



# Australian Government

## Defence Honours and Awards Appeals Tribunal

### **Cocks and the Department of Defence [2018] DHAAT 31 (13 December 2018)**

File number 2018/001

Re **Mr David Bruce COCKS**  
Applicant

And **Department of Defence**  
Respondent

Tribunal Rear Admiral James Goldrick AO CSC RAN (Retd)  
(Presiding Member)  
Ms Josephine Lumb

Appearances Mr Cocks by telephone  
Ms Allison Augustine, Directorate of Honours and Awards  
Mr Brett Mitchell, Directorate of Honours and Awards

Hearing 26 October 2018 in Canberra

#### **DECISION**

On 13 December 2018 the Tribunal decided to affirm the decision under review that Mr David Cocks is not eligible for the award of the Australian Active Service Medal 1945-1975 with Clasp 'MALAYSIA'.

#### **CATCHWORDS**

*DEFENCE AWARD – Australian Active Service Medal 1945-1975 with Clasp 'MALAYSIA' – eligibility criteria – whether the service should be recognised*

#### **LEGISLATION**

*Defence Act 1903 – Part VIII C – Sections 110T, 110VB(2)*  
*Defence Amendment Regulations (No.1) 2010 – Schedule 3 Part 2*  
*Defence Regulation 2016*  
*Commonwealth of Australia Gazette No S18, Letters Patent for the institution of the Australian Active Service Medal 1945-1975, dated 19 January 1998.*  
*Commonwealth of Australia Gazette No S141 Declaration & Determination under the Australian Active Service Medal 1945-1975 Regulations - dated 23 July 2010.*

## REASONS FOR DECISION

### Introduction

1. Mr David Cocks seeks review of a decision that he is not eligible for the award of the Australian Active Service Medal 1945-1975 with Clasp 'MALAYSIA' (AASM 1945-1975 with Clasp 'MALAYSIA'). Mr Cocks asserts that his service in the Permanent Naval Forces, in particular his service in HMAS *Supply* during the period from 3 January 1964 to 12 July 1964, qualifies him for the award. The Department of Defence's contention is that Mr Cocks did not serve on any ships that were involved in a 'prescribed operation' for the purpose of the relevant Regulations.

### Tribunal Jurisdiction

2. Pursuant to s110VB(2) of the Defence Act 1903 (the Defence Act) the Tribunal has jurisdiction to review a reviewable decision if an application is properly made to the Tribunal. The term *reviewable decision* is defined in s110V(1) and includes a decision made by a person within the Department of Defence to refuse to recommend a person for an award in response to an application. Part 6 of the *Defence Regulation 2016* set out the defence honours and awards reviewable by the Tribunal. Included in the defence awards set out in Part 6 is the AASM. Therefore, the Tribunal has jurisdiction to review decisions in relation to this award.

### Eligibility Criteria for the AASM 1945-75

3. The AASM 1945-1975 was established by Letters Patent on 11 December 1997 'for the purpose of according recognition to members of the Defence Force, and certain other persons, who rendered service in warlike operations'.<sup>1</sup>

4. The award of the medal is governed by Regulations set out in the Schedule to the Letters Patent<sup>2</sup> (the Regulations). Of particular relevance to Mr Cocks' application are the following Regulations:

2. *In these Regulations:*

... "*prescribed operation*" means an operation in respect of which a declaration has been made under regulation 3.

...

3. *The Governor-General, on the recommendation of the Minister, may declare a warlike operation in which members of the Defence Force were engaged at any time during the period that commenced on 3 September 1945 and ended on 13 February 1975, to be a prescribed operation for these Regulations.*

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<sup>1</sup> Commonwealth of Australia Gazette No. S18, 19 January 1998

<sup>2</sup> Commonwealth of Australia Gazette No. S18, Schedule, Regulations Governing the Award of the Australian Active Service Medal 1945-1975, 19 January 1998

4. (1) *The Medal may be awarded to the following persons who served in connection with a prescribed operation:*

- (a) a member, or a former member, of the Defence Force;*
- (b) a person in a class of persons determined by a Minister for these Regulations.*

*(2) The conditions for the award of the Medal are determined by the Governor-General on the recommendation of a Minister.*

*(3) The Medal may only be awarded to a person who fulfils the conditions for the award of the Medal.*

...

