



## Australian Government

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### Defence Honours and Awards Appeals Tribunal

#### **Hammond and the Department of Defence [2018] DHAAT 09 (2 August 2018)**

File Number            2018/14

Re                        **Mr Russell Hammond**  
Applicant

And                      **Department of Defence**  
Respondent

**Tribunal**              Mr Mark Sullivan, AO (Presiding Member)  
Brigadier Mark Bornholt, AM (Retd)  
Ms Josephine Lumb

**Hearing Date**        21 June 2018

#### **DECISION**

On 2 August 2018 the Tribunal decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Mr Russell Hammond is not eligible for the award of the Naval General Service Medal 1915-62 with Clasp 'MALAYA'.

#### **CATCHWORDS**

DEFENCE AWARDS - Naval General Service Medal 1915-62 – Clasp Malaya - qualifying service - naval service afloat – patrolling off the Malayan coast - service in Singapore

#### **LEGISLATION**

*Defence Act 1903 – ss 110T, 110VB(2)*

*Defence Force Regulations 1952 – Reg 93C*

*United Kingdom Command Paper 7907 – The Naval General Service Medal, The General Service Medal (Army and Royal Air Force), Service in Malaya since 16<sup>th</sup> June 1948 dated March 1950*

*Admiralty Fleet Order 2466 of 1960 dated 23 September 1960*

## REASONS FOR DECISION

### Introduction

1. The applicant, Mr Russell Hammond seeks review of a decision of the Directorate of Honours and Awards of the Department of Defence (the Directorate) that he is not eligible for the award of the Naval General Service Medal 1915-62 with Clasp 'MALAYA' (the NGSM 1915-62 with Clasp 'MALAYA'). On 16 August 2010 Mr Hammond submitted an on-line application to the Directorate requesting a review of his eligibility for the NGSM 1915-62 with Clasp 'MALAYA', based upon his service as a member of the ship's company of the aircraft carrier HMAS *Melbourne* in 1957 and 1960. On 10 November 2010 the Directorate advised Mr Hammond that he was not eligible for the NGSM 1915-62 with Clasp 'MALAYA' as he had only 'aggregated 21 days qualifying service'.<sup>1</sup>

2. On 22 February 2018 Mr Hammond submitted an application to the Tribunal seeking review of the Directorate's decision to not recommend him for the NGSM 1915-62 with Clasp 'MALAYA'.<sup>2</sup>

### Tribunal Jurisdiction

3. 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. Regulation 93C of the *Defence Force Regulations 1952* defines a defence award as being those awards set out in Part 2 of Schedule 3.<sup>3</sup> Included in the defence awards set out in Part 2 is the Naval General Service Medal 1915-62. Therefore, the Tribunal has jurisdiction to review the decision by the Directorate to refuse to recommend Mr Hammond for the award. The role of the Tribunal is to determine whether the decision of the Directorate is the correct or preferred decision having regard to the applicable law and the relevant facts.

### Conduct of the Review

4. In accordance with its *Procedural Rules 2011*, on 1 March 2018 the Tribunal wrote to the Secretary of the Department of Defence informing him of Mr Hammond's application for review and requested a report on the material

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<sup>1</sup> DHA Letter to Mr Hammond, R35287 2010/1000040/230(27) dated 10 November 2010 – Folio #61

<sup>2</sup> Application for Review of Decision dated 22 February 2018 – Folio #1

<sup>3</sup> Under Section 85 of the *Defence Regulation 2016*, the *Defence Force Regulations 1952* continue to apply to an application made under those regulations before their repeal on 1 October 2016. As Mr Hammond's application was made on 16 August 2010, the *Defence Force Regulations 1952* apply.

questions of fact and the reasons for the decision to refuse to recommend Mr Hammond for the NGSM 1915-62 with Clasp 'MALAYA'. A written submission was received from the Directorate on 2 May 2018.<sup>4</sup> The Defence submission was provided to Mr Hammond on 2 May 2018. On 10 May 2018 the Tribunal contacted Mr Hammond to remind him of the need to make comments on the Defence submission.<sup>5</sup>

5. The Tribunal met on 24 May 2018 and considered the material provided by Defence and Mr Hammond. The Tribunal confirmed the scope of the review, the decision under review, jurisdiction and drafted questions for the subsequent hearing. As part of this initial consideration, the Tribunal sponsored research in the United Kingdom to confirm the eligibility criteria for the NGSM 1915-62 with Clasp 'MALAYA'.

6. On 25 May 2018 Mr Hammond made an annotation on the Tribunal letter of 10 May 2018 stating:

*I will have to put this on hold or cancel ... not well and too mind (sic) strain to carry on.*<sup>6</sup>

7. On 6 June 2018 the Tribunal having noted Mr Hammond's age and concerns, called him and confirmed his desire to continue the review process and to arrange a hearing as soon as practicable.<sup>7</sup>

8. The Tribunal heard oral evidence from Mr Hammond in a telephone hearing on 21 June 2018. The Respondent was represented at the hearing by Ms Margot Kropinski-Myers, Director Honours and Awards; Mr John Perryman, Director of Naval History, Sea Power Centre; Mr Mark Jordan, Manager Service Assessments and Mr Brett Mitchell, Research Officer.

9. A transcript of the hearing and further research material relied on by the Tribunal was provided to Mr Hammond for comment on 28 June 2018, with a request that comments be provided by 13 July 2018. Noting that these comments were not provided, the Tribunal Secretariat attempted to contact Mr Hammond via telephone on several occasions between 27 July and 1 August. On 1 August 2018, Mr Hammond confirmed that he wished the Tribunal to finalise the review.

## **Mr Hammond's Service Record**

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<sup>4</sup> DH&A Review of Recognition, 2018/0027, R35287 Mr Hammond dated 2 May 2018 – Folio #22

<sup>5</sup> DHAAT Letter to Mr Hammond, 2018/361 dated 10 May 2018 – Folio #63

<sup>6</sup> Ibid.

<sup>7</sup> Record of Conversation Koppelman/Hammond of 6 June 2018 – Folio #64

10. According to the Defence submission, Mr Hammond enlisted in the Permanent Naval Force on 4 September 1947 and discharged on 3 September 1967 after his engagement period expired.<sup>8</sup> During his twenty-year career he served in numerous vessels, however it is mainly his service aboard the aircraft carrier HMAS *Melbourne* which is relevant to this matter. During the hearing Mr Hammond confirmed that he was employed as an electrical artificer aboard HMAS *Melbourne*. Mr Hammond's service record indicates that he served in HMAS *Melbourne* during the following periods:

- 26 September 1955 to 19 December 1955,
- 9 February 1956 to 15 July 1956,
- 15 March 1957 to 3 April 1957,
- 18 April 1957 to 14 July 1957, and
- 3 August 1959 to 30 September 1960.<sup>9</sup>

11. Also, of relevance to this matter, Mr Hammond served in the destroyer HMAS *Tobruk* from 4 to 17 April 1957, between periods of service in *Melbourne*.

12. For his service in the Navy Mr Hammond was awarded the following defence awards, and foreign awards:

- Australian Active Service Medal 1945-75 with Clasp 'MALAYA',
- Australian Service Medal 1945-75 with Clasps 'FESR' and 'PNG',
- Australian Defence Medal,
- Naval Long Service and Good Conduct Medal, and
- Pingat Jasa Malaysia.

### **Mr Hammond's Submission**

13. Mr Hammond submitted that he was entitled to the NGSM 1915-62 with Clasp 'MALAYA' as he had completed 'more than the required 28 days afloat between 16 June 1948 and 31 July 1960'.<sup>10</sup> He stated he was inside the qualifying area in HMAS *Melbourne* whilst the ship was deployed to the Far East Strategic Reserve (FESR). In support of his claim he supplied the HMAS *Melbourne* Report of Proceedings (ROP) for the relevant periods and evidence that his service in the FESR had been declared as operational for the purposes of the *Veterans' Entitlement Act* (VEA).<sup>11</sup>

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<sup>8</sup> DH&A Review of Recognition, 2018/0027, R35287 Mr Hammond dated 2 May 2018, P.10 – Folio #25

<sup>9</sup> DH&A Review of Recognition, 2018/0027, R35287 Mr Hammond dated 2 May 2018 – Folio #56

<sup>10</sup> Application for Review of Decision dated 22 February 2018 – Folio #3

<sup>11</sup> DVA Letter to Mr Hammond, QSR00939 dated 16 August 2007 – Folio #8

14. Mr Hammond asserted that he had completed '32 days in total in the FESR' onboard HMAS *Melbourne* within the qualifying area on the following dates:

- 13 June 1957 to 22 June 1957 10 days
- 18 April 1957 to 24 April 1957 7 days
- 14 June 1960 to 14 June 1960 1 day
- 13 May 1960 to 16 May 1960 4 days
- 14 April 1960 to 23 April 1960 10 days

15. Mr Hammond also asked that the Tribunal take into account the days he spent on 'Operation ASTRA' in April/May 1957 as potentially being qualifying service for the NGSM 1915-62 with Clasp 'MALAYA' and that his service in HMAS *Tobruk* from 4 to 17 April 1957 be examined as possible qualifying service for the award.<sup>12</sup>

### **Naval General Service Medal 1915-62 with Clasp 'MALAYA'**

16. The Naval General Service Medal (1915-62) was instituted in 1915 by His Majesty King George V to recognise service by the Royal Navy and Royal Marines in minor naval operations for which no separate medal was intended.<sup>13</sup> The Army/Air Force equivalent was the General Service Medal (1918). Both these medals were replaced by a common General Service Medal in 1962.

17. The NGSM 1915-62 with Clasp 'MALAYA' was established in March 1950 under United Kingdom Command Paper 7907.<sup>14</sup> The Command Paper declared that the award was for 'service in Malaya since 16 June 1948'. The award is available to Australian servicemen and women who satisfy the eligibility criteria.

18. The Command Paper states that the NGSM 1915-62 with Clasp Malaya could be granted subject to the prescribed conditions which included:

3. (i) *Naval Service Afloat.* - *The qualifying service will be twenty-eight days since 16th June, 1948, inclusive, in ships or craft patrolling off the Malayan coast in support of operations against bandits.*

(ii) *Naval Service Ashore.* - *The qualifying period will be service of one day or more on duty ashore in the Federation of Malaya attached to other eligible Forces or Police since 16th June, 1948, inclusive.*

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<sup>12</sup> Record of Conversation Kopplemann/Hammond of 6 June 2018 – Folio #64

<sup>13</sup> Joslin, Litherland and Simpkin. *British Battles and Medals*. pp. 233–237. Published Spink, London. 1988.

<sup>14</sup> *Terms of Award of the Naval General Service Medal and the General Service Medal (Army and Royal Air Force) for Service in Malaya Since 16<sup>th</sup> June 1948*; Command 7907, March 1950 – Folio #36

19. Admiralty Fleet Order (AFO) 2466/1960 specified the terminal date for the NGSM as 31 July 1960.<sup>15</sup> The AFO stated:

*... the Queen has now approved that the terminal date for the qualifying service for the award of the NGSM for service in Malaya shall be 31<sup>st</sup> July, 1960, and that no service after that date shall be a qualification for the medal ...*

20. The AFO provides further clarification of the conditions for the award:

...

2. *The conditions for the award are as set forth below:*

*(a) Service Afloat. The qualifying service will be twenty-eight days between 16<sup>th</sup> June, 1948 and 31<sup>st</sup> July, 1960, inclusive, in ships or craft patrolling off the Malayan coast in support of operations against bandits, or one journey between 16<sup>th</sup> June, 1948, and 31<sup>st</sup> July, 1960, inclusive, in a Harbour Defence Motor Launch or other small craft, up a river or creek in the Federation of Malaya, in close support of operations against bandits.*

...

21. **Qualifying Area.** The conditions stated in the Command Paper and the AFO do not specify the actual qualifying area other than ‘patrolling off the Malayan coast’. This was subsequently addressed in the *Review of Service Anomalies in Respect of South-East Asian Service 1955-75* (the Mohr Review).<sup>16</sup> Following the Mohr Review, the Minister Assisting the Minister for Defence approved a Defence recommendation to declare the qualifying area as:

*... the area of operations (AO) for RAN service in support of operations in Malaya 1955-60 to be 12 nautical miles ...*<sup>17</sup>

## **Defence Submission**

22. The Defence submission states that Mr Hammond is not eligible for the NGSM 1915-62 with Clasp ‘MALAYA’ as he ‘did not aggregate 28 days or more of qualifying service in accordance with *Command Paper 7907* and *Admiralty Fleet Order 2466/1960*, in the prescribed area of operations’.<sup>18</sup> Whilst there were

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<sup>15</sup> *Admiralty Fleet Order 2466/1960* – H&A 13/58: EFO 853/59 dated 23 September 1960 – Folio #40

<sup>16</sup> *Review of Service Anomalies in Respect of South-East Asian Service 1955-75* dated February 2000

<sup>17</sup> ADHQ PE2000-7307 CMP 520/2000 dated 29 August 2000 – Folio #44

<sup>18</sup> DH&A Review of Recognition, 2018/0027, R35287 Mr Hammond dated 2 May 2018, P.25 – Folio #27

contradictory statements made by Defence as to whether the total number of days of service was 21 or 22, this is largely immaterial as the main issue is whether or not Mr Hammond's service on HMAS *Melbourne* and *Tobruk* can be considered to be qualifying service for the purpose of the award and if so, he would need to complete 28 days of aggregated service.

23. In its submission Defence claimed that 'an Amendment Supplement was made into *Command Paper 7907* in 1959' which specifically removed service in Singapore from the eligibility criteria from 1 February 1959.<sup>19</sup> Defence quoted a Department of External Affairs Cablegram from the Secretary of State for Commonwealth Relations, London dated 27 January 1959 as the authority for the amendment.<sup>20</sup> The Cablegram stated:

*The Queen has approved that service specifically in Singapore will cease to be a qualification for the award of the General Service Medal (Army and Royal Air Force) as from 1<sup>st</sup> February, 1959 ...*

24. Defence stated in the submission that:

*... this Cablegram was taken to also apply to the NGSM 1915-62 with Clasp 'MALAYA' ...*

and

*... the Amendment Supplement is believed to be the Cablegram from the Secretary of State for the Commonwealth ...*

25. Defence's submission stated that in September 2000, the Acting Director of Defence Honours and Awards advised the Naval Association of Australia that the decision regarding the exclusion of service in Singapore from 1 February 1959 was 'amended into *Command Paper 7907* in an Amendment Supplement in 1959'. The Acting Director also stated at the time that the subsequent 'Ministerial Determination for warlike service will have to specifically exclude the colony of Singapore'.<sup>21</sup>

26. Whilst it is not clear in the Defence submission whether the claimed 'amendment' was used to deny Mr Hammond's service or not, it appears that Defence has allowed his service in Singapore in their calculations for 1957 but not for 1960. For example, the HMAS *Melbourne* ROP for 18 to 24 April and 13 to 22 June 1957 indicates the ship was in Singapore, either anchored in the harbour or berthed at the wharf. Mr Hammond's claims for these two periods are accepted in the Defence

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<sup>19</sup> Ibid. P.23

<sup>20</sup> Department of External Affairs Inward Cablegram '*General Service Medal (Army and Royal Air Force) Malaya*' dated 27 January 1959 – Folio #42

<sup>21</sup> DHA Fax to ADML (sic) Hudson dated 5 September 2000 – Folio #43

submission as providing aggregated service of 7 and 10 days respectively. By contrast, his claims for 10 days of similar service in Singapore from 14 to 23 April 1960 are assessed by Defence as being eligible only on the first and last day of the period.

27. As a result of the application of these calculations, including the addition of service on 13 May and 14 June 1960, Defence concluded that Mr Hammond's aggregated service did not meet the 28 day threshold and he was therefore not eligible for the NGSM 1915-62 with Clasp 'MALAYA'.

### **The Tribunal's Consideration**

28. **General.** The Tribunal is required to review decisions 'on the merits'. This requires an examination of the merits of the matter in dispute rather than the lawfulness of the decision under review.<sup>22</sup> The merits review revolves around the evidence and accordingly, the Tribunal conducts an independent review, with values, expertise, methods and procedures of its own, and not those of the decision-maker.

29. The facts, law and policy aspects of the decision are all considered afresh and a new decision made.<sup>23</sup> The Tribunal reviews the decision, and not the reasons for the decision. In doing so, there is no legal onus of proof, and there is no presumption that the decision was correct.<sup>24</sup> The Tribunal is bound to make what it regards as the 'correct or preferable' decision and must reach a decision that is legally and factually correct.

30. **The Reviewable Decision.** There is no dispute that the *reviewable decision* is the decision by the Directorate on 10 November 2010 to refuse to recommend Mr Hammond for the NGSM 1915-62 with Clasp 'MALAYA' as he only 'aggregated 21 days qualifying service'. The Tribunal is therefore bound by the eligibility criteria that governed the making of that decision in 2010, as required by s110VB(6) of the Defence Act.

31. **Evidence of an Amendment to Command Paper 7907.** Apart from the Defence quoted Cablegram<sup>25</sup> (which does not mention the NGSM, nor is it addressed to Navy), there is no other evidence to support the Defence claim that Command Paper 7907 was amended in 1959 or at any time relative to the period in question. The Tribunal's research in the United Kingdom discovered a report by the *Committee on the Grant of Honours, Decorations and Medals* into Operational Awards and

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<sup>22</sup> *Council of Australian Tribunals Practice Manual* dated 7 April 2006 p.1.3.1.2

<sup>23</sup> Pearson, Linda, "Merit Review Tribunals", in Creyke, Robin and McMillan, John, *Administrative Law – the Essentials*, AIAL 2002, p. 68

<sup>24</sup> *McDonald v Director-General of Social Security* (1984) 1 FCR 354

<sup>25</sup> Department of External Affairs Inward Cablegram 'General Service Medal (Army and Royal Air Force) Malaya' dated 27 January 1959 – Folio #42



General Service Medals for Malaya conducted in September 1960.<sup>26</sup> The report states:

*... we have had under consideration the scale of award for operational service in the Federation of Malaya. The operations there are now both limited and sporadic. We should like to have recommended the bringing to an end of operational awards as on 31<sup>st</sup> December, 1959, but the Federation Government did not agree. The Federation Government ended the emergency officially on 31<sup>st</sup> July, 1960. We took the view, therefore, that on 31<sup>st</sup> July, 1960, the grant of awards on the operational scale should come to an end ...*

*We took the view that at the same time the grant of the Naval General Service Medal and the General Service Medal (Army and Royal Air Force) awarded for service in Malaya since 16<sup>th</sup> June, 1948, should come to an end ... no service in Malaya after 31<sup>st</sup> July, 1960, would qualify for either of these General Service Medals.*

*The Governments of the Commonwealth of Australia, of New Zealand and of the Federation of Malaya concur in what is proposed ...*

32. Additionally, the Tribunal examined the Acting Director of Defence Honours and Awards' statement in September 2000 that 'the subsequent Ministerial Determination for warlike service will have to specifically exclude the colony of Singapore'.<sup>27</sup> The Tribunal was of the view that the Director's comment about a Ministerial Determination was in all likelihood regarding the instrument which was struck for the Australian Active Service Medal with Clasp 'MALAYA' in 2001.<sup>28</sup> This instrument declared warlike operations:

*during the Malayan Emergency in the Federation of Malaya and the Colony of Singapore during the period that commenced on 16 June 1948 and ended on 31 July 1960*

33. The instrument discusses to two separate awards – the NGSM ((c)(iv)) and the GSM ((c)(v)), and refers to 'the conditions set out in Command Paper 7907 dated March 1950'. There is no mention of an Amendment or exclusion of service in Singapore in this instrument.

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<sup>26</sup> Report 867 by the Committee on the Grant of Honours, Decorations and Medals - *Operational Awards and General Service Medals for Malaya* dated 4 September 1960 – Folio #123

<sup>27</sup> DHA Fax to ADML Hudson dated 5 September 2000 – Folio #43

<sup>28</sup> *Commonwealth of Australia Gazette S102 Australian Active Service Medal 1945-75 Regulations* dated 27 March 2001

34. The Tribunal also notes that the 1993 Report of the *Committee of Inquiry into Defence Awards* examined the criteria for the NGSM.<sup>29</sup> The report stated that:

*the British High Commission, in a letter dated 9 November 1993, conveyed the following advice from the Ministry of Defence in London:*

*... the fact that no RAN ships are listed as being qualified for the NGSM clasp "MALAYA" is most likely to indicate that none met the stringent criteria laid down in Command Paper 7907 dated March 1950 ...*

*...the second key point is the qualification was limited to 'twenty eight days service afloat (between 16 June 1948 and 31 July 1960, inclusive) in ships or craft patrolling off the Malayan coast in support of operations against bandits ...*

35. There is once again no suggestion of an amendment to the Command Paper to exclude Singapore for the Navy and the qualifying period is declared as ending on 31 July 1960.

36. The Mohr Review also examined the question of ‘whether or not the NGSM with Clasp ‘MALAYA’ should have been awarded to members of the Royal Australian Navy who had appropriate qualifications’.<sup>30</sup> The report indicated that the issue had been a source of contention for many years and ‘remains so up until the present time’. There is no suggestion in the Mohr Review that Command Paper 7907 was ever amended and the report made a recommendation which accords with an end date for the award as being 31 July 1960. The report made reference to numerous United Kingdom letters regarding legislation and eligibility criteria but the Tribunal could find nothing in these documents which would suggest an amendment to Command Paper 7907.<sup>31</sup>

37. The Tribunal also noted that contemporary reviews of decisions regarding the NGSM with Clasp ‘MALAYA’ (*Young* 2013, *Dawson* 2014, *Martin* 2015, *Watson* 2015, *Sharland* 2015) all rely on Command Paper 7907 as the legislative authority for the NGSM 1915-62 with Clasp ‘MALAYA’. None of these reviews or the Defence furnished reports in relation to the reviews suggest that the Command Paper was ever amended.

38. **Finding in Relation to the Conditions for the Award of the NGSM 1915-62 with Clasp ‘MALAYA’.** The Tribunal does not accept that Cablegram 2020

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<sup>29</sup> Report of the Committee of Inquiry into Defence Awards dated 1993 p.39

<sup>30</sup> *Review of Service Anomalies in Respect of South-East Asian Service 1955-75* dated February 2000 p.27

<sup>31</sup> *Ibid.* p.28, p.29 and p.30

dated 27 January 1959 referring specifically to ‘the General Service Medal (Army and Royal Air Force) Malaya’ can be ‘taken to also apply to the NGSM 1915-62 with Clasp ‘MALAYA’ as asserted by Defence.

39. The Tribunal finds that Command Paper 7907 as it relates to the NGSM 1915-62 was not amended and that the Command Paper should therefore be used as the basis to assess eligibility for the NGSM 1915-62 with Clasp ‘MALAYA’, with the termination date being 31 July 1960 as declared in AFO 2466/60. During the hearing Defence conceded that, in hindsight, it was likely that the Command Paper had not been amended.<sup>32</sup>

40. **The RAN, the Strategic Reserve and the Malayan Emergency.**<sup>33</sup> The Tribunal noted that the on-line Navy history states that between 1955 and 1960 a total of thirteen Royal Australian Navy vessels served with the FESR. The history indicates that HMAS *Melbourne’s* contribution to the FESR was ‘largely symbolic’, was part of an annual ‘visit’ program and ‘much time was spent exercising at sea’. The Tribunal noted that Mr Hammond was recognised for this service through the award of the Australian Service Medal 1945-1975 with Clasp ‘FESR’ as he had rendered service in ships that had been formally allocated or assigned to the FESR and his service, which could include visits, inspections or other occurrences of a temporary nature, was for periods amounting in the aggregate to 30 days.

41. **Mr Hammond’s Service in the Qualifying Area.** There is no dispute and Defence conceded at the hearing that Mr Hammond served aboard HMAS *Melbourne* and HMAS *Tobruk* and that those ships entered the qualifying area of operations and remained within the area for a total of 33 days in 1957 and 1960.<sup>34</sup>

42. The ship’s ROP indicate that the vast majority of the time spent within the qualifying area during these 33 days was in Singapore either alongside the wharf or anchored off the harbour.

43. Mr Hammond’s evidence suggested that, whilst alongside in Singapore, the ship’s crew were conducting limited ‘refit’ including rearming, refuelling and general maintenance in preparation for deployment.<sup>35</sup> He described long days in hot conditions conducting critical repairs including ‘bagging pipes’. He said that he did have time off and occasionally had ‘shore leave’ if his work for the day was complete. He said that he was not attached for duty ashore to other units or forces when in

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<sup>32</sup> Oral Evidence, Mr B. Mitchell, Hearing, Canberra, 21 June 2018

<sup>33</sup> Perryman, J. *The RAN, the Strategic Reserve and the Malayan Emergency*  
<http://www.navy.gov.au/history/feature-histories/ran-strategic-reserve-and-malayan-emergency>  
accessed 18 June 2018

<sup>34</sup> Oral Submission, Mr B. Mitchell, Hearing, Canberra, 21 June 2018

<sup>35</sup> Oral Submission, Mr Hammond, Hearing, Canberra, 21 June 2018

Singapore although he did recall a visit with other senior sailors to the 'Naval Detention Camp'. He described the lead up and preparation in Singapore for 'Operation ASTRA in 1957 as the hardest time they ever had'.

44. The Tribunal noted that the HMAS *Melbourne* ROP records activities during these times in Singapore which were consistent with representational duties such as hosting diplomatic visits, receptions, open days and visits by school children. An active sports program was also conducted. Whilst there is no doubt that maintenance and replenishment would also have occurred during these periods, there is no evidence to suggest that any operational tasking was undertaken.

45. **Does Mr Hammond's Service in the Qualifying Area Also Meet the Conditions for the NGSM 1915-62 with Clasp 'MALAYA'?** To be eligible for the NGSM 1915-62 with Clasp 'MALAYA', Mr Hammond would be required to have completed:

*twenty-eight days between 16 June 1948 and 31 July 1960 inclusive, in ships or craft patrolling off the Malayan coast in support of operations against bandits, or service of one day or more on duty ashore in the Federation of Malaya attached to eligible Forces or Police ...*

46. There is no evidence to suggest that Mr Hammond was ever on duty ashore in the Federation of Malaya or that he was ever attached to eligible Forces or the Police. Mr Hammond confirmed this during the hearing.

47. The stated conditions for the award clearly require that Mr Hammond's service be:

*... in ships or craft patrolling off the Malayan coast in support of operations against bandits ...*

48. The Tribunal considered that this matter turned on the definition of 'patrolling' and that service in Singapore, whilst occurring within the declared operational area, was not of itself a material determinate of eligibility. During the hearing Defence stated that it was not aware of any agreed definition of 'patrolling' and that in the absence of such definition, the plain meaning of the term would be appropriate. Defence suggested that 'patrolling' activities would usually involve the conduct of surveillance, particularly in relation to an aircraft carrier such as HMAS *Melbourne* as this would allow it to then deploy its aviation assets to prosecute missions.<sup>36</sup>

49. The Tribunal was of the view that the plain meaning of 'patrolling' in a naval sense would involve moving through or traversing an area with the purpose of

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<sup>36</sup> Oral Submission, Mr J. Perryman, Hearing, Canberra, 21 June 2018

conducting reconnaissance or surveillance or to keep watch over an area by regularly traveling around or through it. Furthermore, in this instance, HMAS *Melbourne* would not only have needed to have been conducting ‘patrolling’ activities, but these patrols would need be within the qualifying area and also clearly ‘in support of operations against bandits’.

50. Relying on the plain meaning of the term ‘patrolling’, the Tribunal finds that there is no evidence that HMAS *Melbourne* conducted patrolling activities off the Malayan coast in support of operations against bandits. Accordingly, despite Mr Hammond serving aboard this ship and HMAS *Tobruk* for a period in the aggregate of 33 days within the qualifying area, he cannot meet the conditions for the award of the NGSM 1915-62 with Clasp ‘MALAYA’.

51. **Service on Exercise ASTRA.** The Tribunal noted Mr Hammond’s request that during the conduct of the review, his service ‘on Operation ASTRA’ in April 1957 also be considered as potential qualifying service.<sup>37</sup> The Tribunal noted that the HMAS *Melbourne* ship’s log records participation on ‘Exercise Astra’ in Singapore from 18 to 24 April 1957.<sup>38</sup> The Tribunal was of the view that this entry was in all likelihood a typographical error as the HMAS *Melbourne* ROP for the month of April 1957 records ‘ASTRA 24<sup>th</sup> to 30<sup>th</sup>’.<sup>39</sup> The Tribunal noted from the report that the activity was a Southeast Asia Treaty Organization (SEATO) Exercise which commenced on 24 April 1957 when the ship departed Singapore. The Tribunal also accessed the Exercise ASTRA file and forwarded a copy of this file to Mr Hammond.<sup>40</sup> The file indicates that ASTRA was a significant SEATO coalition exercise and whilst the ship on occasion entered the qualifying area for the NGSM (the force anchored for two nights 27-29 April at Pulau Tioman on the coast of Malaya), the planning document indicates:

*units participating will be ordered to keep clear of Indonesian territorial waters*

52. Furthermore, a careful reading of the HMAS *Melbourne* ROP indicates that the exercise had nothing to do with ‘patrolling in support of operations against bandits’ including the time spent at anchor off Pulau Tioman.

53. Accordingly, the Tribunal considered that Mr Hammond’s service in HMAS *Melbourne* during Exercise ASTRA cannot be considered to be qualifying service for the purposes of the NGSM 1915-62 with Clasp ‘MALAYA’.

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<sup>37</sup> Record of Conversation Kopplemann/Hammond of 6 June 2018 – