authority via a Defence Instruction, or changes to the *Defence Act 1903* to achieve this. However, currently in Defence, separate reviews are being conducted (as a consequence of the implementation of the First Principles Review) on establishing the correct and preferred administrative environment by which to set this authority and a review of Defence Instructions is a part of this. Again, consultation with Defence Legal Division and Ministerial and Executive Coordination and Communication (MECC) Division is required to fully address and respond to this recommendation.

Recommendation 4 - the recommendation is understood in principle and is reasonable. However, Recommendation 4 (part 1) requires further analysis in consultation with Defence Legal on what factors inform the decision of what an "appropriate period" should be (eg should it align with the maximum penalty for the offence, or sentence actually handed down?)

Recommendation 5 - recommends an expansion of scope for the Tribunal to consider individual applications for reviews of recognition for withholding, forfeiture and restoration cases. This is a reasonable recommendation and not controversial. It will require consultation with Defence Legal noting that amendments to the *Defence Act* need to be made to achieve this.

Hope this helps. s47E( ) and I are a lync message away.

Kind regards

s47  
s47E(c)  
Assistant Director  
Policy & Tribunal  
Directorate of Honours and Awards  
People Solutions Division  
Department of Defence  
P: s47E(c) |  
s47E(c) | Campbell Park Offices  
| PO Box 7952 | Canberra BC | ACT 2610

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**From:** s47E(c)  
**Sent:** Friday, 11 September 2015 18:10  
**To:** s47E(c)  
**Cc:** s47E(c)  
**Subject:** VERY URGENT ; MC15-002744 - Defence Honours and Awards Appeals Tribunal - Inquiry into the Refusal to Issue Entitlements to, Withholding and Forfeiture of Defence Honours and Awards [SEC=UNCLASSIFIED]  
**Importance:** High

UNCLASSIFIED

Hi s47E  
( )

As discussed on Friday afternoon, we have received the following tasking in response to the Tribunal handing the forfeiture/withholding report to the ParlSec.

Hi Team, Request advice by [1200, 21 Sep 15](#). PARLSEC has received the attached report from DHAAT. Request the Dept's advice on the Tribunal's recommendations. Please include advice regarding any options available/next steps for individuals affected. Please include a letter for PARLSEC signature to the Chair of the DHAAT advising the recommended position. Please also include TPs and a Media Release reflecting the recommended position. If possible, within the media release and/or TPs, PARLSEC would like a tangible example of a case where a medal was withheld. This is to provide context for the public e.g 'Joe Bloggs was released to undertake cropping and was advised he needn't return, however this was not noted on his record and therefore ...'. Happy to discuss. s47E(c)

It is due on Monday 21 Sep 15. I have spoken with s47E( re the short timeframe and explained that it might not be possible to meet the deadline. s47E( understands but asked that we try and to be in touch later next week to advise how we are going. )

As I mentioned, s47 might be best placed to respond to this one - given he prepared the Defence submission. s47 do you agree? I am happy to help with the final response but I am not able to do it solo!!! E( )

Cheers

s47E(

s47E(c)  
Assistant Director Stakeholder Engagement  
Directorate of Honours and Awards

People Services Division  
Department of Defence

s47E(c) | Campbell Park Offices | PO Box 7952 | Canberra BC | ACT 2610

P: s47E(c)



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**From:** s47E(c)  
**Sent:** Monday, 21 September 2015 4:40 PM  
**To:** s47E(c); s47E(c)  
**Cc:** s47E(c); s47E(c); s47E(c)  
**Subject:** DHAAT Report into its Inquiry into Withholding, Forfeiture and Restoration of Defence Honours and Awards - Request for advice please regarding the Recommendations.  
[SEC=UNCLASSIFIED]  
**Attachments:** Final Report.pdf  
**Importance:** High  
**Categories:** UNCLASSIFIED

UNCLASSIFIED

Good afternoon s47E(c) and s47E(c)

The Defence Honours and Awards Appeals Tribunal recently concluded its *Inquiry into the Refusal to Issue Entitlements to, Withholding and Forfeiture of Defence Honours and Awards*. A full copy is attached. It was presented to Government on 7 September 2015, and will go 'live' on the Tribunal's website on 6 Oct 2015 (so some public interest is expected). DH&A has developed an 'interim' response to ParlSec on this subject, advising further consultation is necessary before we can respond more fully.

It is being shared to seek your advice from a legal perspective and administrative policy perspective on the implications of accepting and implementing the tribunal's recommendations

s47E(c) - please advise if you would like to receive copies of Defence's three submissions to this Inquiry.

Overall, the Tribunal's recommendations may have significant legal and administrative implications and consequences for Defence.

Broadly, the Tribunal's recommendations cite a number of Acts which currently set out offences that would be considered as warranting mandatory medallic forfeiture.

For example, based on an initial review of the recommendations (at pages 11-13), further analysis and advice is necessary on whether the Tribunal's aim to align 'desertion' with a broader 'disgraceful or serious offences' category runs counter to 'desertion' which is currently an offence that results in a mandatory medallic forfeiture.

Recommendation 1, (1): overall, this recommendation applies to Army cases, and it is unclear about what authority Defence can apply when reconsidering Navy and RAAF applications. This overall recommendation can only be implemented based on assessments of applications of individuals to check their service records and recorded reasons for discharge. Ideally, we would seek further clarification from the Tribunal on their recommendations for Navy and RAAF cases (can we do this?)

In regard to Recommendation 1, Parts 3 c,d, and e, these run contrary to current medal policy and need further consideration.

There are other organisational factors that make it difficult to agree to Recommendation 3 immediately. It is understood that the Tribunal wants to achieve a level of overarching authority via a Defence Instruction, or changes to the *Defence Act 1903* to achieve this. However, currently in Defence, I understand that separate reviews are being conducted (as a consequence of the implementation of the First Principles Review) on establishing the correct and preferred administrative environment by which to set this authority and a review of Defence Instructions is a part of this.

s47E - further advice that you can share in regard to responding to this recommendation would be very appreciated

Recommendation 4 - the recommendation is understood in principle and is reasonable. However, Recommendation 4 (part 1) requires further analysis and advice from Defence Legal on what factors inform the decision of what an "appropriate period" should be (eg should it align with the maximum penalty for the offence, or a sentence actually handed down?)

Recommendation 5 - recommends an expansion of scope for the Tribunal to consider individual applications for reviews of recognition for withholding, forfeiture and restoration cases. This is a reasonable recommendation and not controversial with consultation with Defence Legal on the process to arrange for amendments to the *Defence Act* necessary to achieve this.

I would be happy to set up a meeting to discuss this subject with you both at a mutually agreeable time.

Please advise your preferred approach.

Many thanks & kind regards

s47  
E(c)  
Assistant Director  
Policy & Tribunal  
Directorate of Honours and Awards  
People Solutions Division  
Department of Defence  
P: s47E(c) |  
s47E(c) | Campbell Park Offices  
| PO Box 7952 | Canberra BC | ACT 2610

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**From:** s47E(c)  
**Sent:** Tuesday, 15 September 2015 14:57  
**To:** s47E(c) D'Amico, Adrian MR 1  
**Subject:** FW: Hi s47E, spoke to s47E(c), he's happy for you to send him the material on forfeiture.  
[SEC=UNCLASSIFIED]

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Thanks Adrian

And thanks s47E(c)

s47  
As discussed yesterday....

:)

s47E(c)  
Director Honours and Awards  
Department of Defence

s47E(c) | Campbell Park | PO Box 7952 | Canberra BC | ACT 2610  
P: s47E(c) | M: s22  
W: <http://www.defence.gov.au/medals>

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www.defence.gov.au 

---

**From:** D'Amico, Adrian MR 1  
**Sent:** Tuesday, 15 September 2015 14:00  
**To:** s47E(c)  
**Subject:** Hi s47E, spoke to s47E(c), he's happy for you to send him the material on forfeiture.  
[SEC=UNCLASSIFIED]

UNCLASSIFIED

---

**Adrian D'Amico**  
Defence General Counsel

s47E(c)  
Campbell Park Offices  
CANBERRA ACT 2600

Tel: s47E(c)  
Fax: s47E(c)  
Mob: s22

s47E(c)

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**MINISTERIAL ADVICE**

<b>Date for action:</b> 2 October 2015	<b>Reason:</b> The Tribunal is posting the Report on their website on 6 October 2015.
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**For Action: Assistant Minister**

For Info: Minister for Defence

Copies to: Secretary, CDF, Associate Secretary, CN, CA, CAF, DEPSEC DP, HDL, FASMECC

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

**Purpose:**

To seek your signature on the enclosed letter (Attachment A) to Mr Mark Sullivan advising that the Government is considering the recommendations contained in the *Report of the Inquiry into the Refusal to Issue Entitlements to, Withholding and Forfeiture of Defence Honours and Awards*.

**Key Points:**

1. On 7 September 2015, Mr Mark Sullivan, Chair of the Defence Honours and Awards Appeals Tribunal, presented to you the *Report of the Inquiry into the Refusal to Issue Entitlements to, Withholding and Forfeiture of Defence Honours and Awards*.
2. The Tribunal made five recommendations in its Report, some of which may have legal or administrative consequences for the Department of Defence. The Report's Executive Summary, which contains the recommendations, is at Attachment B.
3. To properly advise the Government, the Report and the recommendations will need to be examined by Defence Legal. It is unlikely that this examination will be completed before the Report is published on the Tribunal's website on 6 October 2015. Once legal advice is received, the Department will be in a stronger position to advise you on the implications of accepting the Tribunal's recommendations.
4. Interim action could commence, however, on Recommendation 1. This recommendation requires, depending on the reason for their forfeiture, medals be restored to veterans or gifted to the families of deceased veterans.
5. The vast majority of veterans who forfeited their medals served during World War Two. As no register of forfeited medals exists, the Department would need to manually research in excess of one million service records and/or medals cards to identify any veterans who may qualify for medal restoration under this recommendation.
6. The Department does not have the resources to undertake this task. However, an option would be to put out a call through the media and on the Defence Honours and Awards website for veterans, or the families of deceased veterans, to contact the Department so a list of veterans who may be eligible for medal restoration can be compiled. This could occur prior to formally accepting the recommendations. A draft media release to this effect is at Attachment C for your consideration.
7. The proposed interim reply to Mr Sullivan advises that the Government is considering the Tribunal's recommendations and will write to him again once a decision is made.

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Chester: MA15-002744  
Ref: FASPS/OUT/2015/116

**Recommendations:**

That you:

- i. **Note** the Department of Defence will provide definitive advice on the implications of accepting the recommendations made by the Tribunal as soon as the Defence Legal has analysed the Report.

Noted / Please Discuss

- ii. **Sign** the proposed interim reply to Mr Mark Sullivan.

Signed / Not Signed

Approved By  <b>RICHARD OLIVER</b> First Assistant Secretary People Services s47E(c) [redacted] 22 September 2015 Phone: s47E(c) [redacted]	s22 [redacted]
<b>Contact Officer:</b> s47E(c) [redacted]	<b>Phone:</b> s47E(c) [redacted]
Darren Chester / / <b>Comments / Supplementary tasking:</b>	
For Information  Marise Payne / /	

**Resources:**

- 8. N/A.

**Consultation:**

- 9. N/A.

**Attachments:**

- A. Draft letter to Mr Mark Sullivan.
- B. *Report of the Inquiry into the Refusal to Issue Entitlements to, Withholding and Forfeiture of Defence Honours and Awards – Executive Summary.*
- C. Talking points.
- D. Media release.



**The Hon Darren Chester MP  
Assistant Minister for Defence**

MA15-002744

Mr Mark Sullivan  
Chair  
Defence Honours and Awards Appeals Tribunal  
Locked Bag 7765  
Level 1, 105 Tennant Street  
CANBERRA BC ACT 2610

Dear Mr Sullivan

Thank you for your letter of 7 September 2015 presenting the *Report of the Inquiry into the Refusal to Issue Entitlements to, Withholding and Forfeiture of Defence Honours and Awards*.

I recognise the complexities of such an inquiry and appreciate the Tribunal's conscientious and sensitive deliberation of this matter. As you would understand, the Government will need to devote similar consideration to the Report and the recommendations before providing you with a final response.

I will write to you again when the Government has completed its consideration of the Report.

Yours sincerely

Darren Chester



**Australian Government**

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Defence Honours and Awards Appeals Tribunal

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

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## 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).

## 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

s22  


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

7 September 2015



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

## **MINISTERIAL TALKING POINTS**

- The Defence Honours and Awards Appeals Tribunal has presented its report of the *Inquiry into the Refusal to Issue Entitlements to, Withholding and Forfeiture of Defence Honours and Awards*.
- The Government is currently considering the report and its recommendations and will respond officially to the Chair of the Tribunal and the community in due course.
- The majority of cases of withheld or forfeited medals relate to service during, and shortly after, World War II.
- There is no register of withheld or forfeited medals.
- Veterans, or the families of deceased veterans, whose medal entitlement was withheld or forfeited, may contact the Department of Defence on 1800 333 362 so a list of veterans who may be eligible for medal restoration can be compiled.

<b>Clearance</b>	<b>Name</b>	<b>Appointment</b>	<b>Date Time Group</b>
<i>Cleared by: (Group/Service)</i>	Richard Oliver	FASPS	
<i>Cleared by: MECC Division</i>	s47E(c)	DMOPS	150918 1453

# **MEDIA RELEASE**

## **DRAFT**

<Day>, <Date><Month>2015

MECC 000/00

### **CALL FOR VETERANS TO APPLY FOR FORFEITED AWARDS**

Veterans, or the families of deceased veterans, who forfeited their medals have been urged to contact the Department of Defence.

The Assistant Minister for Defence, the Hon Darren Chester MP, made the call today as he announced that the Australian Government had received the *Report of the Inquiry into the Refusal to Issue Entitlements to, Withholding and Forfeiture of Defence Honours and Awards*.

Mr Chester said the Defence Honours and Awards Appeals Tribunal was directed to inquire into Defence decisions to withhold medals from serving personnel as far back as 1939.

“The vast majority of veterans who forfeited their medals served during World War Two.

“The Government is currently considering the report and will later respond formally to the Chair of the Defence Honours and Awards Appeals Tribunal and the community,” he said.

Meantime, Mr Chester called for veterans, or the families of deceased veterans, who forfeited their medals to contact the Department of Defence.

“There is no register of withheld or forfeited medals, so it is not known how many veterans forfeited their awards,” Mr Chester said.

Veterans or their families can contact the Department of Defence on 1800 333 362.

Further information about Defence honours and awards is available at [www.defence.gov.au/medals](http://www.defence.gov.au/medals).

#### **Media contacts:**

s47E(c) (Mr Chester’s office) s47E(c)

Defence Media Operations (02) 6127 1999

Drafted	Name	Appointment	DTG
<b>TPs drafted by</b>	s47E(c)	AD Stakeholder Engagement, DH&A	17 Sep 15
Clearance	Name	Appointment	DTG
<b>Group/Service (SES Band 1/ 1 Star or above)</b>	Richard Oliver	FASPS	Sep 15
<b>MECC Division (SES Band 1 or above)</b>	s47E(c)	DMOPS	150918 1457

s47E(c)

---

**From:** s47E(c)  
**Sent:** Tuesday, 29 September 2015 12:06 PM  
**To:** s47E(c) s47E(c)  
**Cc:** s47E(c) ; s47E(c) ; s47E(c) s47E(c)  
s47E(c) ; s47E(c) ; s47E(c) ; s47E(d)  
**Subject:** RE: DHAAT Report into its Inquiry into Withholding, Forfeiture and Restoration of Defence Honours and Awards - Request for advice please regarding the Recommendations. [SEC=UNCLASSIFIED]

UNCLASSIFIED

Agreed.

s47E(c)

Director Administrative Policy  
Ministerial and Executive Coordination and Communication Division

---

Department of Defence · s47E(c) · PO Box 7910 · Canberra BC ACT 2610  
phone s47E(c) | email s47E(c)

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**From:** s47E(c)  
**Sent:** Tuesday, 29 September 2015 12:05  
**To:** s47E(c) s47E(c)  
**Cc:** s47E(c) ; s47E(c) s47E(c) s47E(c) s47E(c)  
**Subject:** RE: DHAAT Report into its Inquiry into Withholding, Forfeiture and Restoration of Defence Honours and Awards - Request for advice please regarding the Recommendations. [SEC=UNCLASSIFIED]

UNCLASSIFIED

Hi s47 and s47  
E ( ) E ( )

I think we need to step back here and have a think about what we are trying to achieve. Medals etc are not part of Defence legislation, they are a crown prerogative and in my opinion they should be contained in letters patent or a royal warrant. I understand that when s47E(c) was working on this it was proposed that the GG should set out a criteria via letters patent once we have a decision from the tribunal on this issue.

Defence Regulations or a DI are not appropriate for the H&A's regime.

Cheers

s47E(c)  
Director Legislation  
Defence General Counsel  
Phone s47E(c) Mob s22

---

**From:** s47E(c)  
**Sent:** Tuesday, 29 September 2015 11:50  
**To:** s47E(c)  
**Cc:** s47E(c) s47E(c) s47E(c) s47E(c) s47E(c)  
s47E(c)  
**Subject:** RE: DHAAT Report into its Inquiry into Withholding, Forfeiture and Restoration of Defence Honours and Awards - Request for advice please regarding the Recommendations. [SEC=UNCLASSIFIED]

UNCLASSIFIED

Hi s47  
E( )

The points that you raise confirm that this subject is complex. Having a look at the *Defence Act 1903*, Part XI - Regulations (S124) this might be an area in which new regulations could be made for WFR.

Another option that could be considered is the possibility of developing a Letters Patent or Royal Warrant to address the withholding, forfeiture and restoration of medals to ADF members. Noting the Australian H&A system is established under these, and outside legislation, it may be a preferable option to retain this separation.

Fundamentally, the question that needs to be answered is: what is the most appropriate way to establish the correct legal authority for Defence to have in place for the withholding, forfeiture and restoration of medallic recognition to ADF members, whose actions have prompted a decision to withhold or forfeit such recognition?

I'm no lawyer either :)

Cheers

s47

E( )

s47E(c)

Assistant Director  
Policy & Tribunal  
Directorate of Honours and Awards  
People Solutions Division  
Department of Defence  
P: s47E(c) |  
s47E(c) | Campbell Park Offices  
| PO Box 7952 | Canberra BC | ACT 2610

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**From:** s47E(c)

**Sent:** Friday, 25 September 2015 11:50

**To:** s47E(c)

**Cc:** s47E(c) s47E(c) s47E(d) s47E(c) s47E(c) D'Amico,  
Adrian MR 1; s47E(c) s47E(c) s47E(c)

**Subject:** RE: DHAAI Report into its Inquiry into Withholding, Forfeiture and Restoration of Defence Honours and Awards - Request for advice please regarding the Recommendations. [SEC=UNCLASSIFIED]

UNCLASSIFIED

Hi s47E(  
)

Even without the current review of administrative policy arrangements, it is not clear to me that a Defence Instruction is a legally sound way to achieve the outcome. Again, I'm no lawyer, but perhaps section 112Z of the *Defence Act 1903*, which deals with matters on which regulations may be made, could be amended to explicitly include regulations relating to forfeiture and withdrawal of medals and awards. There would then be no ambiguity about where the authority comes from and how it applies.

Cheers,

s47E  
(c)

s47E(c)

Director Administrative Policy  
Ministerial and Executive Coordination and Communication Division

---

Department of Defence · s47E(c) · PO Box 7910 · Canberra BC ACT 2610  
phone s47E(c) | email s47E(c)

---

**From:** s47E(c)  
**Sent:** Friday, 25 September 2015 11:23  
**To:** s47E(c)  
**Cc:** s47E(c), s47E(c), s47E(d), s47E(c); s47E(c) D'Amico,  
Adrian MR 1; s47E(c), s47E(c), s47E(c)  
**Subject:** RE: DHAAT Report into its Inquiry into Withholding, Forfeiture and Restoration of Defence Honours and Awards - Request for advice please regarding the Recommendations. [SEC=UNCLASSIFIED]

UNCLASSIFIED

Hi s47  
E ( )

Thank you for your email advising that s47E(c) in Defence Legal is also aware of this matter.

I have shared the Tribunal's report (and Defence's submissions to this Inquiry) and sought legal advice from s47E(c) s47E(c), based on advice from Adrian D'Amico as s47E(c) will be joining DL in early Oct and helping us to consider the Tribunal's recommendations more fully.

The matter of withholding and forfeiture of medals, and the legal authority to do this is not as crystal clear as we would like and needs to be looked at closely. On the whole, it is my understanding (and I'm wearing my learning hat) that the Regulations attached to the Letters Patent do not address W&F specifically for each medal so there is a broader authority issue that needs to be addressed.

While the Tribunal has recommended creating this authority via DI, at a broader level it is recommending creating a legal authority in the format that it needs to be. As an independent review body, I suspect the Tribunal may not be aware of the separate work underway in Defence to review SODI and DIs, and so our response to the Tribunal would be based on the 'spirit' of the recommendation and reflecting the direction Defence is taking.

Happy to keep the dialogue continuing.

Cheers

s47  
E ( )

s47E(c)

Assistant Director  
Policy & Tribunal  
Directorate of Honours and Awards  
People Solutions Division  
Department of Defence

P: s47E(c) |  
s47E(c) | Campbell Park Offices  
| PO Box 7952 | Canberra BC | ACT 2610

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**From:** s47E(c)  
**Sent:** Thursday, 24 September 2015 15:53  
**To:** s47E(c)  
**Cc:** s47E(c) s47E(c) s47E(d)  
**Subject:** DHAAI Report into its Inquiry into Withholding, Forfeiture and Restoration of Defence Honours and Awards - Request for advice please regarding the Recommendations. [SEC=UNCLASSIFIED]

UNCLASSIFIED

Hi s47E(c)

I have raised recommendation 3 with s47E(c) in Defence Legal, because it seemed to me that there were legal dimensions, and not being a lawyer myself I felt underqualified to comment.

Without wishing to rain on s47E(c) parade, or to miscommunicate her advice to me, it is likely that neither Defence Instructions nor regulations are the appropriate mechanism to achieve the outcome intended by the Tribunal.

In relation to regulations, the *Defence Act 1903* does not currently provide for regulations to be made in relation to forfeiture of medals.

In relation to Defence Instructions, the *Defence Act 1903* provides for Defence Instructions to be made for the administration of the Defence Force, but forfeiture of medals relates to the administration of the honours and awards system, which draws its authority from elsewhere (Letters Patent?). Furthermore, Defence Instructions apply only to Defence members, so it is not clear how it would apply to forfeiture of medals by people no longer serving in the Defence Force.

To the uninformed lay person (me) it appears that the tribunal recommendation seeks to make forfeiture of medals mandatory in certain circumstances, which goes beyond what the regulations attached to the Letters Patent creating the medal allows for.

It may be worth exploring the possibility of amending the *Defence Act 1903* to allow regulations to be made in this area, and to then have the regulations made to achieve the intended outcome.

I strongly recommend that you seek advice directly from Defence Legal to assist you in preparing your response to the recommendations, to ensure you are on sound legal ground and to remove any chance that I have mangled the message!.

Happy to discuss.

Cheers,  
s47E(c)

s47E(c)

Director Administrative Policy  
Ministerial and Executive Coordination and Communication Division

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Department of Defence · s47E(c) · PO Box 7910 · Canberra BC ACT 2610  
phone s47E(c) | email s47E(c)

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**From:** s47E(c)  
**Sent:** Monday, 21 September 2015 16:40  
**To:** s47E(c); s47E(c)  
**Cc:** s47E(c) s47E(c) s47E(c)

**Subject:** DHAAT Report into its Inquiry into Withholding, Forfeiture and Restoration of Defence Honours and Awards - Request for advice please regarding the Recommendations. [SEC=UNCLASSIFIED]

**Importance:** High

UNCLASSIFIED

Good afternoon s47E(c) and s47E( )

The Defence Honours and Awards Appeals Tribunal recently concluded its *Inquiry into the Refusal to Issue Entitlements to, Withholding and Forfeiture of Defence Honours and Awards*. A full copy is attached. It was presented to Government on 7 September 2015, and will go 'live' on the Tribunal's website on 6 Oct 2015 (so some public interest is expected). DH&A has developed an 'interim' response to ParlSec on this subject, advising further consultation is necessary before we can respond more fully.

It is being shared to seek your advice from a legal perspective and administrative policy perspective on the implications of accepting and implementing the tribunal's recommendations

s47E(c) - please advise if would like to receive copies of Defence's three submissions to this Inquiry.

Overall, the Tribunal's has made five recommendations may have significant legal and administrative implications and consequences for Defence.

Broadly, the Tribunal's recommendations cite a number of Acts which currently set out offences that would be considered as warranting mandatory medallic forfeiture.

For example, based on an initial review of the recommendations (at pages 11-13), further analysis and advice is necessary on whether the Tribunal's aim to align 'desertion' with a broader 'disgraceful or serious offences' category runs counter to 'desertion' which is currently an offence that results in a mandatory medallic forfeiture.

Recommendation 1, (1): overall, this recommendation applies to Army cases, and it is unclear about what authority Defence can apply when reconsidering Navy and RAAF applications. This overall recommendation can only be implemented based on assessments of applications obo individuals to check their service records and recorded reasons for discharge. Ideally, we would seek further clarification from the Tribunal on their recommendations for Navy and RAAF cases (can we do this?)

In regard to Recommendation 1, Parts 3 c,d, and e, these run contrary to current medal policy and need further consideration.

There are other organisational factors that make it difficult to agree to Recommendation 3 immediately. It is understood that the Tribunal wants to achieve a level of overarching authority via a Defence Instruction, or changes to the *Defence Act 1903* to achieve this. However, currently in Defence, I understand that separate reviews are being conducted (as a consequence of the implementation of the First Principles Review) on establishing the correct and preferred administrative environment by which to set this authority and a review of Defence Instructions is a part of this.

s47E - further advice that you can share in regard to responding to this recommendation would be very appreciated

Recommendation 4 - the recommendation is understood in principle and is reasonable. However, Recommendation 4 (part 1) requires further analysis and advice from Defence Legal on what factors inform the decision of what an "appropriate period" should be (eg should it align with the maximum penalty for the offence, or a sentence actually handed down?)

Recommendation 5 - recommends an expansion of scope for the Tribunal to consider individual applications for reviews of recognition for withholding, forfeiture and restoration cases. This is a reasonable recommendation and not controversial with consultation with Defence Legal on the process to arrange for amendments to the *Defence Act* necessary to achieve this.

I would be happy to set up a meeting to discuss this subject with you both at a mutually agreeable time.

Please advise your preferred approach.

Many thanks & kind regards

s47

E(c)

Assistant Director  
Policy & Tribunal  
Directorate of Honours and Awards  
People Solutions Division  
Department of Defence  
P: s47E(c) |  
s47E(c) | Campbell Park Offices  
| PO Box 7952 | Canberra BC | ACT 2610

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---

**From:** s47E(c)  
**Sent:** Tuesday, 15 September 2015 14:57  
**To:** s47E(c) D'Amico, Adrian MR 1  
**Subject:** FW: Hi s47E, spoke to s47E(c), he's happy for you to send him the material on forfeiture.  
[SEC=UNCLASSIFIED]

UNCLASSIFIED

Thanks Adrian

And thanks s47E(c)!

s47

As discussed yesterday....

:)

s47E(c)

Director Honours and Awards  
Department of Defence

s47E(c) | Campbell Park | PO Box 7952 | Canberra BC | ACT 2610  
P: s47E(c) | M: s22  
W: <http://www.defence.gov.au/medals>

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www.defence.gov.au



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**From:** D'Amico, Adrian MR 1  
**Sent:** Tuesday, 15 September 2015 14:00  
**To:** s47E(c)  
**Subject:** Hi s47E, spoke to s47E(c), he's happy for you to send him the material on forfeiture.  
[SEC=UNCLASSIFIED]

UNCLASSIFIED



---

**Adrian D'Amico**  
Defence General Counsel

s47E(c)  
Campbell Park Offices  
CANBERRA ACT 2600

Tel: s47E(c)  
Fax: s47E(c)  
Mob: s22

s47E(c)

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s47E(c)

**From:** s47E(c)  
**Sent:** Wednesday, 14 October 2015 5:08 PM  
**To:** s47E(c) s47E(c) s47E(c) s47E(c)  
**Cc:** s47E(c) s47E(c) s47E(c) s47E(c)  
**Subject:** Tribunal Inquiry Report into into Withholding, Forfeiture and Restoration - suggested way ahead [SEC=UNCLASSIFIED]  
**Attachments:** Final Report.pdf; Comments on DHAAT recommendations [~~PLM For Official Use Only~~]  
**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

UNCLASSIFIED

Good afternoon all

In follow up to today's Defence Honours and Awards Advisory Group (DHAAG) discussion about the Tribunal's *Inquiry into the Refusal to Issue Entitlements to, Withholding and Forfeiture of Defence Honours and Awards*, attached is a copy of the Report.

It was provided by the Tribunal to Darren Chester on 7 Sept 2015, and officially made available to the public via the Tribunal's website on 6/7 Oct 2015.

The Cooma Call Centre has fielded a few calls already in terms of the media release associated with MA15-002744 (a call for applications) via DPAWS.

Since the Report's release, guidance has been from Defence Legal s47E(c) in terms of the Report's recommendations, and how to best position Defence to respond.

Attached is a copy of s47E(c) email response, that provides his initial thoughts and comments.

Based on our discussion at today's meeting, I ask that you take the time to read the Tribunal's report, and s47E(c) comments in full.

And I will arrange for us to meet again in early November to discuss this matter, and develop a collaborative and consulted way ahead more fully. It is complex.

The Minister Assisting is keen for regular updates on this subject. My aim to ensure that we maintain some momentum and develop a well considered and thorough response.

Kind regards

s47E(c)  
Assistant Director  
Policy & Tribunal  
Directorate of Honours and Awards  
People Solutions Division  
Department of Defence  
P: s47E(c) |  
s47E(c) | Campbell Park Offices  
| PO Box 7952 | Canberra BC | ACT 2610

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s47E(c)

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**From:** s47E(c)  
**Sent:** Tuesday, 13 October 2015 8:23 AM  
**To:** s47E(c)  
**Cc:** s47E(c)  
**Subject:** Comments on DHAAT recommendations [~~DLM - For Official Use Only~~]  
**Attachments:** DHAAT REC response.doc

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

~~For Official Use Only~~

Hi s47  
E ( )

Attached are my initial thoughts and comments as we discussed yesterday.

I'm going to have a look at the circumstances in which the DHAAT suggest medals should not be restored.

Regards,

s47E(c)

**IMPORTANT:** This email remains the property of the Department of Defence and is subject to the jurisdiction of section 70 of the Crimes Act 1914. If you have received this email in error, you are requested to contact the sender and delete the email.

~~FOUO~~

### Comments on Recommendations of the Withholding, Forfeiture and Restoration of Medals Report

Item	Recommendation	Comment
1.1	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;	<p>The primary recommendation only includes forfeiture. Is it intended to extend this to withholding of medals?</p> <p>This is only a recommendation which the Minister may accept/reject. Out of fairness, it would be open to the Minister to direct consideration of the same for Navy and Air Force. The Minister is not limited to the terms of the recommendation.</p>
1.2	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.	<p>Note: the recommendation, as drafted, on page 11 is different to the recommendation, as drafted, on page 105.</p> <p>It is open to the Minister to deviate from the recommendation and use the terms of the DPI and the MBI WRT those that are not to be restored.</p> <p>This is going to require a case by case approach.</p> <p>Will need to differentiate between those that were validly withheld/forfeited and that that were not. Difference being that that were not valid will be issued to/returned to the veteran, those that were will be issued/restored.</p>
1.3	<p>medals gifted to deceased veterans' families are to be gifted according to the following rules:</p> <ul style="list-style-type: none"> <li>a. to the executor under the veteran's will;</li> <li>b. if the veteran died intestate, to the Public Trustee Administrator;</li> <li>c. to a member of the family nominated in writing by the immediate descendants of the veteran;</li> <li>d. if there are no immediate descendants, to a member of the family nominated in writing by the family at large; or</li> <li>e. if there is a dispute in the family about who should be gifted the medals, the medals should not be gifted.</li> </ul>	<p>How this is done is a question of policy. Appears to have been decided that it will be on request</p> <p>In relation to the restoration of medals to classes identified in c, d, and e, this is a policy issue. It would be open to the Minister to accept or reject this part of the recommendation.</p> <p>Current Policy DHAM para 45.8</p> <ul style="list-style-type: none"> <li>- Spouse, child, grandchild, parent, sibling.</li> <li>- Could include gifting to the estate in the DHAM</li> </ul>

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<p>2.1</p>	<p>that there be mandatory forfeiture of medals on conviction for the following grounds:</p> <ul style="list-style-type: none"> <li>a. treason and related offences; (see for example s 9A of the Crimes Act 1958 (Vic));</li> <li>b. mutiny and related offences (see s 20 of DFDA 1982);</li> <li>c. sabotage of own and allied assets (see s 15A of DFDA 1982);</li> <li>d. aiding the enemy (including assisting prisoners of war) and related offences (see ss 15D, 15E, 16 of DFDA 1982); and</li> <li>e. serious terrorism related offences (see s 3(1) of the Crimes Act 1914 (Cth), Criminal Code Act 1995).</li> </ul>	<p>Are there currently any grounds for forfeiture of medals? On review of 6 medals, the Letters Patent allow for the discretionary cancellation of medals by way of a recommendation to the Governor General.</p> <p>Is there a disciplinary purpose to cancel medals? Not covered in the DFDA</p> <p>Are there any regulations for the mandatory forfeiture of the medals? (note: DHAM 46.6 suggests there is, but I can't find any)</p>
<p>2.2</p>	<p>a. that there be discretionary forfeiture of medals on the following grounds:</p> <ul style="list-style-type: none"> <li>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</li> <li>ii. if an award was obtained by making a false declaration.</li> </ul> <p>b. the guidelines to be applied when considering the discretionary forfeiture of medals are:</p> <ul style="list-style-type: none"> <li>i. gallantry and distinguished service decorations should only be forfeited in extreme situations;</li> <li>ii. a decision that one award should be forfeited does not mean that any other award should be forfeited;</li> <li>iii. the quality of the member's entire service should be taken into account;</li> <li>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</li> <li>v. consideration should be given to variables such as mental health, physical condition and any other mitigating circumstances.</li> </ul>	<p>This could be managed through guidelines issues by the Governor-General as to what his is willing to consider WRT the cancellation of medals.</p> <p>Example: s22 [REDACTED]</p>

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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.	Mandatory forfeiture should be set out in the Letters Patent.  Discretionary forfeiture could be permitted in the letters patent, but managed in accordance with instructions that set the threshold on the exercise of the Governor-General's delegation to the CDF or other person.  This could be tiered so a delegate other than the CDF could make decision on for example awards, but CDF on honours and awards.
4.1	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.	Policy issue. Could be covered in guidelines from the Governor-General, in terms of 'not consider restoring the medal until ...'
4.2	a. the mandatory forfeiture of medals be forever or for the life of the veteran; and b. that these medals should not be gifted.	Policy issue. Could be covered in guidelines from the Governor-General, in terms of 'not consider restoring the medal until ...'
5	The Tribunal recommends that the Defence Act be amended to include decisions on withholding, forfeiture and restoration of medals in s 110V(1).	Note the powers of the tribunal in section 110VB of the Defence Act 1903: Defence Honours – recommendatory only Defence and foreign awards – affirm, or set aside and substitute or refer for reconsideration.  By reference to the existing powers (above), all the DHAAT can do is make a recommendation, or replace Defence's recommendation.

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Australian Government  
Department of Defence

UNCLASSIFIED

Chester: MA15-002744  
Ref: FASPS/OUT/2015/116

**MINISTERIAL ADVICE**

<b>Date for action:</b> 2 October 2015	<b>Reason:</b> The Tribunal is posting the Report on their website on 6 October 2015.
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**For Action: Assistant Minister**

For Info: Minister for Defence

Copies to: Secretary, CDF, Associate Secretary, CN, CA, CAF, DEPSEC DP, HDL, FASMECC

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

**Purpose:**

To seek your signature on the enclosed letter (Attachment A) to Mr Mark Sullivan advising that the Government is considering the recommendations contained in the *Report of the Inquiry into the Refusal to Issue Entitlements to, Withholding and Forfeiture of Defence Honours and Awards*.

**Key Points:**

1. On 7 September 2015, Mr Mark Sullivan, Chair of the Defence Honours and Awards Appeals Tribunal, presented to you the *Report of the Inquiry into the Refusal to Issue Entitlements to, Withholding and Forfeiture of Defence Honours and Awards*.
2. The Tribunal made five recommendations in its Report, some of which may have legal or administrative consequences for the Department of Defence. The Report's Executive Summary, which contains the recommendations, is at Attachment B.
3. To properly advise the Government, the Report and the recommendations will need to be examined by Defence Legal. It is unlikely that this examination will be completed before the Report is published on the Tribunal's website on 6 October 2015. Once legal advice is received, the Department will be in a stronger position to advise you on the implications of accepting the Tribunal's recommendations.
4. Interim action could commence, however, on Recommendation 1. This recommendation requires, depending on the reason for their forfeiture, medals be restored to veterans or gifted to the families of deceased veterans.
5. The vast majority of veterans who forfeited their medals served during World War Two. As no register of forfeited medals exists, the Department would need to manually research in excess of one million service records and/or medals cards to identify any veterans who may qualify for medal restoration under this recommendation.
6. The Department does not have the resources to undertake this task. However, an option would be to put out a call through the media and on the Defence Honours and Awards website for veterans, or the families of deceased veterans, to contact the Department so a list of veterans who may be eligible for medal restoration can be compiled. This could occur prior to formally accepting the recommendations. A draft media release to this effect is at Attachment C for your consideration.
7. The proposed interim reply to Mr Sullivan advises that the Government is considering the Tribunal's recommendations and will write to him again once a decision is made.



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Chester: MA15-002744  
Ref: FASPS/OUT/2015/116

**Recommendations:**

That you:

- i. **Note** the Department of Defence will provide definitive advice on the implications of accepting the recommendations made by the Tribunal as soon as the Defence Legal has analysed the Report.

Noted / Please Discuss

- ii. **Sign** the proposed interim reply to Mr Mark Sullivan.

Signed / Not Signed

Approved By  <b>RICHARD OLIVER</b> First Assistant Secretary People Services s47E(c) [redacted] 22 September 2015 Phone: s47E(c) [redacted]	s22 [redacted]
<b>Contact Officer:</b> s47E(c) [redacted]	<b>Phone:</b> s47E(c) [redacted]
s22 [redacted] Darren Chester 17/2/16 <b>Comments / Supplementary tasking:</b> NB: Brief signing was overlooked at time of issuing media release.	
For Information  Marise Payne / /	

**Resources:**

- 8. N/A.

**Consultation:**

- 9. N/A.

**Attachments:**

- A. Draft letter to Mr Mark Sullivan.
- B. *Report of the Inquiry into the Refusal to Issue Entitlements to, Withholding and Forfeiture of Defence Honours and Awards – Executive Summary.*
- C. Talking points.
- D. Media release.



**The Hon Darren Chester MP  
Assistant Minister for Defence**

MA15-002744

Mr Mark Sullivan  
Chair  
Defence Honours and Awards Appeals Tribunal  
Locked Bag 7765  
Level 1, 105 Tennant Street  
CANBERRA BC ACT 2610

**COPY**

Dear Mr <sup>Mark</sup>Sullivan

Thank you for your letter of 7 September 2015 presenting the *Report of the Inquiry into the Refusal to Issue Entitlements to, Withholding and Forfeiture of Defence Honours and Awards*.

I recognise the complexities of such an inquiry and appreciate the Tribunal's conscientious and sensitive deliberation of this matter. As you would understand, the Australian Government will need to devote similar consideration to the Report and the recommendations before providing you with a final response.


I have provided a copy of the Report to the incoming Assistant Minister, Michael McCormack.

Yours sincerely  
s22

Darren Chester

17 FEB 2016

~~FOUO~~

 <p>☆☆☆</p>	<h2 style="text-align: center;">DECISION BRIEF FOR CDF</h2> <p style="text-align: center;"><b>DEFENCE HONOURS AND AWARDS APPEALS TRIBUNAL INQUIRY INTO THE REFUSAL TO ISSUE ENTITLEMENTS TO, WITHHOLDING AND FORFEITURE OF DEFENCE HONOURS AND AWARDS</b></p>	
	<p>Group: Defence People Group</p>	<p>Reference: FASPS-OUT-2016-103</p>
<p>For Information: VCDF, CN, CA, CAF, CJOPS, DEPSEC DP.</p>	<p>Due Date: 23 Aug 16</p>	

**Purpose**

1. The purpose of this brief is to provide you with a response to the recommendations made by the Defence Honours and Awards Appeals Tribunal (the Tribunal) *Inquiry into the refusal to issue entitlements to, withholding and forfeiture of Defence Honours and Awards.*

**Recommendations** (please note further recommendations at c, d, e, f, g and h on page 2)

2. It is recommended that CDF:
- a. **Note** the Tribunal concluded that the decisions made by the three Services and Defence on the withholding and forfeiture of medals since 1939 were legally valid.

NOTED / PLEASE DISCUSS

- b. **Note** the then Parliamentary Secretary indicated acceptance of Recommendation 1 with the media release of September 2015 calling for veterans, or the families of deceased veterans, to apply to Defence so a list of veterans who may be eligible for medal restoration could be compiled.

NOTED / PLEASE DISCUSS

<p>s22</p> <div style="background-color: #cccccc; width: 200px; height: 50px; margin: 5px 0;"></div> <p><b>Richard Oliver</b> FASPS</p> <p><i>16</i> August 2016</p>	<p><b>Comments:</b></p>    <p><b>MD Binskin</b> ACM CDF</p> <p style="text-align: right;">August 2016</p>
--	---

**Contact Officer:** s47E(c) [redacted] Assistant Director, Policy and Tribunal  
 Directorate of Honours and Awards  
 Phone: s47E(c) [redacted]

~~FOUO~~

- c. **Agree** the applications that have been received for withheld or forfeited awards be reviewed on a case-by-case basis.

AGREED / NOT AGREED / PLEASE DISCUSS

- d. **Agree** to accept Recommendation 2, to include a new mandatory forfeiture requirement for future cases based on a member's conviction for serious terrorism related offences under the *Crimes Act 1914* (Cth) and the *Criminal Code Act 1995*;

AGREED / NOT AGREED / PLEASE DISCUSS

- e. **Agree** to accept Recommendation 3 in principle, with overarching guidelines from the Governor-General to be developed that set the criteria for awards withholding and forfeiture, and mandating the circumstances for when these are to be sent for his/her mandatory and discretionary decision-making in future.

AGREED / NOT AGREED / PLEASE DISCUSS

- f. **Agree** to accept Recommendation 4, and that the time period for discretionary and mandatory awards forfeiture is forever.

AGREED / NOT AGREED / PLEASE DISCUSS

- g. **Endorse** Recommendation 5 to the Assistant Minister, to enable decisions made by Defence on withholding, forfeiture and restoration of medals to be reviewable by the Tribunal through an amendment to s110V(1) of the *Defence Act 1903*,.

ENDORSED / NOT ENDORSED

- h. **Sign** the ministerial at Enclosure 3 (MA16-001548) formalising the Defence response to the recommendations.

SIGNED / NOT SIGNED / PLEASE DISCUSS

## **Background**

3. In October 2013, the Tribunal completed a review of the eligibility of two brothers (both deceased) for World War II campaign awards. Both men were discharged from the Australian Army for misconduct and their entitlement to awards was withheld by Defence pursuant to the regulations and instructions applicable at the time. The Tribunal found that their awards had been improperly withheld from them by Army, and later, the Department of Defence.

4. The Tribunal recommended a separate inquiry be undertaken to determine the extent to which Imperial and Australian awards, or entitlements, may have been improperly forfeited or withheld since 1939. This inquiry was announced on 10 January 2014 by the then Parliamentary Secretary to the Minister for Defence, the Hon Darren Chester MP.

5. On 20 June 2014, the Acting CDF endorsed Defence's primary submission to this inquiry that identified the relevant legal provisions giving authority for a member's campaign and service awards to be withheld or forfeited that applied in and from 1939.
6. On 24 February 2015, you endorsed a supplementary submission that described each Service's World War II era policies on dishonourable discharges, noting this was a key area of concern and a principal consideration of the decision-making process to withhold or forfeit a person's award.
7. Public hearings for this inquiry were held in February 2015 in Canberra and Melbourne. The first was held in Canberra on 24 February with Defence as the primary witness. Representatives from the Service Headquarters and history/research units, Headquarters Joint Operations Command, Defence Legal and the Directorate of Honours and Awards (DH&A) attended.
8. On 16 April 2015, the then Executive Director DH&A endorsed a further submission responding to matters taken on notice at the hearing. These concerned the application of the *Army Act 1881* (Imperial) during World War II and instructions authorising the issue of World War II ribbons of campaign stars to Service personnel.
9. On 7 September 2015, the Tribunal Chair, Mr Mark Sullivan AO, presented the Report of the *Inquiry into the Refusal to Issue Entitlements to, Withholding and Forfeiture of Defence Honours and Awards to Government* (Enclosure 1). At that time, the Parliamentary Secretary's office requested a Departmental response to the recommendations within two weeks.
10. As the Tribunal's report was complex, and its recommendations may have significant legal and administrative consequences for Defence, further consultation with Defence Legal, the Defence Honours and Awards Advisory Group (DHAAG) and the Directorate of Administrative Policy was necessary. As a result, an interim reply from the then Parliamentary Secretary to the Tribunal Chair, and a media release were finalised in September 2015. The media release called for veterans, and the families of deceased veterans who had forfeited their medals, to lodge applications with DH&A (Enclosure 2).
11. Overall, during the course of the inquiry and subsequent to the media release, 96 applications for review have been received for consideration. Reviews of these have been held, pending your consideration and finalisation of the recommendations.

## Key points

12. **Tribunal findings.** The Tribunal concluded that, for the most part, there was a legal basis for the decisions made by the three Services and Defence on the withholding and forfeiture of medals since 1939. It also concluded that, while there was no doubt that mistakes were made when the provisions were applied by the Services, these were individual errors and there was no evidence that these were a result of maladministration.

13. The Tribunal made five recommendations in its Report:

- a. **Recommendation 1** (1.1, 1.2 and 1.3): sets out the specific circumstances for Defence to restore medals that were forfeited during and after World War II to veterans, or to the families of veterans who are now deceased. These decisions for withholding and forfeiture of service and campaign awards were made in accordance with the policy of the time. This recommendation does not state explicitly that these cases be further reviewed as part of the restoration process and thus infers an automatic restoration.

It is recommended that Defence review each application on a case-by-case basis, noting that the Tribunal concluded that decisions for medallic withholding and forfeiture were lawfully made at the time. If the review process results in a decision to not restore withheld or forfeited award/s, some of these applications may become cases lodged with the Tribunal, subject to Recommendation 5 (paragraph 13e refers).

- b. **Recommendation 2** (2.1 and 2.2): sets out the recommended grounds for mandatory and discretionary, forfeiture of medals in future. It aligns closely to the current withholding and forfeiture policy in the Defence Honours and Awards Manual (the Manual, Chapter 46) with a proposed inclusion requiring mandatory forfeiture as a result of conviction for serious terrorism related offences under the *Crimes Act 1914* (Cth) and the *Criminal Code Act 1995* (see Recommendation 2.1). Defence would not apply this mandatory forfeiture ground for reviews of retrospective cases. It is recommended that Defence accepts this recommendation.
- c. **Recommendation 3**: seeks to establish the future authority to order the mandatory and discretionary forfeiture of any medals. The Tribunal has recommended this be placed in a Defence Instruction or in Regulations made under the *Defence Act 1903*. It is recommended that Defence accept this recommendation in principle, influenced by the outcomes of major reviews undertaken (the First Principles Review, the Belcher Red Tape Review and the Secretary and CDF Advisory Committee decision of June 2014 to adopt a principles based rather than a prescriptive rules-bound approach to achieving administrative policy outcomes). It is also recommended that this can be achieved by formalising overarching guidelines signed by the Governor-General setting the criteria for forfeiture, and mandating the circumstances in which cases are to be sent for his/her mandatory and discretionary decision. In-principle agreement to this approach has been obtained from the Australian Honours and Awards Secretariat at Government House. DH&A will develop these guidelines in consultation with Defence Legal, DHAAG and the Australian Honours and Awards Secretariat.
- d. **Recommendation 4** (4.1 and 4.2): focuses on the decision-maker establishing a set time period for the forfeiture of any medal. For mandatory forfeitures cases, the DHAAG recommends that this period is forever, and without an option to gift any forfeited honours and awards to a veteran's family if the veteran is deceased. In the case of discretionary forfeiture decisions, a time period could be set (for example 10 years) in the Governor-General's guidelines, with a separate internal Defence review of the case after that time (on receipt of a valid application by the member or their family). Overall, the DHAAG view is to accept this recommendation, and for the time period for discretionary and mandatory awards forfeiture is forever.

- e. **Recommendation 5:** The Tribunal recommends that the *Defence Act 1903* (the Act) be amended to include decisions on withholding, forfeiture and restoration of medals. Under s110V(1) of the Act, the Tribunal does not currently have the power to review decisions relating to withheld or forfeited honours and awards. . If agreed, the review powers of the Tribunal will increase to include future recommendations and decisions made by Defence regarding the withholding, forfeiture and restoration of member's medals (Recommendation 1 at paragraph 13a refers). The DHAAG supports this recommendation, and you have the option to endorse this position. With the Minister's agreement, Defence Legal could be engaged to develop the necessary documentation to amend s110V(1) of the Act, and include this as part of the next scheduled Amendment Bill.

14. During discussions of this Tribunal Inquiry and its report, the DHAAG also discussed an option of recommending a complete review of the Tribunal to you, as it has existed as an independent statutory body for five years. If the Act is to be amended, the opportunity does exist to recommend to the Minister that an overall review of the Tribunal be conducted to ensure its role and function is meeting its intent. While this option is broadly supported by Army, overall, the DHAAG acknowledges that the current political appetite for such a review is likely be very low.

15. Changes will also be made to the current Defence policy relating to the 'reinstatement of withheld or forfeited awards' policy. The policy currently states that "restoration will only be considered in cases where the person affected is still living and makes a personal application for restoration of the forfeited entitlement. Applications on behalf of a deceased member cannot be considered." The policy will be amended to reflect present practice, allowing applications on behalf of a deceased member. These will be considered and an evidence based assessment made in accordance with administrative law principles. If a review results in a decision to reinstate award/s, these can be gifted to the member's family - if the member is deceased and in accordance with the deceased member's wishes. In circumstances in which the member has declined or returned their award/s, this action will be respected and taken into consideration by Defence as part of the review process.

## Conclusion

16. The findings of this inquiry have confirmed that, for the most part, the decisions by Defence to withhold or forfeit campaign medals from World War II onwards were legally valid. Rather than retain the current (and legally valid policy), the DHAAG will take this opportunity to review and amend the policy and management of mandatory and discretionary withholding and forfeiture decision-making. This will reinforce the holistic management approach by including overarching guidelines from the Governor-General on those cases in which the circumstances warrant a transparent decision to be made on an individual's right to receive or retain awards, or when these would be forfeited.

## Consultation

17. The following were consulted in the preparation of this brief: s47E(c) [redacted] (Director Australian Honours and Awards Secretariat, Government House); s47E(c) [redacted] (Director Legislation, Defence General Counsel), s47E(c) [redacted] (A/Special Counsel, Defence People Group, Defence Legal); s47E(c) [redacted] (Acting Director Administrative Policy,

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Governance and Reform Division); and the DHAAG comprising representatives from each Service, VCDF Group and HQJOC at the O-6/(E) level.

**Prepared by:** s47E(c) Assistant Director Policy and Tribunal,  
Directorate of Honours and Awards.

**Cleared by:** s47E(c) Director Honours and Awards.

**Enclosures:**

1. DHAAT *Report of the Inquiry into the Refusal to Issue Entitlements to, Withholding and Forfeiture of Defence Honours and Awards* dated 7 September 2015.
2. MA15-002744.
3. MA16-001548.

~~FOUO~~



s47E(c)

**From:** s47E(c)  
**Sent:** Thursday, 25 August 2016 4:01 PM  
**To:** s47E(c) s47E(c) s47E(c)  
**Subject:** RE: DHAAG - Inquiry ~~[DAM - For Official Use Only] [SLS - PROTECTED]~~  
**Attachments:** 20160825 - WFR - Discussion notes for DH&A and COS to CDF .doc; 20160825 - Tribunal Inquiry WFR - DHAAG Discussion points.doc

~~PROTECTED~~

Good afternoon s47E(c)

Please find attached the supporting documents to assist in the discussion with CDF on WFR Recommendations 4 and 5.

Attached are the:

- thoughts;
- notes from the DHAAG discussions this year of the recommendations and
- DHAM Chapter 46 ('Forfeiture and restoration of service awards' that will need amendment:  
<http://defweb.cbr.defence.gov.au/home/documents/data/DEFPUBS/DEPTMAN/DHAMV1/46.pdf>

Hardcopies of these are at s47E(c) desk.

Thank you everyone for the discussion.

Regards

s47E(c)  
Assistant Director  
Policy & Tribunal  
Directorate of Honours and Awards  
People Services Division  
Department of Defence  
P: s47E(c) |  
s47E(c) | Campbell Park Offices  
| PO Box 7952 | Canberra BC | ACT 2610

Defending Australia and its historical interests  
www.defence.gov.au



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**From:** s47E(c)  
**Sent:** Wednesday, 24 August 2016 15:22  
**To:** s47E(c) s47E(c) s47E(c)  
**Subject:** Fwd: DHAAG - Inquiry ~~[DAM - For Official Use Only]~~

Team as you can see below CDF wants to discuss recommendation 4 & 5. s47E(c) given you will be away could I meet with s47E(c) on Friday to discuss. Could you also send through your thoughts or share with the girls before you go on recommendations 4 & 5.

Sent from my iPhone

Begin forwarded message:

**From:** s47E(c)  
**Date:** 24 August 2016 at 10:01:54 AM AEST  
**To:** s47E(c)  
**Subject:** DHAAT - Inquiry [REDACTED]

Hi s47E(c)

CDF has reviewed the brief and MINADV you provided regarding the DHAAT - Inquiry into the refusal to issue entitlements to, withholding and forfeiture of Defence Honours and Awards. There were 5 recommendations out of the Inquiry and I would like to discuss recommendations 4 and 5 with you. I think it probably best to chat in person, at a time that is convenient for you.

Would you please give me a call to organise a time?

Regards

s47E(c)  
CAPT  
COS to CDF  
s47E(c)  
s47E(c)  
s47E(c)  
s22

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**Defence Honours and Awards Appeals Tribunal for its *Inquiry into the refusal to issue entitlements to, withholding and forfeiture of Defence Honours and Award***

**Notes for DH&A with COS to CDF s47E(c)**

Recommendation 4: (future perspective)

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 (Defence Honours and Awards Manual) should contain policy guidelines on the appropriate period that should apply to the forfeiture of a medal.
2.
  - a. the mandatory forfeiture be forever of for the life of the veteran; and
  - b. that these medals should not be gifted.

**Thoughts / Discussion**

- Defence honours and awards under the Australian system of honours and awards have Clauses that set the terms for their cancellation and reinstatement.
- Looking forward, the Instruments will need to be rewritten to include grounds for mandatory and discretionary withholding and forfeiture.
- This will require consultation with Defence Legal (specifically the Services for cases that fall under DFDA to capture those discretionary categories that would also prompt decisions to forfeit.
- This would require sign off by the Sovereign's representative (Governor-General).
- Deciding a time period for medal forfeiture is reasonable and current practice (reflected in policy).
- In the cases when a member forfeits a medal entitlement on the grounds of being convicted for serious crime/s related to/ during their military service (mandatory forfeiture): (as outlined in Chapter 46 DHAM and those listed by the DHAAT in Recommendation 2.1), this period would be forever/ life of the veteran and not gifted thereafter. DHAAG supports this recommendation.
- In terms of discretionary decisions for medal forfeiture (cancellation) in future, the DHAAG is of the view and recommends that the forfeiture period be forever in these cases as well.
- Alternatively, in cases where a discretionary decision is made to forfeit a member's award, the time period could be set for a time period.
- Discussions at DHAAG agreed that a set ten year period was reasonable. Therefore, if a member, or their family, would like a review of the cancellation of a member's award, they could apply for a review after ten years. A review would be conducted on a case-by-case basis.
- Information on this could be included in the Governor-General's guidelines (yet to be developed, see the Defence response to Recommendation 3).

- It would need to be based on substantive documentary evidence provided by the applicant, or their family, of the actions that the member had done after the awards' cancellation that would warrant its reinstatement.
- It is important to remember that decisions for an awards' cancellation are made in circumstances in which the member's actions are considered to be so disgraceful and serious that it would not be proper for the member to retain an award.
- See DHAM Chapter 46: 46.7, 46.8 and 46.9. (tabbed).
- DH&A acknowledges that in some historical cases, decisions have been made to cancel, and subsequently reinstate a ex-serving member's award s22 based on the quality of the redemptive actions undertaken by the individual after the cancellation occurred.

#### Recommendation 5

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

- The Tribunal has powers to recommend only for decisions related to defence honours;
- for Defence service/campaign and foreign awards, it can affirm, or set aside and substitute a decision, or refer for reconsideration.
- The Tribunal currently does not have the powers under the Act to reviews on Defence's decisions to recommend withholding, forfeiture and restoration.
- Under these (expanded) powers, the Tribunal can make recommendations or replace defence's recommendation to withhold, forfeit or restore.
- The decision last year to issue a media release calling for applications for review of cases of withheld or forfeited awards from 1939 has resulted in around 100 applications being received. Under admin law, as these applications have been received, they must be processed iaw admin law procedures and a review mechanism on the decisions made for these cases must also be available.
- Amending the Act will create this review mechanism.
- There was discussion at the DHAAG about asking for the minister to direct a review of the overall powers of the Tribunal, as it has been operating as an independent statutory body for the past 5 years, and as a review body since 2008.
- Noting the recent Government approach to considering the Tribunal's recommendations for Long Tan recognition, the general consensus by DHAAG was that the current Minister would not have an appetite to direct a review of the Tribunal and its role/ powers at the current time.

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**Comments on Recommendations of the  
Withholding, Forfeiture and Restoration of Medals Report**

Item	Tribunal Inquiry Recommendation	Defence Legal Comment	DHAAG Discussion points	Actions & Notes
1.1	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;	<p>The primary recommendation only includes forfeiture.</p> <p>Is it intended to extend this to withholding of medals? <b>YES</b></p> <p>This is only a recommendation which the Minister may accept/reject. Out of fairness, it would be open to the Minister to direct consideration of the same for Navy and Air Force. The Minister is not limited to the terms of the recommendation.</p>	<p>MBI only applied to Army cases.</p> <p>1. How will Defence manage applications for review for the restoration of withheld or forfeited medals from WWII service?</p> <p>Options include:</p> <p>1. Case by case review of each individual application, based on member Service Records and other evidence located. If the member met the qualifying criteria for the all WWII campaign / service awards, should these be restored automatically?</p> <p>2. Case by case review of each application, based on member Service Records and other evidence located; if the member met the qualifying criteria for the all campaign / service awards, should these be restored automatically (feel good factor)?</p> <p>Note: ASM 39-45 w&amp;f decision based on nature of member's discharge and what evidence is available in records</p> <p>Suggested Exclusions:</p> <p>Gallantry and bravery decorations due to nature of actions that prompted decision to W or F (as per Regs at the time, cowardice, treason etc)</p> <p><b>Agreed DHAAG outcome:</b></p>	<p>H&amp;A sought further advice from Tribunal on what it recommended for Navy and RAAF cases to ensure consistency of applications reviews.</p> <p>Q posed to DHAAT: MBI applies specifically to Army. What about Navy and RAAF cases to be reviewed? A: Apply a consistent approach to reviewing Navy &amp; RAAF cases based on Army MBI.</p> <p>Advice provided by DHAAT Ag Exec Officer on 07Jan16:</p> <p>"...., we think it would be prudent that if the Government were to accept the Tribunal's recommendation, Defence would also consider ensuring that its policy reflected a consistency of approach across the three services, in the event that such a claim did arise from an RAN or RAAF veteran in the future.</p>
1.2	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.	<p>Note: the recommendation, as drafted, on page 11 is different to the recommendation, as drafted, on page 105.</p> <p>It is open to the Minister to deviate from the recommendation and use the terms of the DPI and the MBI WRT those that are not to be restored.</p> <p>This is going to require a case by case approach.</p> <p>Will need to differentiate between those that were validly withheld/forfeited and that that were not. Difference being that that were not valid will be issued/returned to the veteran, those that were will be issued/restored.</p>	<p>Going forward</p> <p><b>Options</b> Maintain the status quo in accordance with the DHAM?</p> <p>Is Defence's policy position that members behaving badly are able to retain their Service and Campaign medals as they have met their the qualifying criteria?</p> <p>What is the current process for W, F and R decisions in the Services and HQJOC?</p>	<p>If the decision to withhold, forfeit was made under Defence policy, Defence can make the decision to restore.</p> <p>s22 [REDACTED]</p> <p>s22 [REDACTED] Would the public expect badly behaved people to retain (some) or (all) of their medallic recognition based on their action?</p>

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1.3	<p>medals gifted to deceased veterans' families are to be gifted according to the following rules:</p> <ul style="list-style-type: none"> <li>a. to the executor under the veteran's will;</li> <li>b. if the veteran died intestate, to the Public Trustee Administrator;</li> <li>c. to a member of the family nominated in writing by the immediate descendants of the veteran;</li> <li>d. if there are no immediate descendants, to a member of the family nominated in writing by the family at large; or</li> <li>e. if there is a dispute in the family about who should be gifted the medals, the medals should not be gifted.</li> </ul>	<p>How this is done is a question of policy. Appears to have been decided that it will be on request</p> <p>In relation to the restoration of medals to classes identified in c, d, and e, this is a policy issue. It would be open to the Minister to accept or reject this part of the recommendation.</p> <p>Current Policy DHAM para 45.8 - Spouse, child, grandchild, parent, sibling. - Could include gifting to the estate in the DHAM</p>	<p>Application of the policy must be consistent</p> <p>Options:</p> <p>Should the will executor be included in DHAM? Yes.</p>	
2.1	<p>that there be mandatory forfeiture of medals on conviction for the following grounds:</p> <ul style="list-style-type: none"> <li>a. treason and related offences; (see for example s 9A of the Crimes Act 1958 (Vic));</li> <li>b. mutiny and related offences (see s 20 of DFDA 1982);</li> <li>c. sabotage of own and allied assets (see s 15A of DFDA 1982);</li> <li>d. aiding the enemy (including assisting prisoners of war) and related offences (see ss 15D, 15E, 16 of DFDA 1982); and</li> <li>e. serious terrorism related offences (see s 3(1) of the Crimes Act 1914 (Cth), Criminal Code Act 1995).</li> </ul>	<p>Are there currently any grounds for forfeiture of medals? On review of 6 medals, the Letters Patent allow for the discretionary cancellation of medals by way of a recommendation to the Governor General.</p> <p>Is there a disciplinary purpose to cancel medals? Not covered in the DFDA</p> <p>Are there any regulations for the mandatory forfeiture of the medals? (note: DHAM 46.6 suggests there is, but I can't find any)</p>	<p>Current alignment to DHAM Ch 46</p> <p>What are the Services' views on mandatory forfeiture of all medals in the circumstances of Tribunal recommendation 2.1?</p> <p>Do we agree?</p> <p>Is restoration decided on a case by case basis, dependant on the actions of the individual and the reputational issues For defence?</p> <p>What should the future process be for W, F and R decisions in the Services and HQJOC?</p> <p><b>Proposed option:</b> Obtain a Direction (Guidelines) from G-G stating "when a case falls into one, or more of these categories, I want to see it..." Retain G-G decision-making power</p>	<p>G-G must be advised of these cases</p>

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2.2	<p>a. that there be discretionary forfeiture of medals on the following grounds:</p> <ul style="list-style-type: none"> <li>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</li> <li>ii. if an award was obtained by making a false declaration.</li> </ul> <p>b. the guidelines to be applied when considering the discretionary forfeiture of medals are:</p> <ul style="list-style-type: none"> <li>i. gallantry and distinguished service decorations should only be forfeited in extreme situations;</li> <li>ii. a decision that one award should be forfeited does not mean that any other award should be forfeited;</li> <li>iii. the quality of the member's entire service should be taken into account;</li> <li>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</li> <li>v. consideration should be given to variables such as mental health, physical condition and any other mitigating circumstances.</li> </ul>	<p>This could be managed through guidelines issues by the Governor-General as to what his is willing to consider WRT the cancellation of medals.</p> <p>Example: s22 [REDACTED]</p>	<p><b>Proposed option:</b> Develop a set of Guidelines by the Governor-General which gives G-G the discretion to exercise discretionary decision-making</p> <p>"I will consider these requests for w/ f/ and restoration based on. .... etc etc."</p> <p>We as Defence will suggest/ recommend the threshold for the G-G: ie</p> <p>When, and under what circumstances will the G-G withhold or forfeit an honour and/or award?</p> <p>When, and under what circumstances will the G-G restore an Honour and/or award?</p> <p>This proposed option aligns with DHAM policy amendments</p>	
3	<p>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.</p>	<p>Mandatory forfeiture should be set out in the Letters Patent.</p> <p>Discretionary forfeiture could be permitted in the letters patent, but managed in accordance with instructions that set the threshold on the exercise of the Governor-General's delegation to the CDF or other person.</p> <p>This could be tiered so a delegate other than the CDF could make decision on for example awards, but CDF on honours and awards.</p>	<p>Agree in principle but not via Defence Instruction (note admin policy framework under FPR) or changes to Defence Act.</p> <p>Could be achieved more simply with G-G Direction/ Guidelines decision and rely on the honours &amp; awards Letters Patent and Regulations.</p>	
4.1	<p>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.</p>	<p>Policy issue. Could be covered in guidelines from the Governor-General, in terms of 'not consider restoring the medal until ...'</p>	<p>Agreed – DHAAG view is that forfeiture period is in perpetuity (forever)</p>	
4.2	<p>a. the mandatory forfeiture of medals be forever or for the life of the veteran; and b. that these medals should not be gifted.</p>	<p>Policy issue. Could be covered in guidelines from the Governor-General, in terms of 'not consider restoring the medal until ...'</p>	<p>DHAAG agreed with Tribunal recommendation.</p>	

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5	The Tribunal recommends that the Defence Act be amended to include decisions on withholding, forfeiture and restoration of medals in s 110V(1).	Note the powers of the Tribunal in section 110VB of the Defence Act 1903: Defence Honours – recommendatory only Defence and foreign awards – affirm, or set aside and substitute or refer for reconsideration.  By reference to the existing powers (above), all the DHAAT can do is make a recommendation, or replace Defence's recommendation.	Two DHAAG views:  1. Expand review powers of Tribunal – DHAAG agreed.  2 Agreed in principle, but with a broad review overall of role and powers of Tribunal suggested. This was not included in MINADV as this was beyond scope of responding to the WFR Inquiry recommendations. Also influenced by the Minister's recent consideration/acceptance of Tribunal's recommendations for Long Tan recognition.	
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**APPENDIX 8 to Tribunal Inquiry Report - 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

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**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

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**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

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**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

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**IMPERIAL AWARDS (continued)**

Award	Abbr	LG Date	Refusal Clause	Withholding Clause	Forfeiture Clause	Restoration Clause
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

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**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

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**AUSTRALIAN AWARDS**

<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 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

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**AUSTRALIAN AWARDS** *(continued)*

Award	Abbr	CAG and Date	Refusal Clause	Withholding Clause	Forfeiture Clause	Restoration Clause
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
<i>Australian Operational Service Medal (To be included in DHAAT schedule of reviewable awards)</i>	<i>AOSM</i>	<i>S67 of 6 June 2012</i>			<i>Clause 9</i>	<i>Clause 9</i>

**NOTES**

Awards are listed in Order of Wear or in date of Gazettal  
Further Regulations and Determinations not affecting the table have been omitted

~~FOUO~~



s47E(c)

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**From:** s47E(c)  
**Sent:** Tuesday, 13 September 2016 12:32 PM  
**To:** s47E(c)  
**Subject:** WFR: Preparation for meeting with the Minister on Wednesday morning.....  
[SEC=UNCLASSIFIED]  
**Attachments:** 20160913 - Notes for DEPSEC mtg with Minister Tehan- WFR Tribunal Inquiry.doc

UNCLASSIFIED

Hi s47E(c)  
)

for the WFR Obj file please

Many thanks

s47

E( )

s47E(c)

Assistant Director  
Policy & Tribunal  
Directorate of Honours and Awards  
People Services Division  
Department of Defence

P: s47E(c) |

s47E(c) | Campbell Park Offices  
| PO Box 7952 | Canberra BC | ACT 2610

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www.defence.gov.au



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**From:** s47E(c)  
**Sent:** Tuesday, 13 September 2016 12:21  
**To:** Oliver, Richard MR 1; s47E(c)  
**Cc:** s47E(c) s47E(c) s47E(c)  
**Subject:** RE: Preparation for meeting with the Minister on Wednesday morning..... [SEC=UNCLASSIFIED]

UNCLASSIFIED

Good afternoon Richard

In follow up to our conversation earlier today, please find attached is a copy of the 1 page dot point notes for the meeting at 1330 today (it has an additional background information page included).

Regards

s47

E(c)

Assistant Director  
Policy & Tribunal  
Directorate of Honours and Awards  
People Services Division  
Department of Defence

P: s47E(c) |

s47E(c) | Campbell Park Offices

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**From:** s47E(c)  
**Sent:** Tuesday, 13 September 2016 09:29  
**To:** Oliver, Richard MR 1  
**Cc:** s47E(c) s47E(c) s47E(c)  
**Subject:** RE: Preparation for meeting with the Minister on Wednesday morning..... [SEC=UNCLASSIFIED]

UNCLASSIFIED

Hi Richard,

I have spoken to s47E(c) and s47E(c) who have been dealing with this issue. They will organise a time to meet with you and walk through the paper.

Attached is a copy of the paper was prepared by the tribunal.

FYI, s47E(c) is on leave until Thursday.

Thanks

s47E(c)  
Assistant Director Medals Management and Support  
Directorate of Honours and Awards  
Department of Defence

s47E(c) | Campbell Park Offices | PO Box 7909 | Canberra BC | ACT 2610

---

**From:** Oliver, Richard MR 1  
**Sent:** Monday, 12 September 2016 18:32  
**To:** s47E(c) s47E(c)  
**Cc:** s47E(c)  
**Subject:** Preparation for meeting with the Minister on Wednesday morning..... [SEC=UNCLASSIFIED]

UNCLASSIFIED

s47E(c)

We have a meeting with Minister Tehan early on Wednesday morning.

At another meeting today one of the things he commented would like to speak about is the Withholding of Honours and Awards paper that was prepared (not sure if by us or the Tribunal) some time ago now . Can you talk your team and get a copy of the paper that went to him and secondly, do we support the recommendations that were made in the paper.

Can someone give me call on this matter tomorrow morning. Also.....we we get some time in the diary to meet and for you to take me through this issue.

Thanks

**Richard Oliver**  
**Acting Deputy Secretary Defence People**  
Defence People Group  
Department of Defence

s47E(c) | Russell Offices | PO Box 7909 | Canberra BC | ACT 2610  
P: s47E(c) | Ms22  
Email: s47E(c)

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

**Notes for A/DEPSEC Meeting with Minister Tehan on Wed 14 Sep 16: 0830 hrs**

### **Key Issues**

- From January 2014 to September 2015 the Defence Honours and Awards Appeals Tribunal conducted an *inquiry 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.*
- On 7 September 2015, the Tribunal presented the *Report of the Inquiry into the Refusal to Issue Entitlements to, Withholding and Forfeiture of Defence Honours and Awards* to Government
- It concluded that there was a legal basis for the decisions made by Defence and the three Services on the forfeiture of medals (the majority of these cases relate to World War II service) and made five recommendations in its report:
  - Recommendation 1 sets out the circumstances for Defence to review applications of historical cases from World War II.
  - Recommendations 2, 3 and 4 are focussed on identifying ways that Defence can improve its management for mandatory and discretionary decisions for withholding and forfeiture of medallic recognition in future; and
  - Recommendation 5 seeks to expand the Tribunal's review powers to include decisions on withholding, forfeiture and restoration of medals be included in s 110V(1) of the *Defence Act 1903.*

### **Current situation**

- The Defence Honours and Awards Advisory Group (DHAAG) has met twice this year to discuss the report with a representative from Defence Legal, as the recommendations could have had significant legal and administrative consequences for Defence.
- The DHAAG had reached agreement to recommend to the Minister to accept each of the five recommendations made by the Tribunal;
- This original advice was provided to CDF under Ministerial Advice MA16-001548;
- We understand that CDF is currently considering this advice; he has sought additional advice specifically on Recommendations 4 and 5 and the associated administration and timeframes related to these.
- It is also understood that CDF may not support, or agree fully with each of the Tribunal's recommendations, and an out of session DHAAG meeting will be held within the month to discuss this matter in depth.
- Additional advice will be provided to the CDF from the DHAAG based on this meeting, and
- Minister Tehan will receive further advice on this matter as it progresses.

## Background

- The Inquiry followed a review by the Tribunal into the eligibility of the late Mr Archibald Boyes and the late Mr John Boyes for their service during World War II.
- The majority of cases of withheld or forfeited medals relate to service during, and shortly after, World War II.
- Defence provided a detailed submission to the Tribunal on 20 June 2014 identifying the relevant legal provisions that applied in and from 1939. These policies were laid down in a variety of Service regulations and instructions enacted under both Australian and Imperial legislation.
- Defence provided a supplementary submission on 17 February 2015 addressing: historical discharge policies; each Service's mechanisms to discharge deserters and illegal absentees; and the Army policy on recording of reasons for discharge.
- Public hearings for this inquiry were held in February 2015.
- The Tribunal presented the *Report of the Inquiry into the Refusal to Issue Entitlements to, Withholding and Forfeiture of Defence Honours and Awards* to Government on 7 September 2015.
- It concluded that there was a legal basis for the decisions made by Defence and the three Services on the 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.
- The Tribunal's Report was made publicly available on the Tribunal's website on 6 October 2015.

## Why would Defence have withheld or forfeited an entitlement to awards in the past?

- Awards were withheld or forfeited where members committed acts contrary to Service discipline, or behaved in a way which, at the time, was considered to be serious enough to warrant the withholding of medallic recognition.
- Awards were also withheld or forfeited where a member had been convicted of, or discharged as a consequence of, certain prescribed offences which resulted in automatic forfeiture of medal entitlements (eg desertion).
- The decision to withhold or forfeit an entitlement was made by the Services in accordance with contemporaneous single-Service policies.

## How many veterans have been denied an entitlement to service awards?

- It is unknown how many members have had an entitlement to awards withheld or forfeited, and of these, which may have been based on an incorrect decision. No register exists that lists this information. To determine the potential numbers affected, Defence would need to research and assess in excess of one million service records and medals cards/slips.
- On 7 October 2015, the then Assistant Minister for Defence, the Hon Darren Chester MP, issued a media release calling for veterans, or the families of deceased veterans, who forfeited their medals to contact the Department of Defence.

- Around 100 applications for review have been received. Reviews of these have not commenced, pending finalisation of the Government's consideration of the Tribunal's recommendations.
- On 9 September 2016, s47E(c) DLO at Minister Tehan's office requested information on the number of applications that have been received by Defence on behalf of the adviser s47E(c)
- We confirmed the number at 'around 100' (to date, it is 96) on 9 Sep 16.

Prepared by:

s47E(c)

Assistant Director Policy & Tribunal, Directorate of Honours & Awards;

13 Sep 16



## Australian Government

### Defence Honours and Awards Appeals Tribunal

DHAAT/OUT/2016/370

**The Hon Dan Tehan MP**

Minister for Defence Personnel  
Parliament House  
CANBERRA ACT 2600

Dear Minister

I write to follow up on our recent conversation when we spoke about the status of reports presented by the Defence Honours and Awards Appeals Tribunal to the Government for consideration. I greatly appreciated the chance to talk personally to you about these reports.

Two of the reports presented to Government are in relation to Inquiries conducted by the Tribunal (under direction given by the Minister under s 110W of the *Defence Act 1903* (the Act)). The details of what has occurred for each Inquiry report to date follows:

s22



2. On 7 September 2015, the Tribunal provided its report of the *Inquiry into refusal to issue entitlements to, withholding and forfeiture of Defence honours and awards* to Mr Chester. The Report was published on the Tribunal's website on 6 October 2015. On 17 February 2016, I received advice from Mr Chester that the report had been sent to the new Assistant Minister for Defence, the Hon Michael McCormack MP.

Following the presentation of the Inquiry report to Mr Chester, a number of articles appeared in newspapers, advising that the Minister had received the report and the Government was considering the recommendations. Two media articles are enclosed for your information. The publicity generated expectations from family members who had made submissions to the Tribunal during the Inquiry. While this has been managed to a degree, I am still anxious to know the Government's response to the Inquiry recommendations.

In terms of matters pending, the Tribunal has before it an individual application for review where the applicant is seeking a review of the decision of Defence to forfeit the medals of a former serving member. The Tribunal has suspended any action on this matter until it receives advice from Government on the outstanding recommendations of the above-mentioned Inquiry.

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I look forward to receiving advice from you in relation to the above listed reports.

Yours sincerely

s22



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

15 September 2016

**Enclosures:**

Media article - *Herald Sun* 7 October 2015, *About-turn on diggers denied medals*  
Media article - *The Rockhampton Bulletin* 7 October 2015, *Call to veterans, or family of those that forfeited medals*



07 Oct 2015  
Herald Sun, Melbourne

Author: Annika Smethurst • Section: General News • Article type : News Item  
Classification : Capital City Daily • Audience : 344,061 • Page: 11  
Printed Size: 89.00cm<sup>2</sup> • Market: VIC • Country: Australia • ASR: AUD 4,942  
Words: 178 • Item ID: 476699759

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Also reported in the  
Hobart Mercury p15

Page 1 of 1

## About-turn on Diggers denied medals

THOUSANDS of ex-service-men denied war medals due to disciplinary breaches or minor offences could be "gifted" Defence awards under changes being considered by the Turnbull Government.

A tribunal investigating military awards and honours has handed its report to the Government. It found that

### ANNIKA SMETHURST

while some medals were withheld due to cowardice or aiding the enemy, many personnel were denied honours because they had failed "the test of discipline".

"Some let alcohol or drugs get the better of them, others disobeyed routine orders, oth-

ers overstayed the time allowed away from their units for which they were duly punished," the report found.

The tribunal recommended that medals withheld or forfeited be restored to veterans or gifted to the families of deceased veterans.

The daughter of one World War II veteran, who had his

campaign medals withheld after he was sentenced to 15 months' detention for desertion, said her father had served his country abroad for more than two years, but returned a "broken and disturbed man".

Assistant Minister for Defence Darren Chester said the Government was considering the report.

## Call to veterans, or family of those that forfeited medals

7th Oct 2015 9:12 AM

VETERANS, or the families of deceased veterans, who forfeited their medals have been urged to contact the Department of Defence.

The Assistant Minister for Defence, the Hon Darren Chester MP, made the call today as he announced that the Australian Government had received the Report of the Inquiry into the Refusal to Issue Entitlements to, Withholding and Forfeiture of Defence Honours and Awards.

Mr Chester said the Defence Honours and Awards Appeals Tribunal was directed to inquire into Defence decisions to withhold medals from serving personnel as far back as 1939.

"The vast majority of veterans who forfeited their medals served during World War Two," Mr Chester said.

"The Government is currently considering the report and will later respond formally to the Chair of the Defence Honours and Awards Appeals Tribunal and the community."

Meantime, Mr Chester called for veterans, or the families of deceased veterans, who forfeited their medals to contact the Department of Defence.

"There is no register of withheld or forfeited medals, so it is not known how many veterans forfeited their awards," Mr Chester said.

Mr Chester said that veterans and their families greatly value service medals and this was evident from the submissions made to the enquiry.



### JUST IN

Asbestos mine tailings used in playground, cancer follows [an hour ago](#)

The secret to losing weight? Energy in versus energy out [8 minutes ago](#)

New Elvis Presley album released this October [9 minutes ago](#) **The Bulletin**

FISHING TAILS: Try heading out mid-afternoon [9 minutes ago](#)

5 Rocks clean up a massive success [9 minutes ago](#)

ISLAND FOR SALE: Second island off Hervey Bay on market



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**DEFENCE HONOURS AND AWARDS ADVISORY GROUP**

**Out of Session**

**MEETING MINUTES - Date: 21 September 2016**

**Time: 1400 - 1600 Location: s47E(c)**

**ATTENDEES**

<b>Name</b>	<b>Position</b>	<b>DHAAG Role</b>
s47E(c)	Director Honours and Awards	Chair
s47E(c)	COS CRES, VCDF Group	Member
s47E(c)	DCOS NSC	
s47E(c)	SO Honours and Awards, NAVSTRATCOM	Member
s47E(c)	J1 Director Personnel, JOC	
s47E(c)	SO Ceremonials, AHQ	Member
s47E(c)	SO Honours and Awards / Coord, AFHQ	Member
s47E(c)	AD Policy & Tribunal, DH&A	Member
s47E(c)	A/Special Counsel (DPG)	Guest
s47E(c)	Policy Manager, DH&A	Member
s47E(c)	Tribunal Manager, DH&A	Guest
s47E(c)	Principal Research Officer, DH&A	Guest

**Item 1: Inquiry into the refusal to issue to, withholding and forfeiture of Defence honours and awards – brief for the CDF:**

- In September 2015, the Tribunal presented its Report of the *Inquiry into the Refusal to Issue Entitlements to, Withholding and Forfeiture of Defence Honours and Awards to Government*.
- The report's complexity required consultation with Defence Legal, DHAAG and the Directorate of Administrative Policy to develop the Government's response to the recommendations. (An interim reply from the then Parliamentary Secretary to the Tribunal Chair, and a media release were finalised in September 2015. The media release called for veterans, and the families of deceased veterans who had forfeited their medals, to lodge applications with DH&A. Approximately 100 applications have been received.)
- The Tribunal made five recommendations in its Report:
  - Recommendation 1 (1.1, 1.2 and 1.3): sets out the specific circumstances for Defence to restore medals that were forfeited during and after World War II to veterans, or to the families of veterans who are now deceased. These decisions for withholding and forfeiture of service and campaign awards were made in accordance with the policy of the time.
  - Recommendation 2 (2.1 and 2.2): sets out the recommended grounds for mandatory and discretionary, forfeiture of medals in future.

- Recommendation 3: seeks to establish the future authority to order the mandatory and discretionary forfeiture of any medals.
- Recommendation 4 (4.1 and 4.2): focuses on the decision-maker establishing a set time period for the forfeiture of any medal.
- Recommendation 5: The Tribunal recommends that the *Defence Act 1903* (the Act) be amended to include decisions on withholding, forfeiture and restoration of medals. Under s 110V(1) of the Act, the Tribunal does not currently have the power to review decisions relating to withheld or forfeited honours and awards.
- The initial brief to the CDF recommended acceptance of all 5 recommendations.
- It is now known that CDF does not support Recommendation 5.
- CDF supports taking this opportunity to independently review the Tribunal.
- The Services agreed that the CDF brief be amended to add more information to Recommendation 4 and that Recommendation 5 should reflect CDF's support of an independent review of the Tribunal's purpose. The main area of concern being their role in reviews and the scope creep related to their honours recommendations. There is a concern about the noticeable inconsistencies of the panel member's approaches and methods to the review processes and their decisions.
- s22
- s22
- s22

**Agreed Actions:**

- s47E(c) will rewrite the WFR brief and Ministerial Advice for the CDF, recommending that Recommendations 1-4 to be accepted and that Recommendation 5 not be accepted. Recommendation 5 will be a suggestion to the Minister that the Tribunal has an Independent review of their purpose.
- s47E(c) requested the draft to be completed by Thursday 29 September 2016, so she could take it to her meeting with CDF (this meeting was later cancelled).
- s47E(c) will discuss with CDF:
  - s22
  - s22
  - s22

**Item 2: Richard Oliver and outstanding Issues**

- s47E(c) met with Mr Richard Oliver (FASPS) and he has raised the matter of two outstanding Inquiry recommendations (prompted by a recent meeting between Minister Tehan and Tribunal Chair, Mark Sullivan) concerning:
  - s22 and
  - Refusal to issue to, withholding and forfeiture of Defence honours and awards

- s47E(c) [redacted] advised:

- s22 [redacted]

- RWF – discussed at Item 1.

**Agreed Actions:**

- s47E(c) [redacted] will rewrite the brief to the CDF s22 [redacted]

s22 [redacted]

s22



**Next meeting:**

Date: 19 October 2016

Time: 1000-1200


Location: s47E(c) Russell Offices

**Prepared by:**

DH&A Policy Management Team  
s47E(c)

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EXECUTIVE SUPPORT UNIT  
12 OCT 2016  
CDF | IN | 2016 | 1161

 ☆ ☆ ☆ ☆	<h2 style="text-align: center;">DECISION BRIEF FOR CDF</h2> <p style="text-align: center;"><b>DEFENCE HONOURS AND AWARDS APPEALS TRIBUNAL INQUIRY INTO THE REFUSAL TO ISSUE ENTITLEMENTS TO, WITHHOLDING AND FORFEITURE OF DEFENCE HONOURS AND AWARDS</b></p>	
	Group: Defence People Group	Reference: <i>FASPS-OUT-2016-120</i>
For Information: VCDF, CN, CA, CAF, CJOPS, DEPSEC DP.	Due Date: 14 Oct 16	

**Purpose**

1. The purpose of this brief is to provide you with a response to the recommendations made by the Defence Honours and Awards Appeals Tribunal (the Tribunal) *Inquiry into the refusal to issue entitlements to, withholding and forfeiture of Defence Honours and Awards.*

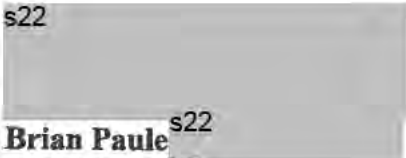
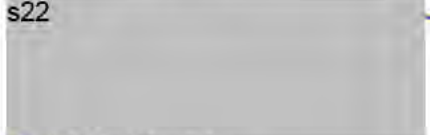
**Recommendations** (please note further recommendations at c, d, e, f, g, h and i on page 2)


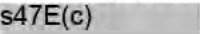
2. It is recommended that CDF:
- a. Note the Tribunal concluded that the decisions made by the three Services and Defence on the withholding and forfeiture of medals since 1939 were legally valid.

NOTED / PLEASE DISCUSS

- b. Note the then Parliamentary Secretary indicated an acceptance of Recommendation 1 with the media release of September 2015 calling for veterans, or the families of deceased veterans, to apply to Defence so a list of veterans who may be eligible for medal restoration could be compiled.

NOTED / PLEASE DISCUSS

s22  Brian Paule <sup>s22</sup> Acting FASPS    October 2016	<b>Comments:</b> s22  MD Binskin ACM CDF 24 October 2016
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**Contact Officer:** s47E(c)  Assistant Director, Policy and Tribunal  
 Directorate of Honours and Awards  
 Phone: s47E(c) 

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- c. **Agree** the applications that have been received for withheld or forfeited awards be reviewed on a case-by-case basis.

~~AGREED / NOT AGREED / PLEASE DISCUSS~~

- d. **Agree** to accept Recommendation 2, to include a new mandatory forfeiture requirement for future cases based on a member's conviction for serious terrorism related offences under the *Crimes Act 1914* (Cth) and the *Criminal Code Act 1995*;

~~AGREED / NOT AGREED / PLEASE DISCUSS~~

- e. **Agree** to accept Recommendation 3 in principle, with overarching guidelines from the Governor-General to be developed that set the criteria for awards withholding and forfeiture, and mandating the circumstances for these to be sent for his/her mandatory and discretionary decision-making in future.

~~AGREED / NOT AGREED / PLEASE DISCUSS~~

- f. **Agree** to accept Recommendation 4, that the time period for the forfeiture of discretionary and mandatory awards is to be forever; and that no option exists to gift those honours and awards, that are forfeited on mandatory grounds, to a veteran's family if the veteran is deceased.

~~AGREED / NOT AGREED / PLEASE DISCUSS~~

- g. **Agree** to not accept Recommendation 5 that will expand the review powers of the Tribunal and enable decisions made by Defence on withholding, forfeiture and restoration of medals to be reviewable by the Tribunal through an amendment to s110V(1) of the *Defence Act 1903*.

~~AGREED / NOT AGREED / PLEASE DISCUSS~~

- h. **Agree** to recommend to the Minister for Defence Personnel that an independent review be conducted of the role and powers of the Tribunal.

~~AGREED / NOT AGREED / PLEASE DISCUSS~~

- i. **Sign** the ministerial at Enclosure 3 (MA16-001548) formalising the Defence response to the recommendations.

~~SIGNED / NOT SIGNED / PLEASE DISCUSS~~

### Background

3. In October 2013, the Tribunal completed a review of the eligibility of two brothers (both deceased) for World War II campaign awards. Both men were discharged from the Australian Army for misconduct and their entitlement to awards was withheld by Defence pursuant to the regulations and instructions applicable at the time. The Tribunal found that their awards had been improperly withheld from them by Army, and later, the Department of Defence.

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4. The Tribunal recommended a separate inquiry be undertaken to determine the extent to which Imperial and Australian awards, or entitlements, may have been improperly forfeited or withheld since 1939. This inquiry was announced on 10 January 2014 by the then Parliamentary Secretary to the Minister for Defence, the Hon Darren Chester MP.

5. On 20 June 2014, the Acting CDF endorsed Defence's primary submission to this inquiry that identified the relevant legal provisions giving authority for a member's campaign and service awards to be withheld or forfeited that applied in, and from, 1939.

6. On 24 February 2015, you endorsed a supplementary submission that described each Service's World War II era policies on dishonourable discharges, noting this was a key area of concern and a principal consideration of the decision-making process to withhold or forfeit a person's award.

7. Public hearings for this inquiry were held in February 2015 in Canberra and Melbourne. The first was held in Canberra on 24 February with Defence as the primary witness. Representatives from the Service Headquarters and history/research units, Headquarters Joint Operations Command, Defence Legal and the Directorate of Honours and Awards (DH&A) attended.

8. On 16 April 2015, the then Executive Director DH&A endorsed a further submission responding to matters taken on notice at the hearing. These concerned the application of the *Army Act 1881* (Imperial) during World War II and instructions authorising the issue of World War II ribbons of campaign stars to Service personnel.

9. On 7 September 2015, the Tribunal Chair, Mr Mark Sullivan AO, presented the Report of the *Inquiry into the Refusal to Issue Entitlements to, Withholding and Forfeiture of Defence Honours and Awards to Government* (Enclosure 1). At that time, the Parliamentary Secretary's office requested a Departmental response to the recommendations within two weeks.

10. As the Tribunal's report was complex, and its recommendations may have significant legal and administrative consequences for Defence, further consultation with Defence Legal, the Defence Honours and Awards Advisory Group (DHAAG) and the Directorate of Administrative Policy was necessary. As a result, an interim reply from the then Parliamentary Secretary to the Tribunal Chair, and a media release were finalised in September 2015. The media release called for veterans, and the families of deceased veterans who had forfeited their medals, to lodge applications with DH&A (Enclosure 2).

11. Overall, during the course of the inquiry and subsequent to the media release, 96 applications for review have been received for consideration. Reviews of these have been held, pending your consideration and finalisation of the Tribunal's recommendations.

### Key points

12. **Tribunal findings.** The Tribunal concluded that, for the most part, there was a legal basis for the decisions made by the three Services and Defence on the withholding and forfeiture of medals since 1939. It also concluded that, while there was no doubt that mistakes

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were made when the provisions were applied by the Services, these were individual errors and there was no evidence that these were a result of maladministration.

13. The Tribunal made five recommendations in its Report:

- a. **Recommendation 1** (1.1, 1.2 and 1.3): sets out the specific circumstances for Defence to restore medals that were forfeited during and after World War II to veterans, or to the families of veterans who are now deceased. These decisions for withholding and forfeiture of service and campaign awards were made in accordance with the policy of the time. This recommendation does not state explicitly that these cases be further reviewed as part of the restoration process and thus infers an automatic restoration.

It is recommended that Defence review each application on a case-by-case basis, noting that the Tribunal concluded that decisions for medallic withholding and forfeiture were lawfully made at the time. If the review process results in a decision to not restore withheld or forfeited award/s to a member, some of these applications could be lodged with the Tribunal for it to review, subject to the outcomes of Recommendation 5 (paragraph 13e refers).

- b. **Recommendation 2** (2.1 and 2.2): sets out the recommended grounds for mandatory and discretionary, forfeiture of medals in future. It aligns closely to the current withholding and forfeiture policy in the Defence Honours and Awards Manual (the Manual, Chapter 46) with a proposed inclusion requiring mandatory forfeiture as a result of conviction for serious terrorism related offences under the *Crimes Act 1914* (Cth) and the *Criminal Code Act 1995* (see Recommendation 2.1). Defence would not apply this mandatory forfeiture ground for reviews of retrospective cases. It is recommended that Defence accepts this recommendation.
- c. **Recommendation 3**: seeks to establish the future authority to order the mandatory and discretionary forfeiture of any medals. The Tribunal has recommended this be placed in a Defence Instruction or in Regulations made under the *Defence Act 1903*. It is recommended that Defence accept this recommendation in principle. This advice is influenced by the outcomes of major reviews undertaken (the First Principles Review, the Belcher Red Tape Review and the Secretary and CDF Advisory Committee decision of June 2014 to adopt a principles-based rather than a prescriptive rules-bound approach to achieving administrative policy outcomes). It is also recommended that this can be achieved by formalising overarching guidelines, signed by the Governor-General, setting the criteria for mandatory and discretionary forfeiture decisions, and mandating the circumstances in which cases are to be sent for his/her decision. In-principle agreement to this approach has been obtained from the Australian Honours and Awards Secretariat at Government House. DH&A will develop these guidelines in consultation with Defence Legal, DHAAG and the Australian Honours and Awards Secretariat.
- d. **Recommendation 4** (4.1 and 4.2): focuses on the decision-maker establishing a set time period for the forfeiture of any medal. For mandatory forfeitures cases, the DHAAG recommends that this period is to be forever, and without an option to gift any forfeited honours and awards to a veteran's family if the veteran is deceased. In the case of forfeiture decisions for discretionary honours and awards, guiding principles for these would be included in the Governor-General's guidelines

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(paragraph 13c refers). Current administration and processes for internal-to-Defence reviews for awards restoration (on receipt of a valid application by the member, or their family) will be reviewed by the DHAAG and approved policy changes will be reflected in the Defence Honours and Awards Manual. Overall, the DHAAG view is to accept this recommendation.

- e. **Recommendation 5:** The Tribunal has recommended that the *Defence Act 1903* (the Act) be amended to include decisions on withholding, forfeiture and restoration of medals. Under s110V(1) of the Act, the Tribunal does not currently have the power to review decisions relating to withheld or forfeited honours and awards. If agreed, the review powers of the Tribunal will increase to include future recommendations and decisions made by Defence regarding the withholding, forfeiture and restoration of a member's medals (Recommendation 1 at paragraph 13a refers). The DHAAG does not support this recommendation. The reasons for this are discussed further in paragraphs 14 and 15.

14. The DHAAG suggest that you recommend to Minister Tehan that a complete review of the Tribunal and its powers be conducted. The reasons for this include:

- a. The Tribunal has been operating as an independent statutory body for five years since 5 January 2011;
- b. It would be beneficial to assess its current role and review functions against its original intent, as it appears that 'scope-creep' may be occurring. Its initial intent was primarily focussed on reviewing Defence honours and awards decisions and whether these were procedurally fair and made in accordance with Administrative Law principles. It also conducted broader inquiries into other Defence honours and awards related subjects.
- c. Recently, the Tribunal has increased the number of its completed individual merits reviews for the actions of veterans (who may have previously received recognition under the Imperial Honours and Awards System) and made recommendations to the Minister for some of these veterans to be awarded a Defence gallantry honour or decoration under the Australian Honours and Awards system. While Section 110VB of the *Defence Act 1903* requires the Tribunal to undertake a merits review of all reviewable decisions, some of these recent decisions have raised significant concerns within the Services, including:

s22



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15. The key DHAAG concerns about these recent Tribunal review decisions include:
- a. some inconsistencies in the Tribunal's recent approaches and decisions for individual reviews made by different Tribunal panels. At times, the Tribunal has placed more 'weight' on certain reviews, ensuring it receives favourable media coverage. The Tribunal do not treat all review cases consistently and/or with equal weighting. Each Tribunal panel operates separately. Under Part 4, Rule 22 of the *Defence Honours and Awards Appeals Tribunal Procedural Rules 2011, Defence Act 1903*, it states "Subject to the Act and the Regulations, the procedure of the Tribunal is at the discretion of the Tribunal"; and
  - b. the Tribunal making decisions to recommend personnel for gallantry honours and applying contemporary expectations, standards and practices to command decisions that were made half a century (and more) ago. These are broadly publicised and as a consequence, create a public expectation that other historical case reviews will also be as successful.

16. The DHAAG acknowledges that the current political appetite for a review to be conducted may be low.

17. To effect ongoing reform, the Directorate of Honours and Awards proposes to:

a. s22

- b. change the current Defence policy relating to the 'reinstatement of withheld or forfeited awards' policy. The policy currently states that "restoration will only be considered in cases where the person affected is still living and makes a personal application for restoration of the forfeited entitlement. Applications on behalf of a deceased member cannot be considered." The policy will be amended to reflect present practice, allowing applications for reinstatement on behalf of a deceased member. These will be considered and an evidence based assessment made in accordance with Administrative Law principles. If a review results in a decision to reinstate award/s, these can be gifted to the member's family - if the member is deceased and in accordance with the deceased member's wishes. In circumstances in which the member has declined or returned their award/s, this action will be respected and taken into consideration by Defence as part of the review process.

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## Conclusion

18. The findings of this inquiry have confirmed that, for the most part, the decisions by Defence to withhold or forfeit campaign medals from World War II onwards were legally valid. Rather than retain the current (and legally valid policy), the DHAAG will take this opportunity to review and amend the policy and management of mandatory and discretionary withholding and forfeiture decision-making, as these relate specifically to Recommendations 1 through 4. This will reinforce the holistic management approach by including overarching guidelines from the Governor-General on those cases in which the circumstances warrant a transparent decision to be made on an individual's right to receive or retain awards, or when these would be forfeited.

19. More broadly, there are significant implications and consequences to Defence of recent Tribunal decisions related to its role to conduct merits reviews of individual cases for Australian gallantry and bravery honours recognition. It may be timely to consider reviewing the Tribunal's role and powers.

## Consultation

20. The following were consulted in the preparation of this brief: s47E(c) (Director Australian Honours and Awards Secretariat, Government House); s47E(c) (Director Legislation, Defence General Counsel), s47E(c) (A/Special Counsel, Defence People Group, Defence Legal); s47E(c) (Acting Director Administrative Policy, Governance and Reform Division); and the DHAAG comprising representatives from each Service, VCDF Group and HQJOC at the O-6/(E) level and DH&A staff.

**Prepared by:** s47E(c) Assistant Director Policy and Tribunal,  
Directorate of Honours and Awards.

**Cleared by:** s47E(c) Director Honours and Awards.

## Enclosures:

1. DHAAT *Report of the Inquiry into the Refusal to Issue Entitlements to, Withholding and Forfeiture of Defence Honours and Awards* dated 7 September 2015.
2. MA15-002744.
3. MA16-001548.

~~FOUO~~



Australian Government  
Department of Defence

UNCLASSIFIED

Chester: MA15-002744  
Ref: FASPS/OU/D/2015/116

**MINISTERIAL ADVICE**

**Date for action:**  
2 October 2015

**Reason:**  
The Tribunal is posting the Report on their website on 6 October 2015.

**For Action: Assistant Minister**

**For Info: Minister for Defence**

**Copies to:** Secretary, CDF, Associate Secretary, CN, CA, CAF, DEPSEC DP, HDL, FASMLCC

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

**Purpose:**

To seek your signature on the enclosed letter (Attachment A) to Mr Mark Sullivan advising that the Government is considering the recommendations contained in the *Report of the Inquiry into the Refusal to Issue Entitlements to, Withholding and Forfeiture of Defence Honours and Awards*.

**Key Points:**

1. On 7 September 2015, Mr Mark Sullivan, Chair of the Defence Honours and Awards Appeals Tribunal, presented to you the *Report of the Inquiry into the Refusal to Issue Entitlements to, Withholding and Forfeiture of Defence Honours and Awards*.
2. The Tribunal made five recommendations in its Report, some of which may have legal or administrative consequences for the Department of Defence. The Report's Executive Summary, which contains the recommendations, is at Attachment B.
3. To properly advise the Government, the Report and the recommendations will need to be examined by Defence Legal. It is unlikely that this examination will be completed before the Report is published on the Tribunal's website on 6 October 2015. Once legal advice is received, the Department will be in a stronger position to advise you on the implications of accepting the Tribunal's recommendations.
4. Interim action could commence, however, on Recommendation 1. This recommendation requires, depending on the reason for their forfeiture, medals be restored to veterans or gifted to the families of deceased veterans.
5. The vast majority of veterans who forfeited their medals served during World War Two. As no register of forfeited medals exists, the Department would need to manually research in excess of one million service records and/or medals cards to identify any veterans who may qualify for medal restoration under this recommendation.
6. The Department does not have the resources to undertake this task. However, an option would be to put out a call through the media and on the Defence Honours and Awards website for veterans, or the families of deceased veterans, to contact the Department so a list of veterans who may be eligible for medal restoration can be compiled. This could occur prior to formally accepting the recommendations. A draft media release to this effect is at Attachment C for your consideration.
7. The proposed interim reply to Mr Sullivan advises that the Government is considering the Tribunal's recommendations and will write to him again once a decision is made.

UNCLASSIFIED

Chester: MA15-002744  
Ref: FASPS/OUT/2015/116

**Recommendations:**

That you:

- i. Note the Department of Defence will provide definitive advice on the implications of accepting the recommendations made by the Tribunal as soon as the Defence Legal has analysed the Report.  
Noted / Please Discuss
- ii. Sign the proposed interim reply to Mr Mark Sullivan.  
Signed / Not Signed

Approved By  RICHARD OLIVER First Assistant Secretary People Services s47E(c) [redacted] 22 September 2015 Phone: s47E(c) [redacted]	s22 [redacted]
Contact Officer: s47E(c) [redacted]	Phone: s47E(c) [redacted]
Darren Chester / / Comments / Supplementary asking:	
For Information  Marise Payne / /	

**Resources:**

8. N/A.

**Consultation:**

9. N/A.

**Attachments:**

- A. Draft letter to Mr Mark Sullivan.
- B. *Report of the Inquiry into the Refusal to Issue Entitlements to, Withholding and Forfeiture of Defence Honours and Awards – Executive Summary.*
- C. Talking points.
- D. Media release.





**The Hon Darren Chester MP  
Assistant Minister for Defence**

MA15-002744

Mr Mark Sullivan  
Chair  
Defence Honours and Awards Appeals Tribunal  
Locked Bag 7765  
Level 1, 105 Tennant Street  
CANBERRA BC ACT 2610

Dear Mr Sullivan

Thank you for your letter of 7 September 2015 presenting the *Report of the Inquiry into the Refusal to Issue Entitlements to, Withholding and Forfeiture of Defence Honours and Awards*.

I recognise the complexities of such an inquiry and appreciate the Tribunal's conscientious and sensitive deliberation of this matter. As you would understand, the Government will need to devote similar consideration to the Report and the recommendations before providing you with a final response.

I will write to you again when the Government has completed its consideration of the Report.

Yours sincerely

Darren Chester



**Australian Government**

**Defence Honours and Awards Appeals Tribunal**

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

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## 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

s22  


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

### **MINISTERIAL TALKING POINTS**

- The Defence Honours and Awards Appeals Tribunal has presented its report of the *Inquiry into the Refusal to Issue Entitlements to, Withholding and Forfeiture of Defence Honours and Awards*.
- The Government is currently considering the report and its recommendations and will respond officially to the Chair of the Tribunal and the community in due course.
- The majority of cases of withheld or forfeited medals relate to service during, and shortly after, World War II.
- There is no register of withheld or forfeited medals.
- Veterans, or the families of deceased veterans, whose medal entitlement was withheld or forfeited, may contact the Department of Defence on 1800 333 362 so a list of veterans who may be eligible for medal restoration can be compiled.

<b>Clearance</b>	<b>Name</b>	<b>Appointment</b>	<b>Date Time Group</b>
<i>Cleared by: (Group/Service)</i>	Richard Oliver	FASPS	
<i>Cleared by: MECC Division</i>	s47E(c)	DMOPS	150918 1453

## MEDIA RELEASE

DRAFT

<Day>, <Date><Month>2015

MECC 000/00

### CALL FOR VETERANS TO APPLY FOR FORFEITED AWARDS

Veterans, or the families of deceased veterans, who forfeited their medals have been urged to contact the Department of Defence.

The Assistant Minister for Defence, the Hon Darren Chester MP, made the call today as he announced that the Australian Government had received the *Report of the Inquiry into the Refusal to Issue Entitlements to, Withholding and Forfeiture of Defence Honours and Awards*.

Mr Chester said the Defence Honours and Awards Appeals Tribunal was directed to inquire into Defence decisions to withhold medals from serving personnel as far back as 1939.

"The vast majority of veterans who forfeited their medals served during World War Two.

"The Government is currently considering the report and will later respond formally to the Chair of the Defence Honours and Awards Appeals Tribunal and the community," he said.

Meantime, Mr Chester called for veterans, or the families of deceased veterans, who forfeited their medals to contact the Department of Defence.

"There is no register of withheld or forfeited medals, so it is not known how many veterans forfeited their awards," Mr Chester said.

Veterans or their families can contact the Department of Defence on 1800 333 362.

Further information about Defence honours and awards is available at [www.defence.gov.au/medals](http://www.defence.gov.au/medals).

#### Media contacts:

s47E(c) (Mr Chester's office) s47E(c)

Defence Media Operations (02) 6127 1999

Drafted	Name	Appointment	DTG
<b>TPs drafted by</b>	s47E(c)	AD Stakeholder Engagement, DH&A	17 Sep 15
Clearance	Name	Appointment	DTG
<b>Group/Service (SES Band 1/1 Star or above)</b>	Richard Oliver	FASPS	Sep 15
<b>MECC Division (SES Band 1 or above)</b>	s47E(c)	DMOPS	150918 1457





# MINISTERIAL ADVICE

**Minister for Defence Personnel – For action**

**Minister for Defence – For information**

Copies to: Secretary, Associate Secretary, VCDF, CN, CA, CAF, CJOPS, DEPSEC DP

## DEFENCE HONOURS AND AWARDS APPEALS TRIBUNAL - INQUIRY INTO THE REFUSAL TO ISSUE ENTITLEMENTS TO, WITHHOLDING AND FORFEITURE OF DEFENCE HONOURS AND AWARDS

**Critical Date:**

**Reason:** Routine

### Recommendations:

- |   |                     |
|---|---------------------|
| 1. That you agree to accept recommendations 1, 2, 3 and 4 made by the Defence Honours and Awards Appeals Tribunal for its <i>Inquiry into the refusal to issue entitlements to, withholding and forfeiture of Defence Honours and Awards</i> .  | Agreed / Not agreed |
| 2. That you agree to not accept recommendation 5, that will expand the review powers of the Tribunal and enable decisions made by Defence on withholding, forfeiture and restoration of medals to be reviewable by the Tribunal through an amendment to s110V(1) of the <i>Defence Act 1903</i> . | Agreed / Not agreed |
| 3. That you agree to an independent review of the role and powers of the Defence Honours and Awards Appeals Tribunal, commencing in 2017.   | Agreed / Not agreed |
| 4. That you sign the attached letters to the Governor-General and Chair of the Defence Honours and Awards Appeals Tribunal.   | Signed / Not signed |

**Minister for Defence Personnel**..... Date / /

### Key Points:


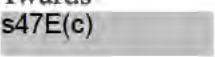
- From January 2014 to September 2015, the Defence Honours and Awards Appeals Tribunal (the Tribunal) conducted an inquiry to determine the extent to which Imperial and Australian awards or entitlements may have been improperly forfeited or withheld since 1939.
- On 7 September 2015, the Tribunal Chair, Mr Mark Sullivan AO, presented the Tribunal’s Inquiry Report to Government, concluding that decisions made since 1939 by the three Services and Defence on the withholding and forfeiture of medals were legally valid (Attachment A).
- The report’s complexity and recommendations may have had significant legal and administrative consequences for Defence. Consultation was necessary with Defence Legal, the Defence Honours and Awards Advisory Group and the Directorate of Administrative Policy. In September 2015, the then Parliamentary Secretary sent an interim reply to the Tribunal Chair, and a media release called for veterans and families of deceased veterans to apply for a review of cases in which service awards were withheld and/or forfeited since 1939.

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Ref: CDF/OUT/2016/850

4. The Tribunal made five recommendations in its report. The first sets out the circumstances for Defence to review applications of historical cases from World War II onwards. Recommendations 2, 3 and 4 are focussed on implementing improvements by Defence on future management, including establishing overarching guidelines from the Governor-General and setting time periods for mandatory and discretionary withholding and forfeiture of medallic recognition. I recommended that these be accepted.
5. Recommendation 5 seeks to expand the Tribunal's review powers to include decisions on withholding, forfeiture and restoration of medals be included in s 110V(1) of the *Defence Act 1903*. Rather than accepting this recommendation outright, I recommend that an independent review of the Tribunal and its purpose be conducted in 2017. Acceptance of this recommendation would be deferred, pending the outcomes of the review.
6. Changes to policy including; amending Defence honours' regulations; and the 'reinstatement of withheld or forfeited awards' policy will be made. The policy currently states that "restoration will only be considered in cases where the person affected is still living and makes a personal application for restoration of the forfeited entitlement. Applications on behalf of a deceased member cannot be considered." In future, applications on behalf of a deceased member will be considered. If a review results in a decision to reinstate award/s, these can be gifted to the members' family - if the member is deceased and in accordance with the deceased member's wishes. In circumstances where the member has deliberately declined or returned their award/s, this action will be respected and taken into consideration by Defence as part of its review process.
7. Draft letters to the Governor-General and Tribunal Chair, talking points and a media release are enclosed for your consideration.

s22  


MD Binskin, AC  
Air Chief Marshal  
Chief of the Defence Force

Contact officer: s47E(c)   
Director Honours and Awards  
Contact officer phone: s47E(c) 

24 October 2016

Tehan: MA16-001548  
Ref: CDF/OUT/2016/850

**Sensitivity:**

No.

**Financial Impacts:**

There are no financial impacts.

**Summary of Attachments:**

A – Defence Honours and Awards Appeals Tribunal report into its *Inquiry into the refusal to, issue entitlements to withholding and forfeiture of Defence Honours and Awards* dated 7 September 2015.

B – MA15-002744

**Background:**

8. On 10 January 2014, the Tribunal commenced an inquiry to determine the extent to which Imperial and Australian awards, or entitlements, may have been improperly forfeited or withheld since 1939. This inquiry was announced by the then Parliamentary Secretary to the Minister for Defence, the Hon Darren Chester MP.

9. Defence made three submissions to this Inquiry between June 2015 and April 2015. Public hearings were held in Canberra and Melbourne in February 2015. Defence was represented at the first of these hearings.

10. The Tribunal presented its report into the Inquiry to the Government on 7 September 2015. It concluded that for the most part, there was a legal basis for the decisions made by the Services and Defence on the withholding and forfeiture of medals since 1939. It also concluded that, while mistakes were made when the provisions were applied by the Services, these were individual errors and there was no evidence that these were a result of maladministration.

11. The report's recommendations had possible significant legal and administrative consequences for Defence and required further internal to Defence consultation with Defence Legal, the Defence Honours and Awards Advisory Group (DHAAG) and the Directorate of Administrative Policy. As a result, an interim reply from the then Parliamentary Secretary to the Tribunal Chair, and a media release were finalised in September 2015. The media release called for veterans and the families of deceased veterans who had forfeited their medals, to lodge applications for review. To date, around 100 applications have been received. Reviews of these have not commenced, pending finalisation of the recommendations.

12. The Tribunal made five recommendations in its Report:

- a. **Recommendation 1** (1.1, 1.2 and 1.3, Attachment A, page 111): sets out the specific circumstances for Defence to restore medals that were forfeited during and after World War II to veterans, or to the families of veterans who are now deceased. These decisions for withholding and forfeiture of service and campaign awards were made in accordance with the policy of the time. This recommendation does not state explicitly that these cases be further reviewed as part of the restoration process and infers automatic restoration.

- b. I recommend that this recommendation be accepted and each application reviewed on a case-by-case basis. If the review process results in a decision to not restore withheld of forfeited award/s, some of these cases may become applications for review by the Tribunal, subject to Recommendation 5 (paragraph 12e refers).
- c. **Recommendation 2** (comprising 2.1 and 2.2: Attachment A, pages 111-112): sets out the recommended grounds for mandatory and discretionary forfeiture of medals in future. It aligns closely to the current Defence policy for withholding and forfeiture of honours and awards, with a proposed inclusion requiring mandatory forfeiture as a result of conviction for serious terrorism related offences under the *Crimes Act 1914* (Cth) and the *Criminal Code Act 1995* (see Recommendation 2.1). Defence would not apply this mandatory forfeiture ground for reviews of retrospective cases. I recommend that this recommendation be accepted.
- d. **Recommendation 3** (Attachment A, page 112): seeks to establish the future authority to order the mandatory and discretionary forfeiture of any medals. The Tribunal has recommended this be placed in a Defence Instruction, or in Regulations under the *Defence Act 1903*. I recommend acceptance of this recommendation in principle. In light of administrative reform projects progressing under the First Principles Review, the Belcher Red Tape Review and a shift from a prescriptive and rules-bound approach to a principles-based approach to achieving administrative policy outcomes, overarching guidelines could be formalised in a document signed by the Governor-General. These would set the criteria for forfeiture and mandate the circumstances in which cases are to be sent to for his/her mandatory and discretionary decision. In-principle agreement for this approach has been obtained from the Australian Honours and Awards Secretariat at Government House, and Defence would work in consultation with the Secretariat to develop these.
- e. **Recommendation 4** (comprising 4.1 and 4.2: Attachment A, page 112) focuses on the decision-maker establishing a set time period for the forfeiture of any medal. For mandatory forfeitures cases, I recommend that this period is to be forever, and without an option to gift any forfeited honours and awards to a veteran's family if the veteran is deceased. In the case of forfeiture decisions for discretionary honours and awards, guiding principles for these would be included in the Governor-General's guidelines (paragraph 12c above refers). For example, a time period could be set (such as 10 years) in the Governor-General's guidelines, with a separate internal Defence review of the case after that time initiated by an application by the member, or their family. Current administration and processes for internal-to-Defence reviews for awards restoration (upon receipt of a valid application by the member, or their family) will be reviewed by the DHAAG and approved policy changes will be reflected in the Defence Honours and Awards Manual. Overall, my view is to accept this recommendation.
- f. **Recommendation 5** (Attachment A, page 112): The Tribunal recommends that the *Defence Act 1903* be amended to include decisions on withholding, forfeiture and restoration of medals in s110V(1). Under s110V(1) of the Act, the Tribunal does not currently have the power to review decisions relating to withheld or forfeited honours and awards. If agreed, the review powers of the Tribunal will increase to include recommendations made by Defence regarding the withholding, forfeiture and restoration of member's medals (Recommendation 1 at paragraph 12a refers). I am reluctant to endorse this recommendation at this time. Instead, I recommend that a complete independent review of the Tribunal and its powers be conducted in 2017. My reasons for this are set out in paragraphs 13 and 14.

13. The reasons include:

- a. The Tribunal has been operating as an independent statutory body for five years since 5 January 2011;
- b. It would be beneficial to assess its current role and review functions against its original intent, as it appears that 'scope-creep' may be occurring. Its initial intent was primarily focussed on reviewing Defence honours and awards decisions and whether these were procedurally fair and made in accordance with Administrative Law principles. It also conducted broader inquiries into other Defence honours and awards related subjects.
- c. Recently, the Tribunal has increased the number of its completed individual merits reviews for the actions of veterans (who may have previously received recognition under the Imperial Honours and Awards System) and made recommendations to the Minister for some of these veterans to be awarded a Defence gallantry honour or decoration under the Australian Honours and Awards system. While Section 110VB of the *Defence Act 1903* requires the Tribunal to undertake a merits review of all reviewable decisions, some of these recent decisions have raised significant concerns within the Services, including:

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14. The key DHAAG concerns about these recent Tribunal review decisions include:

- a. some inconsistencies in the Tribunal's recent approaches and decisions for individual reviews made by different Tribunal panels. At times, the Tribunal has placed more 'weight' on certain reviews, ensuring it receives favourable media coverage. The Tribunal do not treat all review cases consistently and/or with equal weighting. Each Tribunal panel operates separately. Under Part 4, Rule 22 of the *Defence Honours and Awards Appeals Tribunal Procedural Rules 2011, Defence Act 1903*, it states "Subject to the Act and the Regulations, the procedure of the Tribunal is at the discretion of the Tribunal"; and
- b. the Tribunal is making decisions to recommend personnel for gallantry honours and applying contemporary expectations, standards and practices to command decisions that were made half a century (and more) ago. These are broadly publicised and as a consequence, create a public expectation that other historical case reviews will also be as successful.

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15. To effect ongoing reform, the Directorate of Honours and Awards proposes to:

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- b. change the current Defence policy relating to the 'reinstatement of withheld or forfeited awards'. The policy currently states that "restoration will only be considered in cases where the person affected is still living and makes a personal application for restoration of the forfeited entitlement. Applications on behalf of a deceased member cannot be considered." The policy will be amended to reflect present practice, allowing applications on behalf of a deceased member. These will be considered and an evidence based assessment made in accordance with administrative law principles. If a review results in a decision to reinstate award/s, these can be gifted to the members' family, if the member is deceased and in accordance with the deceased member's wishes. In circumstances in which the member has declined or returned their award/s, this action will be respected and taken into consideration by Defence as part of the review process.

**Related Briefs:**

Nil

**Consultation:**

16. The following personnel were consulted in the preparation of this advice: s47E(c) (Director Australian Honours and Awards Secretariat, Government House); s47E(c) (Director Legislation, Defence General Counsel, Defence Legal Division), s47E(c) (A/Special Counsel to Defence People Group, Defence Legal Division); s47E(c) (Acting Director Administrative Policy, Governance and Reform Division); and the Defence Honours and Awards Advisory Group whose members comprise representatives from the Services Headquarters, Vice Chief of the Defence Force Group and Headquarters Joint Operations Command at the Colonel (O-6 Equivalent) level.



**The Hon Dan Tehan MP**  
Minister for Veterans' Affairs  
Minister for Defence Personnel  
Minister Assisting the Prime Minister for Cyber Security  
Minister Assisting the Prime Minister for the Centenary of ANZAC

Parliament House  
CANBERRA ACT 2600

Telephone: 02 6277 7820

MA16-001548

Mr Mark Sullivan AO  
Chair  
Defence Honours and Awards Appeals Tribunal  
Locked Bag 7765  
Canberra BC ACT 2610

Dear Mr Sullivan

Thank you for your letter of 7 September 2015, addressed to the then Parliamentary Secretary for Defence, the Hon Darren Chester MP, that presented the Defence Honours and Awards Appeals Tribunal *Report of the Inquiry into the Refusal to Issue Entitlements to, Withholding and Forfeiture of Defence Honours and Awards*.

The complex nature of this Inquiry prompted Government to conduct a thorough consideration of the report and its recommendations. In light of this, you were provided with an interim response on the Government's position with regard to this matter on 16 February 2016.

***Use if first 4 recommendations are accepted***

The Government has completed its consideration of the Report in consultation with the Department of Defence and accepts Recommendations 1, 2, 3 and 4.

***OR: Use if all five recommendations are accepted***

The Government has completed its consideration of the Report in consultation with the Department of Defence and accepts all five of the Tribunal's Recommendations.

I would like to take this opportunity to share with you some detail on the factors taken into consideration for each recommendation, and how Defence will implement these.

***Use if first 4 recommendations are accepted***

Recommendation 1 set out the circumstances for Defence to restore those medals that were forfeited during and after World War II to veterans, or to the families of veterans who are now deceased. This recommendation has been accepted in principle. You might recall that in September 2015, Defence called for veterans, or the families of deceased veterans

who may be eligible for medal restoration to lodge applications for review. I am informed that around 100 applications have been received. Each review will be conducted on a case-by-case basis and with sensitivity. In a circumstance that a review results in a decision to reinstate a deceased member's award/s, these can be gifted to the member's family, if it accords with the deceased member's wishes. In circumstances in which the member has previously declined or returned their award/s, this action will be respected and taken into consideration by Defence as part of the review process.

***Use if first 4 recommendations are accepted***

Recommendation 2 set out the recommended grounds for mandatory and discretionary forfeiture of medals in future. It aligns closely to the current Defence policy for withholding and forfeiture of honours and awards, with the inclusion of a new mandatory forfeiture ground: conviction for serious terrorism related offences under the *Crimes Act 1914* (Cth) and the *Criminal Code Act 1995*. While Defence will not apply this mandatory forfeiture ground for its reviews of retrospective cases, this recommendation has been accepted and policy will be amended to reflect this.

***Use if first 4 recommendations are accepted***

Recommendation 3 focussed on establishing the future authority to order the mandatory and discretionary forfeiture of any medals to be placed in a Defence Instruction, or in Regulations made under the *Defence Act 1903*. This recommendation has been accepted in principle. In light of administrative reform projects progressing under the First Principles Review, the Belcher Red Tape Review and a shift from a prescriptive and rules-bound approach to a principles based approach to achieving administrative policy outcomes, the preferred implementation method will be to develop overarching guidelines from the Governor-General, setting the criteria and circumstances for mandatory and discretionary decisions for withholding and forfeiture of medallic recognition. I am advised that consultation has commenced with Government House to progress the development of these guidelines further.

***Use if first 4 recommendations are accepted***

Recommendation 4 focussed on establishing a set time period for the forfeiture of any medal. This recommendation has been accepted. For mandatory forfeitures cases, I recommend that this period is forever, and without an option to gift any forfeited honours and awards to a veteran's family if the veteran is deceased. In the case of forfeiture decisions for discretionary honours and awards, guiding principles for these would be included in the Governor-General's guidelines. For example, a time period could be set (such as 10 years) with a separate internal Defence review of the case after that time initiated by an application by the member, or their family. Current administration and processes for internal-to-Defence reviews for awards restoration will be reviewed by the DHAAG and approved policy changes will be reflected in the Defence Honours and Awards Manual.

***Use if first 4 recommendations are accepted***

I have decided that, as it has been operating as an independent statutory body for five years since 5 January 2011, it is timely for an independent review of the Tribunal and its powers to commence in 2017.



**OR: Use if all five recommendations are accepted**

Recommendation 5 suggested that the *Defence Act 1903* (the Act) be amended to include decisions on withholding, forfeiture and restoration of medals in s110V(1) of the Act and thus expand the Tribunal's review powers. I have endorsed this position and this will be included during the process for the next scheduled Amendment Bill.

I would like to take this opportunity to thank the Tribunal for this Inquiry. It has contributed to further refinements to the policy and system for managing future decisions related to mandatory and discretionary withholding and forfeiture of medallic recognition.

Yours sincerely

**Dan Tehan**



**The Hon Dan Tehan MP**  
Minister for Veterans' Affairs  
Minister for Defence Personnel  
Minister Assisting the Prime Minister for Cyber Security  
Minister Assisting the Prime Minister for the Centenary of ANZAC

Parliament House  
CANBERRA ACT 2600

Telephone: 02 6277 7820

His Excellency General the Honourable Sir Peter Cosgrove AK MC (Retd)  
Governor-General of Australia  
Government House  
Dunrossil Drive  
YARRALUMLA ACT 2600

Your Excellency

In September 2015, the Defence Honours and Awards Appeals Tribunal presented its *Report of the Inquiry into the Refusal to Issue Entitlements to, Withholding and Forfeiture of Defence Honours and Awards*.

The complex nature of this Inquiry prompted the Government to conduct a thorough consideration of the report and its recommendations. This has now been completed, and each recommendation has been accepted. I would like to take this opportunity to share with you some detail on the factors taken into consideration for each recommendation, and how Defence will implement these further.

***Use if first 4 recommendations are accepted***

The Government has completed its consideration of the Report in consultation with the Department of Defence and accepts Recommendations 1, 2, 3 and 4.

***OR: Use if all five recommendations are accepted***

The Government has completed its consideration of the Report in consultation with the Department of Defence and accepts all five of the Tribunal's Recommendations.

***Use if first 4 recommendations are accepted***

Recommendation 1 set out the circumstances for Defence to restore those medals that were forfeited during and after World War II to veterans, or to the families of veterans who are now deceased. This recommendation has been accepted in principle. In September 2015, Defence called for veterans, or the families of deceased veterans who may be eligible for medal restoration to lodge applications for review. I am informed that around 100 applications have been received. Each review will be conducted on a case-by-case basis and with sensitivity. In a circumstance that a review results in a decision to reinstate a deceased member's award/s, these can be gifted to the member's family, if it accords with the deceased member's wishes. In

circumstances in which the member has previously declined or returned their award/s, this action will be respected and taken into consideration by Defence as part of the review process.

**Use if first 4 recommendations are accepted**

Recommendation 2 set out the recommended grounds for mandatory and discretionary forfeiture of medals in future. It aligns closely to the current Defence policy for withholding and forfeiture of honours and awards, with the inclusion of a new mandatory forfeiture ground: conviction for serious terrorism related offences under the *Crimes Act 1914* (Cth) and the *Criminal Code Act 1995*. While Defence will not apply this mandatory forfeiture ground for its reviews of retrospective cases, this recommendation has been accepted and policy will be amended to reflect this.

**Use if first 4 recommendations are accepted**

Recommendation 3 focussed on establishing the future authority to order the mandatory and discretionary forfeiture of any medals to be placed in a Defence Instruction, or in Regulations made under the *Defence Act 1903*. This recommendation has been accepted in principle. In light of administrative reform projects progressing under the First Principles Review, the Belcher Red Tape Review and a shift from a prescriptive and rules-bound approach to a principles based approach to achieving administrative policy outcomes, the preferred approach will be to develop overarching guidelines on your behalf as Governor-General. These will establish your criteria and circumstances for mandatory and discretionary decisions for withholding and forfeiture of medallic recognition. I am advised that initial consultation has commenced with staff within the Australian Honours and Awards secretariat to progress the development of these guidelines further.

**Use if first 4 recommendations are accepted**

Recommendation 4 focussed on establishing a set time period for the forfeiture of any medal. This recommendation has been accepted. For mandatory forfeitures cases, I recommend that this period is forever, and without an option to gift any forfeited honours and awards to a veteran's family if the veteran is deceased. In the case of forfeiture decisions for discretionary honours and awards, guiding principles for these would be included in the overarching guidelines. For example, a time period could be set (such as 10 years) with a separate internal Defence review of the case after that time initiated by an application by the member, or their family. Current administration and processes for internal-to-Defence reviews for awards restoration will be reviewed by the Defence and approved policy changes will be reflected in the its Honours and Awards Manual.

**Use if first 4 recommendations are accepted**

I have decided that, as it has been operating as an independent statutory body for five years since 5 January 2011, it is timely for an independent review of the Tribunal and its powers to commence in 2017.

**OR: Use if all five recommendations are accepted**

Recommendation 5 suggested that the *Defence Act 1903* (the Act) be amended to include decisions on withholding, forfeiture and restoration of medals in s110V(1) of the Act and thus expand the Tribunal's review powers. I have endorsed this position and this will be included during the process for the next scheduled Amendment Bill to the Act.

I have written to the Tribunal Chair, Mr Mark Sullivan AO, to personally thank him and the panelled members who conducted this Inquiry. It has contributed to further refinements to the Defence honours and awards policy and system for managing future decisions related to mandatory and discretionary withholding and forfeiture of medallic recognition.

Yours sincerely

**Dan Tehan**

## Defence Honours and Awards Appeals Tribunal - Inquiry into the Refusal to Issue Entitlements to, Withholding and Forfeiture of Defence Honours and Awards.

### MINISTERIAL TALKING POINTS

#### Talking points

- The Defence Honours and Awards Appeals Tribunal presented its report of the *Inquiry into the Refusal to Issue Entitlements to, Withholding and Forfeiture of Defence Honours and Awards* to the Government in September 2015.
- The report concluded there was a legal basis for decisions made by Defence on the withholding and forfeiture of medals since 1939.
- The report's recommendations have been fully considered.  
Use the two bullet points below if the first 4 recommendations are accepted and a review of the Tribunal is to be conducted
- The Government has completed its consideration of the Report in consultation with the Department of Defence and accepts Recommendations 1, 2, 3 and 4.
- I have decided that, as it has been operating as an independent statutory body for five years since January 2011, it is timely for an independent review of the Tribunal and its powers to commence in 2017.  
OR: Use the following bullet point if all five recommendations are accepted
- The Government has completed its consideration of the Report in consultation with the Department of Defence and accepts all five of the Tribunal's Recommendations.
- Defence has commenced implementing these.
- I have written to the Tribunal Chair to thank him and the panelled members for this Inquiry.
- This report brings further refinement to the Defence honours and awards system for managing decisions related to withholding and forfeiture of medallic recognition in future.

- The majority of withheld or forfeited medals related to service during, and shortly after, World War II.
  - I am advised around 100 applications have been received for review from veterans, or from families of deceased veterans, whose medal entitlement was withheld or forfeited.
  - These will be reviewed on a case-by-case basis.

Contact officer: s47E(c)

Contact officer phone: s47E(c) / s47E(c)

Clearance	Name	Appointment	Date and time
<b>Cleared by: (Group/Service)</b>	Brian Paule	Acting FASPS, DPG	
<b>Cleared by: MECC Division</b>	s47E(c)	A/ Director Media, MECC	1615 10 Oct 16

NOTE: To be cleared prior to submitting to PC (DMPLS) for Quality Check.



**Minister for Defence Personnel – For action**

**Minister for Defence – For information**

Copies to: Secretary, Associate Secretary, VCDF, CN, CA, CAF, CJOPS, DEPSEC DP

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

**Critical Date:** 9 NOV 2016 **Reason:** Routine

**Recommendations:**

1. That you agree to accept recommendations 1, 2, 3 and 4 made by the Defence Honours and Awards Appeals Tribunal for its *Inquiry into the refusal to issue entitlements to, withholding and forfeiture of Defence Honours and Awards*.
2. That you agree to not accept recommendation 5, that will expand the review powers of the Tribunal and enable decisions made by Defence on withholding, forfeiture and restoration of medals to be reviewable by the Tribunal through an amendment to s110V(1) of the *Defence Act 1903*.
3. That you agree to an independent review of the role and powers of the Defence Honours and Awards Appeals Tribunal, commencing in 2017.
4. That you sign the attached letters to the Governor-General and Chair of the Defence Honours and Awards Appeals Tribunal. s22

Agreed / Not agreed  
*To discuss*  
 Agreed / Not agreed  
*To discuss*  
 Agreed / Not agreed  
*To discuss*  
 Signed / Not signed

Minister for Defence Personnel..

Date 13 / 11 / 16

s22

**Key Points:**

1. From January 2014 to September 2015, the Defence Honours and Awards Appeals Tribunal (the Tribunal) conducted an inquiry to determine the extent to which Imperial and Australian awards or entitlements may have been improperly forfeited or withheld since 1939.
2. On 7 September 2015, the Tribunal Chair, Mr Mark Sullivan AO, presented the Tribunal's Inquiry Report to Government, concluding that decisions made since 1939 by the three Services and Defence on the withholding and forfeiture of medals were legally valid (Attachment A).
3. The report's complexity and recommendations may have had significant legal and administrative consequences for Defence. Consultation was necessary with Defence Legal, the Defence Honours and Awards Advisory Group and the Directorate of Administrative Policy. In September 2015, the then Parliamentary Secretary sent an interim reply to the Tribunal Chair, and a media release called for veterans and families of deceased veterans to apply for a review of cases in which service awards were withheld and/or forfeited since 1939.

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Tehan: MA16-001548  
Ref: CDF/OUT/2016/850

4. The Tribunal made five recommendations in its report. The first sets out the circumstances for Defence to review applications of historical cases from World War II onwards. Recommendations 2, 3 and 4 are focussed on implementing improvements by Defence on future management, including establishing overarching guidelines from the Governor-General and setting time periods for mandatory and discretionary withholding and forfeiture of medallic recognition. I recommended that these be accepted.
5. Recommendation 5 seeks to expand the Tribunal's review powers to include decisions on withholding, forfeiture and restoration of medals be included in s 110V(1) of the *Defence Act 1903*. Rather than accepting this recommendation outright, I recommend that an independent review of the Tribunal and its purpose be conducted in 2017. Acceptance of this recommendation would be deferred, pending the outcomes of the review.
6. Changes to policy including; amending Defence honours' regulations; and the 'reinstatement of withheld or forfeited awards' policy will be made. The policy currently states that "restoration will only be considered in cases where the person affected is still living and makes a personal application for restoration of the forfeited entitlement. Applications on behalf of a deceased member cannot be considered." In future, applications on behalf of a deceased member will be considered. If a review results in a decision to reinstate award/s, these can be gifted to the members' family - if the member is deceased and in accordance with the deceased member's wishes. In circumstances where the member has deliberately declined or returned their award/s, this action will be respected and taken into consideration by Defence as part of its review process.
7. Draft letters to the Governor-General and Tribunal Chair, talking points and a media release are enclosed for your consideration.

s22

MD Binskin, AC  
Air Chief Marshal  
Chief of the Defence Force

24 October 2016

Contact officer: s47E(c)  
Director Honours and Awards  
Contact officer phone: s47E(c)

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~~FOR OFFICIAL USE ONLY~~**Sensitivity:**

No.

**Financial Impacts:**

There are no financial impacts.

**Summary of Attachments:**

A – Defence Honours and Awards Appeals Tribunal report into its *Inquiry into the refusal to, issue entitlements to withholding and forfeiture of Defence Honours and Awards* dated 7 September 2015.

B – MA15-002744

C – Letters to the Governor-General and Chair of Defence Honours and Awards Appeals Tribunal

D – Ministerial Talking Points

**Background:**

8. On 10 January 2014, the Tribunal commenced an inquiry to determine the extent to which Imperial and Australian awards, or entitlements, may have been improperly forfeited or withheld since 1939. This inquiry was announced by the then Parliamentary Secretary to the Minister for Defence, the Hon Darren Chester MP.

9. Defence made three submissions to this Inquiry between June 2015 and April 2015. Public hearings were held in Canberra and Melbourne in February 2015. Defence was represented at the first of these hearings.

10. The Tribunal presented its report into the Inquiry to the Government on 7 September 2015. It concluded that for the most part, there was a legal basis for the decisions made by the Services and Defence on the withholding and forfeiture of medals since 1939. It also concluded that, while mistakes were made when the provisions were applied by the Services, these were individual errors and there was no evidence that these were a result of maladministration.

11. The report's recommendations had possible significant legal and administrative consequences for Defence and required further internal to Defence consultation with Defence Legal, the Defence Honours and Awards Advisory Group (DHAAG) and the Directorate of Administrative Policy. As a result, an interim reply from the then Parliamentary Secretary to the Tribunal Chair, and a media release were finalised in September 2015. The media release called for veterans and the families of deceased veterans who had forfeited their medals, to lodge applications for review. To date, around 100 applications have been received. Reviews of these have not commenced, pending finalisation of the recommendations.

12. The Tribunal made five recommendations in its Report:

- a. **Recommendation 1** (1.1, 1.2 and 1.3, [Attachment A](#), page 111): sets out the specific circumstances for Defence to restore medals that were forfeited during and after World War II to veterans, or to the families of veterans who are now deceased. These decisions for withholding and forfeiture of service and campaign awards were made in accordance with the policy of the time. This recommendation does not state explicitly that these cases be further reviewed as part of the restoration process and infers automatic restoration.

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- b. I recommend that this recommendation be accepted and each application reviewed on a case-by-case basis. If the review process results in a decision to not restore withheld or forfeited award/s, some of these cases may become applications for review by the Tribunal, subject to Recommendation 5 (paragraph 12c refers).
- c. **Recommendation 2** (comprising 2.1 and 2.2: Attachment A, pages 111-112): sets out the recommended grounds for mandatory and discretionary forfeiture of medals in future. It aligns closely to the current Defence policy for withholding and forfeiture of honours and awards, with a proposed inclusion requiring mandatory forfeiture as a result of conviction for serious terrorism related offences under the *Crimes Act 1914* (Cth) and the *Criminal Code Act 1995* (see Recommendation 2.1). Defence would not apply this mandatory forfeiture ground for reviews of retrospective cases. I recommend that this recommendation be accepted.
- d. **Recommendation 3** (Attachment A, page 112): seeks to establish the future authority to order the mandatory and discretionary forfeiture of any medals. The Tribunal has recommended this be placed in a Defence Instruction, or in Regulations under the *Defence Act 1903*. I recommend acceptance of this recommendation in principle. In light of administrative reform projects progressing under the First Principles Review, the Belcher Red Tape Review and a shift from a prescriptive and rules-bound approach to a principles-based approach to achieving administrative policy outcomes, overarching guidelines could be formalised in a document signed by the Governor-General. These would set the criteria for forfeiture and mandate the circumstances in which cases are to be sent to for his/her mandatory and discretionary decision. In-principle agreement for this approach has been obtained from the Australian Honours and Awards Secretariat at Government House, and Defence would work in consultation with the Secretariat to develop these.
- e. **Recommendation 4** (comprising 4.1 and 4.2: Attachment A, page 112) focuses on the decision-maker establishing a set time period for the forfeiture of any medal. For mandatory forfeitures cases, I recommend that this period is to be forever, and without an option to gift any forfeited honours and awards to a veteran's family if the veteran is deceased. In the case of forfeiture decisions for discretionary honours and awards, guiding principles for these would be included in the Governor-General's guidelines (paragraph 12c above refers). For example, a time period could be set (such as 10 years) in the Governor-General's guidelines, with a separate internal Defence review of the case after that time initiated by an application by the member, or their family. Current administration and processes for internal-to-Defence reviews for awards restoration (upon receipt of a valid application by the member, or their family) will be reviewed by the DHAAG and approved policy changes will be reflected in the Defence Honours and Awards Manual. Overall, my view is to accept this recommendation.
- f. **Recommendation 5** (Attachment A, page 112): The Tribunal recommends that the *Defence Act 1903* be amended to include decisions on withholding, forfeiture and restoration of medals in s110V(1). Under s110V(1) of the Act, the Tribunal does not currently have the power to review decisions relating to withheld or forfeited honours and awards. If agreed, the review powers of the Tribunal will increase to include recommendations made by Defence regarding the withholding, forfeiture and restoration of member's medals (Recommendation 1 at paragraph 12a refers). I am reluctant to endorse this recommendation at this time. Instead, I recommend that a complete independent review of the Tribunal and its powers be conducted in 2017. My reasons for this are set out in paragraphs 13 and 14.

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13. The reasons include:

- a. The Tribunal has been operating as an independent statutory body for five years since 5 January 2011;
- b. It would be beneficial to assess its current role and review functions against its original intent, as it appears that ‘scope-creep’ may be occurring. Its initial intent was primarily focussed on reviewing Defence honours and awards decisions and whether these were procedurally fair and made in accordance with Administrative Law principles. It also conducted broader inquiries into other Defence honours and awards related subjects.
- c. Recently, the Tribunal has increased the number of its completed individual merits reviews for the actions of veterans (who may have previously received recognition under the Imperial Honours and Awards System) and made recommendations to the Minister for some of these veterans to be awarded a Defence gallantry honour or decoration under the Australian Honours and Awards system. While Section 110VB of the *Defence Act 1903* requires the Tribunal to undertake a merits review of all reviewable decisions, some of these recent decisions have raised significant concerns within the Services, including:

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14. The key DHAAG concerns about these recent Tribunal review decisions include:

- a. some inconsistencies in the Tribunal’s recent approaches and decisions for individual reviews made by different Tribunal panels. At times, the Tribunal has placed more ‘weight’ on certain reviews, ensuring it receives favourable media coverage. The Tribunal do not treat all review cases consistently and/or with equal weighting. Each Tribunal panel operates separately. Under Part 4, Rule 22 of the *Defence Honours and Awards Appeals Tribunal Procedural Rules 2011*, *Defence Act 1903*, it states “Subject to the Act and the Regulations, the procedure of the Tribunal is at the discretion of the Tribunal”; and
- b. the Tribunal is making decisions to recommend personnel for gallantry honours and applying contemporary expectations, standards and practices to command decisions that were made half a century (and more) ago. These are broadly publicised and as a consequence, create a public expectation that other historical case reviews will also be as successful.

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~~FOR OFFICIAL USE ONLY~~

Tehan: MA16-001548

Ref: CDF/OUT/2016/850

15. To effect ongoing reform, the Directorate of Honours and Awards proposes to:

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- b. change the current Defence policy relating to the 'reinstatement of withheld or forfeited awards'. The policy currently states that "restoration will only be considered in cases where the person affected is still living and makes a personal application for restoration of the forfeited entitlement. Applications on behalf of a deceased member cannot be considered." The policy will be amended to reflect present practice, allowing applications on behalf of a deceased member. These will be considered and an evidence based assessment made in accordance with administrative law principles. If a review results in a decision to reinstate award/s, these can be gifted to the members' family, if the member is deceased and in accordance with the deceased member's wishes. In circumstances in which the member has declined or returned their award/s, this action will be respected and taken into consideration by Defence as part of the review process.

**Related Briefs:**

Nil

**Consultation:**

16. The following personnel were consulted in the preparation of this advice: s47E(c) (Director Australian Honours and Awards Secretariat, Government House); s47E(c) (Director Legislation, Defence General Counsel, Defence Legal Division), s47E(c) (A/Special Counsel to Defence People Group, Defence Legal Division); s47E(c) (Acting Director Administrative Policy, Governance and Reform Division); and the Defence Honours and Awards Advisory Group whose members comprise representatives from the Services Headquarters, Vice Chief of the Defence Force Group and Headquarters Joint Operations Command at the Colonel (O-6 Equivalent) level.

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**The Hon Dan Tehan MP**  
Minister for Veterans' Affairs  
Minister for Defence Personnel  
Minister Assisting the Prime Minister for Cyber Security  
Minister Assisting the Prime Minister for the Centenary of ANZAC

Parliament House  
CANBERRA ACT 2600

Telephone: 02 6277 7820

His Excellency General the Honourable Sir Peter Cosgrove AK MC (Ret'd)  
Governor-General of Australia  
Government House  
Dunrossil Drive  
YARRALUMLA ACT 2600

Your Excellency

In September 2015, the Defence Honours and Awards Appeals Tribunal presented its *Report of the Inquiry into the Refusal to Issue Entitlements to, Withholding and Forfeiture of Defence Honours and Awards*.

The complex nature of this Inquiry prompted the Government to conduct a thorough consideration of the report and its recommendations. This has now been completed, and each recommendation has been accepted. I would like to take this opportunity to provide you some detail on the factors taken into consideration for each recommendation, and how the Department of Defence will implement these further.

The Government has completed its consideration of the report in consultation with Defence and accepts recommendations 1, 2, 3 and 4.

Recommendation 1 set out the circumstances for Defence to restore those medals that were forfeited during and after World War II to veterans, or to the families of veterans who are now deceased. This recommendation has been accepted in principle. In September 2015, Defence called for veterans, or the families of deceased veterans who may be eligible for medal restoration to lodge applications for review. I am informed that around 100 applications have been received. Each review will be conducted on a case-by-case basis and with sensitivity.

In the circumstance that a review results in a decision to reinstate a deceased member's award/s, these can be gifted to the member's family, if it accords with the deceased member's wishes. In circumstances in which the member has previously declined or returned their award/s, this action will be respected and taken into consideration by Defence as part of the review process.

Recommendation 2 set out the recommended grounds for mandatory and discretionary forfeiture of medals in future. It aligns closely to the current Defence policy for withholding and forfeiture of honours and awards, with the inclusion of a new mandatory forfeiture ground: conviction for serious terrorism related offences under the *Crimes Act 1914* (Cth) and the *Criminal Code Act 1995*. While Defence will not apply this mandatory forfeiture ground for its reviews of retrospective cases, this recommendation has been accepted and policy will be amended to reflect this.

Recommendation 3 focussed on establishing the future authority to order the mandatory and discretionary forfeiture of any medals to be placed in a Defence Instruction, or in regulations made under the *Defence Act 1903*. This recommendation has been accepted in principle. In light of administrative reform projects progressing under the First Principles Review, the Belcher Red Tape Review and a shift from a prescriptive and rules-bound approach to a principles-based approach to achieving administrative policy outcomes, the preferred approach will be to develop overarching guidelines on your behalf as Governor-General. These will establish your criteria and circumstances for mandatory and discretionary decisions for withholding and forfeiture of medallic recognition. I am advised initial consultation has commenced with staff within the Australian Honours and Awards secretariat to progress the development of these guidelines further.

Recommendation 4 focussed on establishing a set time period for the forfeiture of any medal. This recommendation has been accepted. For mandatory forfeitures cases, I recommend that this period is forever, and without an option to gift any forfeited honours and awards to a veteran's family if the veteran is deceased. In the case of forfeiture decisions for discretionary honours and awards, guiding principles for these would be included in the overarching guidelines. For example, a time period could be set (such as 10 years) with a separate internal Defence review of the case after that time initiated by an application by the member, or their family. Current administration and processes for internal-to-Defence reviews for awards restoration will be reviewed by the Defence and approved policy changes will be reflected in the its Honours and Awards Manual.

Recommendation 5 suggested that the *Defence Act 1903* be amended to include decisions on withholding, forfeiture and restoration of medals in s 110V(1). Noting my recent discussions with the tribunal Chair, Mr Mark Sullivan AO, and the Chief of the Defence Force, a decision on this recommendation is yet to be made. I will write to you again in 2017 to provide you with a further update. Please advise me if you would like to receive a more detailed briefing on this issues from the Tribunal or Defence.

I have written to Mr Sullivan, to personally thank him and the panelled members who conducted this inquiry. It has contributed to further refinements to the Defence honours and awards policy and system for managing future decisions related to mandatory and discretionary withholding and forfeiture of medallic recognition.

Yours sincerely  
s22

Dan Tehan

s22

13 NOV 2016



**The Hon Dan Tehan MP**  
Minister for Veterans' Affairs  
Minister for Defence Personnel  
Minister Assisting the Prime Minister for Cyber Security  
Minister Assisting the Prime Minister for the Centenary of ANZAC

Parliament House  
CANBERRA ACT 2600

Telephone: 02 6277 7820

MA16-001548

Mr Mark Sullivan AO  
Chair  
Defence Honours and Awards Appeals Tribunal  
Locked Bag 7765  
Canberra BC ACT 2610

Dear Mr Sullivan

*Mark,*

Thank you for your letter of 7 September 2015 to the then Parliamentary Secretary for Defence, the Hon Darren Chester MP, that presented the Defence Honours and Awards Appeals Tribunal *Report of the Inquiry into the Refusal to Issue Entitlements to, Withholding and Forfeiture of Defence Honours and Awards*.

The complex nature of this inquiry prompted the Australian Government to conduct a thorough consideration of the report and its recommendations. In light of this, you were provided with an interim response on the Government's position with regard to this matter on 16 February 2016.

The Government has completed its consideration of the report in consultation with the Department of Defence and accepts Recommendations 1, 2, 3 and 4.

I would like to take this opportunity to share with you some detail on the factors taken into consideration for each recommendation, and how Defence will implement these.

Recommendation 1 set out the circumstances for Defence to restore those medals that were forfeited during and after World War II to veterans, or to the families of veterans who are now deceased. This recommendation has been accepted in principle. You might recall that in September 2015, Defence called for veterans, or the families of deceased veterans who may be eligible for medal restoration to lodge applications for review. I am informed that around 100 applications have been received. Each review will be conducted on a case-by-case basis and with sensitivity. In the circumstance that a review results in a decision to reinstate a deceased member's award/s, these can be gifted to the member's family, if it accords with the deceased member's wishes. In circumstances in which the member has previously declined or returned their award/s, this action will be respected and taken into consideration by Defence as part of the review process.

Recommendation 2 set out the recommended grounds for mandatory and discretionary forfeiture of medals in future. It aligns closely to the current Defence policy for withholding and forfeiture of honours and awards, with the inclusion of a new mandatory forfeiture ground: conviction for serious terrorism related offences under the *Crimes Act 1914* (Cth) and the *Criminal Code Act 1995*. While Defence will not apply this mandatory forfeiture ground for its reviews of retrospective cases, this recommendation has been accepted and policy will be amended to reflect this.

Recommendation 3 focussed on establishing the future authority to order the mandatory and discretionary forfeiture of any medals to be placed in a Defence Instruction, or in regulations made under the *Defence Act 1903*. This recommendation has been accepted in principle. In light of administrative reform projects progressing under the First Principles Review, the Belcher Red Tape Review and a shift from a prescriptive and rules-bound approach to a principles-based approach to achieving administrative policy outcomes, the preferred implementation method will be to develop overarching guidelines from the Governor-General, His Excellency General the Hon Sir Peter Cosgrove AK MC (Ret'd), setting the criteria and circumstances for mandatory and discretionary decisions for withholding and forfeiture of medallic recognition. I am advised that consultation has commenced with Government House to progress the development of these guidelines further.

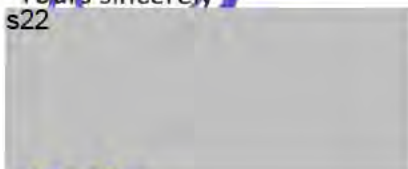
Recommendation 4 focussed on establishing a set time period for the forfeiture of any medal. This recommendation has been accepted. For mandatory forfeitures cases, I recommend that this period is forever, and without an option to gift any forfeited honours and awards to a veteran's family if the veteran is deceased. In the case of forfeiture decisions for discretionary honours and awards, guiding principles for these would be included in the Governor-General's guidelines. For example, a time period could be set (such as 10 years) with a separate internal Defence review of the case after that time initiated by an application by the member, or their family. Current administration and processes for internal-to-Defence reviews for awards restoration will be reviewed by the Defence Honours and Awards Advisory Group and approved policy changes will be reflected in the Defence Honours and Awards Manual.

Recommendation 5 suggested that the *Defence Act 1903* be amended to include decisions on withholding, forfeiture and restoration of medals in s 110V(1). Noting my recent discussions with yourself and the Chief of the Defence Force, a decision on this recommendation is yet to be made. I will write to you again in 2017 to provide you with a further update.

I would like to take this opportunity to thank the tribunal for this Inquiry. It has contributed to further refinements to the policy and system for managing future decisions related to mandatory and discretionary withholding and forfeiture of medallic recognition.

Yours sincerely

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Dan Tehan

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13 NOV 2016

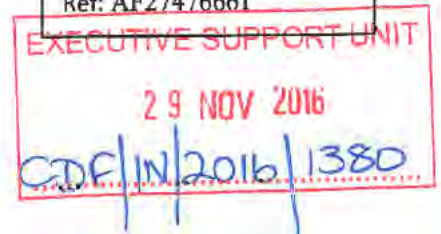


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Australian Government  
Department of Defence

Chief of the Defence Force

Copies to: Not required.



**MEETING WITH MINISTER FOR DEFENCE PERSONNEL, THE HON DAN TEHAN MP  
ADDRESSED AS "MINISTER"**

**Timing and Venue:** 0900-0930, Wednesday, 30 November 2016.  
Minister Tehan's office: Room M1.19 at Parliament House

**Other attendees:**

- Chair of the Defence Honours and Awards Appeals Tribunal, Mr Mark Sullivan AO

**Dates you have previously met:**

- You previously met with Minister Tehan on 10 November 2016 to discuss this subject.

**Our Objectives:** (Talking points are at [Attachment A](#))

- To note that the Government has accepted your recommendation to accept the first four recommendations made by the Tribunal as a result of the Withholding and Forfeiture Inquiry. These recommendations are focussed on further improving the current management of decisions related to withholding and forfeiture of honours and awards and are uncontentious.
- To inform the Minister of options to respond to the Defence Honours and Awards Appeals Tribunal's Recommendation 5 from its *Inquiry into the refusal to issue entitlements to, withholding and forfeiture of Defence Honours and Awards*;
  - Recommendation 5 states: "The Tribunal recommends that the Defence Act be amended to include decisions on withholding, forfeiture and restoration of medals in s110 V(1)."
  - if the Government agrees to this recommendation, the current Tribunal's review powers will increase to include reviews of decisions made by Defence from 1939 to withhold, forfeit and/or restore a member's medallic recognition.
- To discuss concerns that have contributed to Defence's proposed options to respond to Recommendation 5; including an independent review into the Tribunal's overall intent, role and powers be conducted.

**Their Objectives:** (Biographies are at [Attachment B](#))

- The Tribunal Chair may share his views of a separate review that has been suggested by the Tribunal. It is understood Mark Sullivan and Mark Cunliffe (Head Defence Legal) had discussed reviewing the legislation affecting the Tribunal's practical ability to conduct its reviews on older topics (eg World War II with living witnesses becoming scarce and decisions becoming increasingly reliant on documentary evidence) and to make further improvements to the current legislation governing the Tribunal's remit and procedures to ensure it meet its applicants' needs.
- To discuss factors that have contributed to Defence's proposed options to respond to Recommendation 5, including an independent review into the Tribunal's overall intent, role and powers be conducted.

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### Key Points:

- Some recent Tribunal decisions that recommended veterans be recognised with contemporary Australian gallantry, distinguished and meritorious service awards have raised concern for the Service Chiefs and command chains.
- These concerns include:
  - a broadening of its current scope and review methodology beyond its historical/traditional/understood 'swimlane'. It is now conducting fresh merits reviews for individual applications seeking honours recognition for members, whereas for its 2013 Valour Inquiry, it conducted a process review. If a case of maladministration had clearly occurred, or if new compelling evidence was presented, it could prompt a fresh merits review and the Tribunal should take into account further factors including: retrospective and revised awards in the Australian honours and awards system should only be contemplated in the most compelling of cases; new evidence should be assessed by reference to the standards and regulations of the time; and the impact of retrospective recognition on the standing of the Imperial honours already awarded to Australians should be considered.
- In the Valour Inquiry, it reviewed 13 cases and made no recommendations to change their current recognition.
- Defence is in a position to offer some options to address these concerns. These include:
  - the Minister directing an independent review be conducted on the Tribunal's role, scope and intent, as it has been operating as a statutory body for five years;
  - pursuing options to amend legislation of the Tribunal's scope for gallantry, distinguished and meritorious service awards, to reviews of the contemporaneous nomination and recommendation decision-making process within the relevant Service chain-of-command;
  - amending the Honours medals Regulations to insert 'sunset clauses' for nominations for honours decorations to be considered only up to three years after the action/s to be recognised; and
  - suggesting amendments to the overarching legislation and schedule of honours and awards that binds the Tribunal's remit, with a view to refocus its power to conducts reviews of the decision-making processes for Defence awards that have clearly-defined eligibility criteria.

### Sensitivities:

- To date, the Minister and Tribunal Chair may not have a full appreciation of the implications and consequences of some of the most recent decisions related to recommendations for gallantry decorations for service during World War II and the Vietnam War. These present significant implications for the integrity of the Defence honours and awards system, and future Services' command decisions and management of gallantry and bravery honours nominations and recommendations.

### Background: (Further information is at Attachment C)

- On 10 November 2016 you met with Minister Tehan to discuss this subject. That discussion included reviewing the Tribunal, and it is understood that Minister Tehan may consider initiating such a review in around 18 months.

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**Consultation:**

- This subject has been consulted previously with Defence Honours and Awards Advisory Group members during the course of its consideration of the Tribunal's Inquiry Recommendations.
- It was further discussed with the Director of Honours and Awards, s47E(c) [redacted] s47E(c) during your meeting of Monday 14 November 2016, after your meeting with Minister Tehan on 10 November 2016.
- Further consultation occurred with s47E(c) [redacted] (SO Ceremonials, AHQ) with regard to obtaining information on CA's meeting with Mark Sullivan on 21 November 2016.

**Richard Oliver**  
*(actual signature not required)*  
 FASPS  
 November 2016  
 Contact number: s47E(c) [redacted]

**Contact Officer:**  
 s47E(c) [redacted]  
 Director Honours and Awards  
 s47E(c) [redacted]  
 s22 [redacted]

NOTED:

CDF  
 Date  
 s22  
 : 30/10/2016

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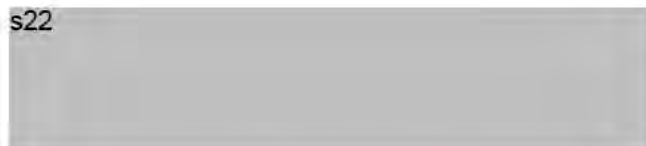
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ATTACHMENT A

### TALKING POINTS

**Issue 1 – *Inquiry into the refusal to issue entitlements to, withholding and forfeiture of Defence Honours and Awards.***

- You have agreed with my recommendation that the Government accept the first four recommendations made by the Tribunal from this Inquiry. These are focussed on the current management of decisions related to the withholding and forfeiture of honours and awards by Defence Honours and Awards System stakeholders, and are an opportunity for further improvements to be made.

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## BACKGROUND

### **Defence Honours and Awards Appeals Tribunal *Inquiry into the refusal to issue entitlements to, withholding and forfeiture of Defence Honours and Awards***

- The Defence Honours and Awards Appeals Tribunal (the Tribunal) conducted its *Inquiry into the refusal to issue entitlements to, withholding and forfeiture of Defence Honours and Awards* (this Inquiry) from January 2014 to September 2015, making a total of five recommendations.
- Recommendation 1 focussed on a review process for historical withholding and forfeiture cases.
- Recommendations 2, 3 and 4 suggested changes to further improve the future management of withholding, forfeiture and restoration decisions.
- On 13 November 2016, Minister Tehan agreed to your recommendation that the Government accept Recommendations 1-4 made by the Tribunal for this Inquiry.

### **Recommendation 5**

- The Tribunal has recommended that the *Defence Act 1903* (the Act) be amended to include decisions on withholding, forfeiture and restoration of medals. Under s110V(1) of the Act, the Tribunal does not currently have the power to review decisions relating to withheld or forfeited honours and awards. If agreed, the powers of the Tribunal will increase to include their future review of decisions made from 1939 onwards for withholding, forfeiture and restoration of a member's medals (including the applications for review that were received by Defence after the Inquiry) and future withholding and forfeiture decisions involving current serving members.
- If Recommendation 5 is to be accepted, it is the view of the Defence Honours and Awards Advisory Group (DHAAG) that an overall review of the Tribunal including its scope and intent be conducted.

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**Minister for Defence Personnel – For action**

**Minister for Defence – For information**

Copies to: Secretary, CDF, DEPSEC DP, FASPS, DH&A, FASMECC

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

**Critical Date:** 1200, 8 December 2016

**Reason:** As requested by your office

**Recommendation:**

- |  |                            |
|--|----------------------------|
| <p>1. That you agree to the attached media release announcing the Government's response to the Defence Honours and Awards Appeals Tribunal <i>Inquiry into the refusal to issue entitlements to, withholding and forfeiture of Defence Honours and Awards.</i></p> | <p>Agreed / Not agreed</p> |
|--|----------------------------|

**Minister for Defence Personnel**..... Date / /

**Key Points:**

1. On 13 November 2016, you agreed to accept recommendations 1, 2, 3, and 4 of the Defence Honours and Awards Appeals Tribunal (the Tribunal) *Inquiry into the refusal to issue entitlements to, withholding and forfeiture of Defence Honours and Awards.*
2. A fifth recommendation made by the Tribunal is "... that the *Defence Act 1903* be amended to include decisions on withholding, forfeiture and restoration of medals in s110V(1)". Acceptance of this recommendation by the Government would expand the Tribunal's review powers.
3. On 30 November 2016, you met with the Chief of the Defence Force, and the Chair of the Tribunal, Mr Mark Sullivan, to discuss this subject in more detail. As a result, your agreed position continues to be to accept the first four recommendations with a decision on recommendation 5 yet to be made.
4. On 7 December 2016, your office requested a media release to announce the Government's acceptance of the first four recommendations.
5. A draft media release is enclosed for your consideration.

s22

Richard Oliver  
FASPS  
Defence People Group  
Telephone s47E(c)

7 December 2016

Contact officer: s47E(c)  
Contact officer phone s47E(c)



UNCLASSIFIED

Tehan: MA16-003847 Ref: DPG/FASPS/OUT/2016/
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**Sensitivity:**

No.

**Financial Impacts:**

There are no financial impacts.

**Summary of Attachment:**

A – Media Release

**Background:**

6. In October 2015, interim advice was provided to the then Parliamentary Secretary to the Minister for Defence, the Hon Darren Chester MP under MA15-002744.
7. On 24 October 2016, further advice was provided to you by the Chief of the Defence Force under MA16-001548.

**Consultation:**

Nil

UNCLASSIFIED

**MEDIA RELEASE****DRAFT**

Thursday, 8 December 2016

MECC 000/00

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

In September 2015, the Defence Honours and Awards Appeals Tribunal presented the report on its *Inquiry into the refusal to issue entitlements to, withholding and forfeiture of Defence Honours and Awards to Government*.

Overall, the Tribunal has concluded that decisions made by the Navy, Army, Air Force and the Department of Defence since 1939 to withhold and forfeit of medals were lawful.

Minister for Defence Personnel the Hon. Dan Tehan MP said the complexity of the report prompted a thorough consideration of the Tribunal's recommendations.

"I am pleased to announce on behalf of the Government my acceptance of the first four of the Tribunal's five Recommendations," he said.

"These recommendations will further improve the decision-making processes on historical cases, and future withholding and forfeiture decisions."

Recommendation 5 remains under consideration, and I will advise of further progress on this matter in 2017.

"I have personally thanked the Chair of the Tribunal for the results from this inquiry," Minister Tehan said.

It has contributed to further refinements to the policy and system for managing decisions related to mandatory and discretionary withholding and forfeiture of medallic recognition.

The Tribunal's full report is available at: [www.defence-honours-tribunal.gov.au](http://www.defence-honours-tribunal.gov.au)

**Media contacts:**

s47E(c)

s22

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Defence Media (02) 6127 1999 media@defence.gov.au

Drafted	Name	Appointment	Date and time
<i>TPs drafted by</i>	s47E(c) s47E(c)	<i>AD Policy &amp; Tribunal Management, DH&amp;A</i>	<i>7 December 2016: 1600</i>

Clearance	Name	Appointment	Date and time
<i>Cleared by:</i>	Richard Oliver	SES Band 2 FASPS	7 December 2016 1800
<i>Cleared by: MECC Division</i>	s47E(c)	<b>A/Director Media</b>	7 December 2016 1700

NOTE: To be cleared prior to submitting to PC (DMPLS) for Quality Check.

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Australian Government  
Department of Defence

UNCLASSIFIED  
MINISTERIAL CORRESPONDENCE

Tehan: MC16-003153  
Ref: DHA/OUT/2017/0007

Minister for Defence Personnel – For action



MR MARK SULLIVAN AO - STATUS OF DHAAT REPORTS

Critical Date: 30 JAN 2016 Reason: Routine

**Recommendations:**

1. That you note the status of the nine Defence Honours and Awards Appeals Tribunal reports referred to by Mr Mark Sullivan AO.

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Noted / Please discuss

Agreed / Not Agreed

Agreed / Not Agreed

Signed / Not signed

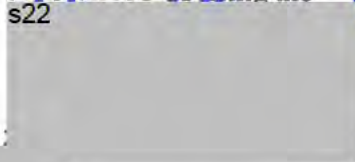
Signed / Not signed

Signed / Not signed

Signed / Not signed

7. That you sign the attached letter to Mr Mark Sullivan AO advising the status of these Tribunal reports.

s22



Minister for Defence Personnel

.... Date 29 / 1 / 17

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**Key Points:**

1. On 15 September 2016, the Chair of the Defence Honours and Awards Appeals Tribunal (the Tribunal), Mr Mark Sullivan AO, wrote to you about the status of nine reports presented by the Tribunal to the Government for consideration (Attachment A).

2. On 17 November 2016, a Ministerial Submission was provided which detailed the current status of these reports (Attachment B). On 15 December 2016, your office requested this submission be redrafted because action on several reports had by then either been completed or substantially progressed.

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UNCLASSIFIED

Tehan: MC16-003153  
Ref: DHA/OUT/2017/0007

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***Inquiry into refusal to issue entitlements to, withholding and forfeiture of Defence honours and awards***

7. Mr Sullivan presented the report of this inquiry to the Government on 7 September 2015.
8. The report made five detailed and complex recommendations. The first sets out the circumstances for Defence to review historical cases from World War II onwards. Recommendations 2, 3 and 4 are focussed on implementing improvements by Defence on future management, establishing overarching guidelines from the Governor-General and setting time periods for mandatory and discretionary withholding and forfeiture of service awards. The fifth recommendation seeks to expand the Tribunal's review powers to include decisions on withholding, forfeiture and restoration of service awards.
9. As the recommendations had possible significant legal and administrative consequences for Defence, it was necessary to consult widely across the Defence organisation.
10. On 24 October 2016, CDF wrote to you under Ministerial Advice MA16-001548 recommending that you agree to recommendations 1, 2, 3 and 4 arising out of this report. CDF further recommended that you do not agree to recommendation 5.
11. On 13 November 2016, you agreed to recommendations 1, 2, 3 and 4; and formally announced your decision in a media release dated 23 December 2016.
12. In relation to recommendation 5, you met with CDF on 10 November 2016 and with CDF and Mr Sullivan on 30 November 2016. I understand you are holding an additional meeting with CDF and Mr Sullivan early this year.

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Tehan: MC16-003153  
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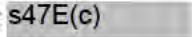


s47E(c)



Director Honours and Awards  
Defence People Group  
Telephone: s47E(c)   
13 January 2017

Contact officer: s47E(c) 

Contact officer phone: s47E(c) 

**Sensitivity:**

No.

**Financial Impacts:**

There are no financial impacts.

**Summary of Attachments:**

A – Original correspondence.

s22



H – Draft letter to Mr Mark Sullivan AO advising the status of Tribunal reports.

UNCLASSIFIED

Tehan: MC16-003153  
Ref: DHA/OUT/2017/0007

**Related Briefs:**

MA16-001548 Defence Honours and Awards Appeals Tribunal – Inquiry into the refusal to issue entitlements to, withholding and forfeiture of Defence honours and awards.

s22



**Consultation:**

No.





**The Hon Dan Tehan MP**  
Minister for Veterans' Affairs  
Minister for Defence Personnel  
Minister Assisting the Prime Minister for Cyber Security  
Minister Assisting the Prime Minister for the Centenary of ANZAC

Parliament House  
CANBERRA ACT 2600

Telephone: 02 6277 7820

MC16-003153

Mr Mark Sullivan AO  
Chair  
Defence Honours and Awards Appeals Tribunal  
Locked Bag 7765  
CANBERRA BC ACT 2610

Dear Mr Sullivan

*Mark,*

Thank you for your letter of 15 September 2016 about the status of nine reports presented by the Defence Honours and Awards Appeals Tribunal to the Australian Government for consideration. I apologise for the delay in responding.

I am pleased to provide the following information in relation to each of the reports identified in your correspondence.

s22

***Inquiry into refusal to issue entitlements to, withholding and forfeiture of Defence honours and awards***

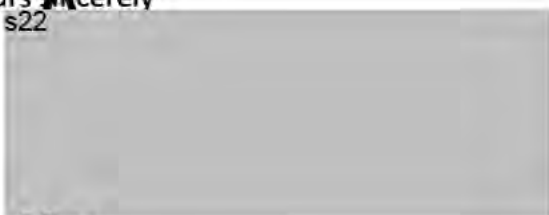
After considering CDF's detailed advice about the complex recommendations arising out of this report, I agreed to recommendations 1, 2, 3 and 4. I formally announced my acceptance of these recommendations in my media release dated 23 December 2016.

Recommendation 5 remains under consideration and you may recall that we met with CDF on 30 November 2016 to discuss this recommendation in more detail. I intend to convene a further meeting on this early in 2017.

This page is exempt under Section 22 of the Freedom of Information Act.

I appreciate you bringing these matters to my attention. I thank the panel members who have reviewed these cases and look forward to receiving the results of further reviews as they are completed.

Yours sincerely  
s22



Dan Ahan  
s22 s22

29 JAN 2017