#### **Declaration in relation to the AASM 1945-1975 with Clasp 'MALAYSIA'**

5. Of particular relevance to Mr Cocks' application is the declaration made by the Governor-General under the Regulations on 23 July 2010 which sets out what constitutes a 'prescribed operation' for the purposes of awarding the AASM 1945-1975 with Clasp 'MALAYSIA':

*(b) declare, under regulation 3 of the Regulations, the following warlike operations in which members of the Australian Defence Force were engaged in the Indonesian Confrontation during the following periods to be a prescribed operation for the purpose of the Regulations:*

*(i) Defence Force activities in Brunei, North Borneo, and Sarawak during the period that commenced on 8 December 1962 and ended 23 December 1962;*

*(ii) Defence Force activities in Sabah, Sarawak and Brunei during the period that commenced on 24 December 1962 and ended on 14 September 1966;*

*(iii) Defence Force activities in the Malay Peninsula/Singapore during the period that commenced on 17 August 1964 and ended on 11 August 1966; and*

*(c) determine, under subregulation 4(2) of the Regulations, that the conditions for award of the Australian Active Service Medal 1945-1975 with Clasp 'MALAYSIA' ("the medal") for the prescribed operation are:*

*(i) the Medal may be awarded to a member of the Australian Defence Force who rendered service as such a member while allotted and posted as a member of the Australian element for duty to the prescribed operation;*

*(ii) the Medal may be awarded to a member of the Australian Defence Force who rendered service as such a member allotted as part of the contribution of a foreign Defence Force to the prescribed operation while on secondment or exchange with the foreign Defence Force;*

*(iii) the Medal may be awarded to a member of the Australian Defence Force who rendered service as such a member and who completed one operational sortie within the duration of the prescribed operation;*

*(iv) the Medal may be awarded to a member of the Australian Defence Force who qualified for the General Service Medal 1962 with Clasp 'BORNEO' in*

*accordance with the conditions for that award Command Paper 2466 dated September 1964;*

*(v) the Medal may be awarded to a member of the Australian Defence Force who qualified for the General Service Medal 1962 with Clasp 'MALAY PENINSULA' in accordance with the conditions for that award set out in Command Paper 3432 dated October 1967;*

*(vi) the Medal may be awarded to a member of the Australian Defence Force who qualified for the General Service Medal 1918 – 1962 with Clasp 'BRUNEI' in accordance with the conditions for that award set out in British Command Paper, Print Number (30793) dated July 1963;*

*(vii) the Medal may be awarded to a person who rendered service as part of the Australian element of the prescribed operation and who, in accordance with a determination by the Minister under paragraph 4(1)(b) of the Regulations, is in a class of persons who may be awarded the Medal.<sup>3</sup>*

### **Mr Cocks' Service Record**

6. Mr Cocks enlisted in the Permanent Naval Forces (PNF) on 8 May 1961, and served until he was discharged 'Free' on 16 June 1969. He served in sea-going vessels on the following dates:

- |                           |  |
|---------------------------|--|
| a) HMAS <i>Quickmatch</i> | 6 October 1961 – 8 April 1962  |
| b) HMAS <i>Sydney</i>     | 9 April 1962 – 28 April 1962<br>12 June 1962 – 17 June 1962<br>25 June 1962 – 28 June 1962   |
| c) HMAS <i>Vampire</i>    | 29 June 1962 – 30 June 1962<br>7 July 1962 – 12 December 1962<br>29 December 1962 – 11 August 1963<br>15 September 1963 – 12 December 1963 |
| d) HMAS <i>Supply</i>     | 3 January 1964 – 12 July 1964  |
| e) HMAS <i>Anzac</i>      | 26 February 1968 – 9 March 1968<br>20 January 1969 – 5 May 1969  |

7. For his service, Mr Cocks has been awarded the following:

- the Australian Service Medal 1945-1975 with Clasp 'FESR';
- the Australian Defence Medal; and
- the Pingat Jasa Malaysia

### **Mr Cocks' Evidence and Submissions**

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<sup>3</sup> Commonwealth of Australia Gazette No. S141 *Declaration & Determination under the Australian Active Service Medal 1945-75 with Clasp 'MALAYSIA'* dated 23 July 2010

8. In summary, Mr Cocks' position is that, due to his service in HMAS *Supply* during the period 3 January 1964 to 12 July 1964 inclusive, he is entitled to the AASM 1945-1975 with Clasp 'MALAYSIA'.

9. In his Application for Review to the Tribunal dated 20 December 2017, Mr Cocks elaborates that while in HMAS *Supply*:

*"We steamed up and down the coast mainly at night refueling gunboats, minesweepers and small craft that were trying to keep Malaysia safe."*<sup>4</sup>

10. In a written submission to the Tribunal dated 6 June 2018, Mr Cocks made the following additional observations in support of his application:

- I. *HMAS Supply was involved in refueling ships, gunboats and minesweepers off the coast of Malaysia and Singapore during operation "LIGTAS". This operation commenced on 14<sup>th</sup> May 1964 and completed on 9<sup>th</sup> June 1964.*
- II. *I served on HMAS Supply from 29<sup>th</sup> November 1963 to 7<sup>th</sup> August 1964 as an Able Seaman and was involved in refueling 29 ship refuels during this period of operation "LIGTAS" as per Report of Proceedings for that period.*
- III. *In overseas service on HMAS Supply it is detailed that Supply was in PNG area for 19 days. We only spent 1 day at Manis [sic] Island, but were in operational area for over 30 days.*
- IV. *In addition I served on HMAS Quickmatch and HMAS Vampire during the Indonesian "confrontation".*<sup>5</sup>

11. During the hearing, Mr Cocks gave oral evidence consistent with his written submissions and confirmed that he was relying on his service aboard HMAS *Supply* as rendering him eligible for the award of the AASM 1945-1975 with Clasp 'MALAYSIA'.

### **Defence position**

12. In summary, the Defence position is that Mr Cocks did not serve on any ships that were involved in a '*prescribed operation*' for the purpose of the Regulations.

13. In the decision under review, it is noted that:

*"Ship movement records from HMAS Supply confirm that while you [Mr Cocks] were posted to the ship it did not enter the prescribed operation for the purpose of the Regulations in accordance with Commonwealth of Australia Gazette S141 -*

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<sup>4</sup> Mr David Bruce Cocks Application for Review of Decision dated 20 December 2017.

<sup>5</sup> Mr David Bruce Cocks Submission to the Tribunal – attachment to email dated 6 June 2018.

*Declaration & Determination under the Australian Active Service Medal 1945-1975 with Clasp 'MALAYSIA'.*<sup>6</sup>

14. Defence therefore recommended that the decision under review be affirmed. At the hearing the Defence representatives briefly confirmed the Department's position as set out in its written submissions.

### **Tribunal Consideration**

15. The Tribunal is required to undertake a merits review and is bound to apply the eligibility criteria which applied at the date of the decision under review.<sup>7</sup> In this case, the reviewable decision is that of Ms Donna Burdett, Acting Assessments Manager, Directorate of Honours and Awards, on 7 December 2017.<sup>8</sup>

16. The eligibility criteria of particular relevance to Mr Cocks' matter are therefore those set out at paragraph 6 above. The Tribunal has no discretion as to which eligibility criteria it must apply.

17. The critical criterion is that a member of the Defence Force must have rendered service in a '*prescribed operation*' declared by the Governor-General as such.

18. It is not disputed that Mr Cocks served in HMAS *Supply* during the period 3 January 1964 to 12 July 1964 inclusive. Mr Cocks confirmed during the hearing that it was his service on HMAS *Supply* that he relies upon in making his application for review to the Tribunal.

19. Consequently, the key issue for the Tribunal was whether HMAS *Supply* participated in a '*prescribed operation*' for the purposes of the Regulations. The Tribunal considered, however, that Mr Cocks' service in other HMA Ships committed to the Far East Strategic Reserve between December 1961 (HMAS *Quickmatch*'s deployment) and July 1963 (HMAS *Vampire*'s deployment) should be assessed in order to be sure that no other grounds for eligibility for the AASM 1945-1975 with Clasp 'MALAYSIA' might exist.

20. The Tribunal carefully considered all the material presently before it, including Mr Cocks' service records, the extracts of ship movement records supplied by the Naval History Section, Sea Power Centre Australia which covered Mr Cocks' seagoing service, and the Reports of Proceedings for HMAS *Supply* during the period Mr Cocks was aboard that vessel. In addition to his service in other HMA Ships, the Tribunal was satisfied that Mr Cocks was aboard HMAS *Supply* from 3 January 1964 to 12 July 1964 inclusive. The Tribunal could not, however, be satisfied that during that period HMAS *Supply* entered any of the areas defined as qualifying for service in the '*prescribed operation*' for the purpose of the Regulations, nor

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<sup>6</sup> DHA Letter AL17469705 (DHA-R57934) dated 7 December 2017.

<sup>7</sup> Defence Act 1903: s 110VB(6)

<sup>8</sup> DHA Letter AL17469705 (DHA-R57934) dated 7 December 2017.

did any of the other ships in which Mr Cocks served during his time onboard. The Tribunal notes that this is a determinative consideration in this matter.

### **Finding**

21. For the reasons given above, the Tribunal finds that Mr Cocks is not eligible for the AASM 1945-1975 with Clasp 'MALAYSIA' as he did not participate in a '*prescribed operation*' for the purpose of the Regulations. The Tribunal has no discretion in this matter. The Governor-General's declaration made under the Regulations is clear and unequivocal in relation to the dates and geographical locations attached to the prescribed operation for the purposes of the award concerned. Accordingly, the Tribunal finds that the decision of the Directorate is correct and is therefore affirmed.

### **DECISION**

22. The Tribunal decided to affirm the decision that Mr Cocks is not eligible for the award of the AASM 1945-1975 with Clasp 'MALAYSIA'.