FEDERAL COURT OF AUSTRALIA

McLeod-Dryden v Defence Honours and Awards Appeals Tribunal [2016] FCA 1138

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| Appeal from: | *McLeod-Dryden and the Department of Defence* [2016] DHAAT 02 |
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| File number: |  |
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| Judge: | **TRACEY J** |
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| Date of judgment: | 23 September 2016 |
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| Catchwords: | **ADMINISTRATIVE LAW** – application for judicial review of a decision of the Defence Honours and Awards Appeals Tribunal affirming a decision that the applicant was not eligible for the Republic of Vietnam Campaign Medal (“RVCM”) – whether the Tribunal erred by misconstruing and misapplying the eligibility criteria for the RVCM – whether the Tribunal erred by misconstruing and misapplying the concept of “direct combat support” – application dismissed  |
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| Legislation: | *Administrative Decisions (Judicial Review) Act 1977* (Cth)*Defence Act 1903* (Cth)*Judiciary Act 1903* (Cth)*Repatriation (Special Areas) Regulations* (Cth)*Repatriation (Special Overseas Service) Act 1962* (Cth) |
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| Cases cited: | *Francis v Department of Defence* [1995] AATA 708 – cited*McLeod-Dryden and the Department of Defence* [2016] DHAAT 02 – cited  |
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| Date of hearing: | 15 August 2016 |
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| Registry: |  |
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| Division: |  |
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| National Practice Area: | Administrative and Constitutional Law and Human Rights |
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| Category: | Catchwords |
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| Number of paragraphs: | 48 |
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| Counsel for the Applicant: | Mr D McCredden (Pro bono) |
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| Counsel for the Respondents: | Mr R Knowles |
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| Solicitor for the Respondents: | Australian Government Solicitor |

ORDERS

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|  | VID 279 of 2016 |
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| BETWEEN: | FREDERICK IAN MCLEOD-DRYDENApplicant |
| AND: | DEFENCE HONOURS AND AWARDS APPEALS TRIBUNALFirst RespondentSECRETARY OF THE DEPARTMENT OF DEFENCESecond Respondent |

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| JUDGE: | TRACEY J |
| DATE OF ORDER: | 23 SEPTEMBER 2016 |

THE COURT ORDERS THAT:

1. The application be dismissed.
2. The applicant pay the second respondent’s costs of the application.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

REASONS FOR JUDGMENT

TRACEY J:

1. Mr Frederick McLeod-Dryden served on HMAS *Sydney* between 11 November 1966 and 25 June 1967. During this period the ship undertook three voyages to Vietnam. Mr McLeod‑Dryden claimed that, as a result of this service, he was eligible to receive the award of the Republic of Vietnam Campaign Medal (“the RVCM”). He applied for the award in September 2011. The Directorate of Honours and Awards within the Department of Defence (“the Directorate”) considered his application but rejected it. Mr McLeod‑Dryden appealed against this decision to the Defence Honours and Awards Appeals Tribunal (“the Tribunal”). On 29 January 2016 the Tribunal affirmed the Directorate’s decision that Mr McLeod-Dryden was not eligible for the award: see *McLeod-Dryden and the Department of Defence* [2016] DHAAT 02.
2. Mr McLeod-Dryden then purported to appeal to this Court from the Tribunal’s decision. That proceeding (VID 198/2016) was dismissed because the Court did not have jurisdiction to entertain appeals from the Tribunal. Mr McLeod-Dryden then commenced the present proceeding in which he sought judicial review of the Tribunal’s decision pursuant to s 5 of the *Administrative Decisions (Judicial Review) Act 1977* (Cth) (“the ADJR Act”) and s 39B of the *Judiciary Act 1903* (Cth).

# THE BACKGROUND facts

1. Mr McLeod-Dryden served in the Royal Australian Navy between 10 October 1965 and 19 March 1970. He was posted to HMAS *Sydney* between 11 November 1966 and 25 June 1967.
2. During the period when Mr McLeod-Dryden was a member of the ship’s company it made three “logistic support deployments” to Vietnam. Two of these voyages occurred in April–May 1967. The third took place in May–June 1967. The return journeys of the first two voyages occupied a total of 34 days. The third return voyage took 35 days. In the course of these voyages HMAS *Sydney* spent a total of only three days in a Vietnamese harbour and within operational areas.

# ELIGIBILITY FOR THE RVCM

1. On or about 12 May 1964, the Government of the Republic of Vietnam (as it then was) created a campaign medal for the Vietnam War. The campaign medal is known in Australia as the Republic of Vietnam Campaign Medal. On 24 June 1966, the Queen granted approval for members of the Australian armed forces to accept and wear the RVCM.
2. On 1 September 1965, the Republic of Vietnam Armed Forces (“the RVNAF”) issued a directive which governed the award of the RVCM (“the Directive”). Chapter 1 of the Directive set out eligibility criteria for the RVCM. It provided that:

**“CHAPTER 1: ELIGIBILITIES**

Article 1: All military personnel of the RVNAF who have 12 month service in the field during war time, may claim for Campaign Medal award.

Article 2: The RVNAF personnel, who don't possess the eligibilities prescribed in Art. 1, but happen to be under one of the following circumstances, are qualified for Campaign Medal award:

– WIA (wounded in action)

– Captured in action by enemies or missing while performing his missions, but released later, or an escape has taken place.

– KIA or die while performing a mission entrusted.

The above anticipated cases must take place during the war.

Article 3: Allied soldiers assigned to the Republic of Vietnam after 6 months in war time with mission to assist the Vietnamese Government and the RVNAF to fight against armed enemies, are eligible for Campaign Medal decorations; they would be awarded with Campaign Medal under conditions anticipated in Article 2 of this Directive.

1. Article 3 of Chapter 1 of the Directive was amended on 22 March 1966 to read as follows:

“Article 3: Foreign military personnel serving in South Vietnam for six months during wartime and those serving outside the geographic limits of South Vietnam and contributing direct combat support to the RVNAF for six months in their struggle against an armed enemy will also be eligible for the award of the Campaign Medal.

**Foreign authorities will determine eligibility of their personnel for this award.** Foreign military personnel are also entitled to this award under the special conditions provided for in article two of this Directive.” (emphasis added)

1. This amendment was explained in a memorandum from the Secretary of the Department of Defence entitled “Vietnamese Campaign Medal”, which was issued on 16 September 1966 (“the 1966 memorandum”):

“3. This amendment [to Article 3] was specifically requested by the United States authorities to cover those United States servicemen in the Seventh Fleet, Thailand and Guam, who are participating in the present conflict. **The United States interpretation of this amendment is that it covers all members of the Seventh Fleet serving in waters off the coast of Vietnam,** as well as the aircrews of aircraft operating out of Thailand and Guam. The Americans do not interpret the amendment to cover ground support staff in Thailand and Guam.

4. **Our interpretation is the same as that of the United States. At present no Australians serving with Australian units outside the Vietnamese theatre would be eligible for the award**.” (emphasis added)

1. The 1966 memorandum also contained what were described as “conditions for the grant of the award of the [RVCM]”. Paragraph 5 read:

“5. The conditions for the grant of the award of the Vietnamese Campaign Medal to Australian servicemen, which are in line with those laid down by the United States authorities, are as follows:

(a) “Special service” (as defined by the Repatriation (Special Overseas Service) Act) of a minimum of 6 months duration, either continuous or aggregated, in Vietnam with retrospective effect to 31st July, 1962;

(b) “Special service” in Vietnam of less than six months duration since 31st July 1962 if:

(i) killed on active service or wounded in action and evacuated;

(ii) captured and later released or escaped.”

I will refer to these conditions as “the 1966 conditions.”

1. Section 3 of the *Repatriation (Special Overseas Service) Act 1962* (Cth) (“the Repatriation Act”) defined the term “special service” to mean, in relation to a person:

“… service of the person in a special area while—

(a) a member of, or attached to, a body, contingent or detachment of the Naval, Military or Air Forces at a time when it was allotted for special duty in that special area; or

(b) a member of the Naval, Military or Air Forces allotted for special duty in that special area ...

1. Section 3 also defined “special duty” to mean, in relation to a special area:

“... duty relating directly to the warlike operations or state of disturbance by reason of which the declaration in respect of the area has been made by regulations in accordance with section four of this Act ...”

1. Section 4 provided that:

“(1) The regulations may declare that, by reason of warlike operations, or a state of disturbance, in or affecting a specified area outside Australia, that area shall become, on a specified date, a special area for the purposes of this Act or shall be deemed to have become, on a specified date (which may be a date before the commencement of the regulations or before the commencement of this Act), a special area for the purposes of this Act.

(2) The regulations may declare that a special area shall, on and after a specified date, be no longer a special area for the purposes of this Act.”

1. Regulation 4 of the *Repatriation (Special Areas) Regulations 1963* (Cth) stated that:

“It is declared that, by reason of a state of disturbance in or affecting the area specified in the First Schedule to these Regulations, being an area outside Australia, that area shall be deemed to have become, on the thirty-first day of July, 1962, a special area for the purposes of the Act.”

1. The First Schedule referred to “Vietnam (Southern Zone)”.
2. Regulation 8 of these Regulations was added shortly after Mr McLeod-Dryden’s service on HMAS *Sydney* concluded. It is, nonetheless, relevant because it retrospectively defined the area to which the Repatriation Act applied. The “special area” was deemed to have come into existence on 1 March 1967, a date which preceded the first of the three relevant voyages. Regulation 8 provides:

“(1) It is declared that, by reason of a state of disturbance in or affecting the area specified in the Fifth Schedule to these Regulations, being an area outside Australia, that area shall be deemed to have become, on the first day of March, 1967, a special area for the purposes of the Act.

(2) In the Fifth Schedule to these Regulations, a reference to miles shall be read as a reference to Admiralty nautical miles.”

1. The Fifth Schedule referred to:

“All that area of land and waters (other than land or waters forming part of the territory of Cambodia or China) bounded by a line commencing at the intersection of the boundary between Cambodia and Vietnam (Southern Zone) with the shore of Vietnam (Southern Zone) at high-water mark; thence proceeding along an imaginary line parallel to, and at a distance of 100 miles from, the shore of Vietnam at high-water mark to its intersection with the parallel 21 degrees 30 minutes north latitude, thence proceeding along that parallel westerly to its intersection with the shore of Vietnam at high-water mark; thence following the shore of Vietnam at high-water mark to the point of commencement.”

1. The areas of the “Vietnam (Southern Zone)” and the specified “Vietnamese waters” were declared, on 27 January 1973, to be no longer a special area for the purposes of the Repatriation Act.

# THE LEGISLATION

1. In 2011, a new Part VIIIC was included in the *Defence Act 1903* (Cth) (“the Act”). It was entitled “Defence Honours and Awards Appeals Tribunal”. The Tribunal was thereby established: see s 110U. The functions of the Tribunal are identified in s 110UA. Relevantly, the Tribunal’s functions include the review of “reviewable decisions”. Such decisions include a refusal to recommend a person for a “foreign award”: see ss 110T and 110V(1)(a)(iii). The RVCM is such an award. It is an honour or award given by the government of a foreign country. Review may be sought by a person who has applied unsuccessfully for an award: see s 110VA. If an application is made for review of a reviewable decision the Tribunal is required to review the decision and either affirm the decision or set it aside. When conducting the review “the Tribunal is bound by the eligibility criteria that governed the making of the reviewable decision”: see s 110VB(6). The term “eligibility criteria” is not defined in the Act. Section 110VB(7), however, provides that the regulations may define or otherwise clarify the meaning of the term for the purposes of s 110VB(6). I was informed that no such regulations have been made.
2. If the decision is set aside the Tribunal may either substitute a new decision or refer the matter to a person determined by the Tribunal for reconsideration in accordance with any directions given by the Tribunal: see s 110VB(2). Any new decision, made by the Tribunal, is to be what the Tribunal regarded as the “correct and preferable” decision. Any determinations made by the Tribunal must be in writing and it is required to provide reasons for its decisions: see s 110XE(1) and (2).
3. Section 110W of the Act provides that the Minister may direct the Tribunal to hold an inquiry into specified matters “concerning honours or awards for eligible service.” If such a direction is given the Tribunal is required to hold an inquiry and to report to the Minister on the outcomes of that inquiry. When making its report the Tribunal is empowered to make recommendations to the Minister.
4. The Tribunal is constituted by a Chair and other members. The Chair is the executive officer of the Tribunal: see ss 110X and 110XA. The Chair determines which members are to sit on reviews and inquiries. A review can be heard by one or more members: see s 110XA(1). At least three members are required to conduct an inquiry: see s 110XA(2).

# THE TRIBUNAL’S DECISION

1. The Tribunal provided written reasons for its decision.
2. The Tribunal explained the reasons for its protracted consideration of Mr McLeod-Dryden’s appeal. Mr McLeod-Dryden had made his application to the Tribunal in May 2012. It was over three years later that the Tribunal made its decision. In the meantime the Tribunal had conducted two inquiries following Ministerial directions, given under s 110W of the Act. These inquiries were an inquiry into eligibility for the Republic of Vietnam Campaign Medal (“the first inquiry”) which reported on 24 March 2014, and the inquiry into the feasibility of amending the eligibility criteria for the Republic of Vietnam Campaign Medal (“the second inquiry”) which reported on 25 June 2015. Mr McLeod-Dryden had requested that the Tribunal defer making a decision on his application until the first inquiry had concluded. The Tribunal acceded to this request. It subsequently informed Mr McLeod-Dryden that it would hold over his review pending the completion of the second inquiry.
3. The first inquiry led to a recommendation by the Tribunal that the government take no action to change the criteria for the award of the RVCM. The second inquiry recommended that the Government did not have any legal ability to amend the eligibility criteria. This was because the Government of Vietnam, which had promulgated the criteria, had ceased to exist in 1975 and because the Australian Government did not have the legal authority to amend them. The Australian Government accepted this recommendation: Tribunal reasons at [16].
4. The Tribunal then summarised what it saw to be the requirements for eligibility for the award of the RVCM:

“The eligibility criteria for the RVCM therefore remain anchored by the Joint General Staff of the RVNAF September 1965 Directive as amended, to include conditions relating to service outside the geographic limits of South Vietnam, the contribution to direct combat support, the additional conditions imposed by the Secretary’s memorandum of September 1966 and informed by the recommendation of the first Inquiry as it relates to considerations of those suffering from psychological injury.”

1. Having set out the eligibility criteria for the award the Tribunal summarised the arguments which had been advanced to it by Mr McLeod-Dryden:

 “19. Mr McLeod-Dryden’s appeal, throughout his various submissions is centred on his view that the entirety of his service in HMAS *Sydney* falls within the definition of ‘direct combat support’ set out by the eligibility criteria and that he achieved the total of 181 days qualifying service.

20. Mr McLeod-Dryden argues that HMAS *Sydney’s* ‘primary function between the years 1965 to 1973 was “direct combat support for the RVNAF in their struggle against an armed enemy.” ’ He therefore believes that all service in the ship during the years in question would qualify, subject to an individual achieving the required minimum of 181 days, as eligible service for the RVCM.” (footnotes omitted)

1. It recorded (at [22]) that the Directorate had submitted that Mr McLeod-Dryden had only accrued three eligible days of service “towards the RVCM”. Those were the three days during which HMAS *Sydney* had been in Vietnamese waters.
2. The Tribunal then turned to consider Mr McLeod-Dryden’s claims. It explained its reasons for rejecting them as follows:

“24. In assessing Mr McLeod-Dryden’s submissions, the Tribunal noted the accepted recommendations of the first Inquiry, which examined the application of the eligibility criteria for the RVCM at the direction of the Parliamentary Secretary of Defence. It also noted the accepted recommendation of the second Inquiry ‘that the eligibility criteria for the Republic of Vietnam Campaign Medal not be amended because the Australian Government does not have the legal authority to do so.’

25. It is not in dispute that HMAS *Sydney* spent only 3 days in a Vietnamese harbour with short associated time at sea within the operational area during Mr McLeod-Dryden’s time onboard, or that the totals of her logistic support deployments while he was serving in the ship would not be able to satisfy even the mistaken Navy definition up until 1987 of ‘allotment’, since they amount to only 34 (April-May 1967) and 35 (May-June 1967) days respectively.

*‘Direct combat support’*

26. The key point to be determined relates to Mr McLeod-Dryden’s argument that *all* his service in HMAS *Sydney* should be counted towards qualification for the RVCM, because it was, he claimed ‘direct combat support’ to the RVNAF.

…

28. As observed by the Tribunal in its Report of the first Inquiry, that although logistic support to the Australian forces in Vietnam was clearly the highest priority task for the ship during the Vietnam conflict, it was not the only work that the ship undertook between 1965 and 1972. Amongst other activities, this included amphibious exercises (1968), training cruises (1968 and 1970), a training and logistic voyage to Canada and the United States (1971) and other logistic support for Australian forces in Singapore (1971). HMAS *Sydney* also spent time in maintenance and refitting, and a major refit was undertaken in the second half of 1967.

29. We accept that HMAS *Sydney’s* highest priority during the Vietnam conflict was logistic support to the Australian forces in Vietnam. However, in our view, not every task undertaken during the period of the Vietnam conflict amounted to *direct combat support*.

Further, even if we were to accept the port-to-port provisions applied in calculating the period of direct combat support, in Mr McLeod-Dryden’s case, he still falls well short of the required 181 days.

30. The Tribunal concludes that Mr McLeod-Dryden’s qualifying service for the RVCM does not meet the required 6 months of direct combat support to the RVNAF.” (footnotes omitted; emphasis in original)

# GROUNDS OF REVIEW

1. Mr McLeod-Dryden advanced two broad grounds. The first alleged that the Tribunal had misconstrued and misapplied the eligibility criteria for the RVCM. The second was that it had misconstrued and misapplied the concept of “direct combat support”.

## The first ground – “eligibility criteria”

1. Mr McLeod-Dryden complained that the 1966 conditions had impermissibly narrowed the criteria for the grant of the RVCM and that the Tribunal had treated those conditions as eligibility criteria and applied them to his detriment.
2. He directed attention to the language of Article 3 of the Directive as amended in 1966. He said that he qualified for the RVCM because he was a serviceman who had served for six months during the Vietnam War “outside the geographic limits of South Vietnam and contributing direct combat support to the RVNAF.” The geographic area covered by Article 3 was far larger than that captured by the definitions of “special service” and “special duty” under the Repatriation Act and the Regulations made under it. Throughout his period of service on HMAS *Sydney*, Mr McLeod-Dryden had (apart from three days spent in Vietnamese waters) served outside the geographic limits of South Vietnam. As a result, and assuming that throughout the whole of this period (or at least six months of it) he had contributed “direct combat support” to the RVNAF (a matter to which I will return) he satisfied the criteria contained in Article 3. He had not, however, rendered relevant service for the necessary period within the confined area prescribed indirectly through the 1966 memorandum.
3. It was common ground that the conditions in the 1966 memorandum did not constitute “eligibility criteria” for the RVCM.
4. There is some force in Mr McLeod-Dryden’s submission that the Tribunal treated the 1966 memorandum as forming part of the eligibility criteria for the RVCM. So much is suggested by what it said at [17], namely that the eligibility criteria “include[d] … the additional conditions imposed by the Secretary’s memorandum of September 1966 …”. In the previous paragraph of its reasons, however, the Tribunal impliedly treated the “eligibility criteria” as being those contained in the Directive.
5. In any event, the Tribunal’s adverse decision does not appear to have turned on geographical considerations. In the section of its reasons headed “The Tribunal’s Consideration” (paras [23] and following) the Tribunal proceeded on the basis that the “eligibility criteria” for the award were those contained in the Directive: see especially at [24]. There is reference (at [25]) to the fact that HMAS *Sydney* spent only three days in a Vietnamese harbour and “short associated time at sea within the operational area”, but this is followed immediately by the observation that, even if the total time taken on the three voyages was brought into account, it would not come close to the six months’ service required by the Directive.
6. Thereafter the Tribunal was concerned with the “direct combat support” criterion and rejected Mr McLeod-Dryden’s claim for temporal rather than geographical reasons.

## The second ground – “direct combat support”

1. Mr McLeod-Dryden submitted that the Tribunal had either failed to construe or misconstrued the phrase “direct combat support” appearing in the Directive.
2. At no point in its reasons does the Tribunal proffer a definition or an explanation of the meaning of the phrase “direct combat support”. At [27] it dismisses the relevance of the Administrative Appeals Tribunal’s decision in *Francis v Department of Defence* [1995] AATA 708. At [28] it refers to the report of the Tribunal following the first inquiry and summarises a finding of the report that, between 1965 and 1972, HMAS *Sydney* was engaged in providing logistic support to Australian forces in Vietnam as a matter of the highest priority but was also engaged in other activities. A number of these activities, as set out in the quote underneath [28] above, were then recorded.
3. The Tribunal which had conducted the first inquiry (which was differently constituted from the Tribunal which determined Mr McLeod-Dryden’s application) did turn its attention to the meaning of the phrase and did apply it to the period during which HMAS *Sydney* was engaged in providing logistic support to Australian forces in Vietnam. Having examined terminology used in a range of military publications it concluded (at [59]) that:

“… ‘direct combat support’ requires the provision of support directly to combat units on the battlefield to assist them to achieve their mission in a timely manner. This assistance could include air bombing and strafing, naval gunfire, artillery fire, tactical intelligence, and tactical transport on the battlefield. It would not include logistic support provided to units before they deployed to the battlefield.”

In applying this definition, the first inquiry Tribunal determined that, at relevant times, HMAS *Sydney* was not providing direct combat support even whilst in the Vietnamese harbour.

1. The definition admits of the possibility that relevant support can be provided away from the battlefield. A serviceman monitoring satellite transmissions in Guam could provide direct combat support to a commander on the battlefield by advising about the disposition of opposing forces. A ship steaming away from a combat zone, on the other hand, cannot be said to be supporting combat, much less providing direct support.
2. The Tribunal which heard Mr McLeod-Dryden’s application was plainly aware of what the first inquiry Tribunal had decided in this regard. It is, therefore, somewhat surprising that no reference to the relevant parts of the inquiry’s findings appears in its reasons.
3. The compound phrase “direct combat support” falls to be construed as a whole. The word “direct” imports an element of immediacy of “combat” or imminent combat. Thus, sense 6(a) of the definition of the adjectival form of the word in the *Oxford English Dictionary* is, “[e]ffected or existing without intermediation or intervening agency; immediate”. Similarly, sense 6(d), dealing with “direct action”, gives this definition: “action which takes effect without intermediate instrumentality”. Definition 14 in the *Macquarie Dictionary* is similar: “without intervening agency; immediate; personal”.
4. During the three voyages in April, May and June of 1967, HMAS *Sydney* transported Australian troops, military equipment and supplies to Vietnam. On some, at least, of the return voyages it also transported troops and equipment departing South Vietnam following completion of their service. Mr McLeod-Dryden contended that each of the three return voyages, from beginning to end, involved the provision of direct combat support to Australian forces and the RVNAF. I cannot accept that submission. In my judgment, even on the forward voyages any immediate link to combat in Vietnam was lacking. Still less can the transport of troops away from battlefields during the return voyages be regarded as direct combat support.
5. As already noted, the total time involved with the three voyages was only 69 days. For Mr McLeod-Dryden to succeed, he had to persuade the Tribunal that *all* of his service on HMAS *Sydney* involved the provision of direct combat support. He assumed this burden, unsuccessfully, in the Tribunal. The evidence before the Tribunal supported the conclusion that the additional time was spent in working up, training, maintenance, and preparation for the voyages. The ship’s company practised gunnery, communications, diving exercises, establishing a darkened ship, moving to defence stations and various helicopter manoeuvres. Such activities could not, in my view, reasonably be regarded as providing “direct combat support” to Vietnamese forces. Training, for example, for military tasks, including combat, may readily be distinguished from the performance of the task to which the training related. The troops which HMAS *Sydney* carried to Vietnam undertook jungle warfare training in Australia before embarking. Whilst engaged in that training they were not providing direct combat support to Vietnamese forces. That task awaited their arrival in Vietnam.
6. The Tribunal’s reasons are not to be read zealously in pursuit of error. Mr McLeod-Dryden is, nonetheless, correct to point to deficiencies in the reasons insofar as they seek to grapple with the “direct combat support” issue. The Tribunal should have explained what it understood the phrase to mean. It should then have applied that understanding to the facts before it. Its failure to do so is unfortunate but it does not, in the circumstances, constitute jurisdictional or reviewable error. When read as a whole it is tolerably clear that the Tribunal reasoned that, even if the total duration of the three return voyages was brought into account, this would not have been sufficient to meet the six-month criterion. Implicitly, the Tribunal rejected Mr McLeod‑Dryden’s contention that all of the other activities undertaken by HMAS *Sydney* outside this period and while Mr McLeod-Dryden was a member of the ship’s company, constituted direct combat support to Vietnamese armed forces. Such a finding was consistent with the first inquiry Tribunal’s approach to the “direct combat support” criterion which was, in my view, correct.
7. There is, therefore, no relevant jurisdictional or reviewable error.

# DISPOSITION

1. The application must be dismissed with costs.
2. I would add that the Court’s finding in no way diminishes the value of Mr McLeod-Dryden’s period of military service. It does no more than hold that the Tribunal did not commit a jurisdictional or reviewable error in determining that he was not qualified to receive a particular medal. His service had, properly, been recognised by the award of a number of other decorations.
3. The Court is grateful for the assistance provided by counsel appearing pro bono for Mr McLeod‑Dryden. His carefully-researched submissions rehearsed all the arguments which could reasonably have been advanced in support of Mr McLeod-Dryden’s application.

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| I certify that the preceding forty-eight (48) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Tracey. |

Associate:

Dated: 23 September 2016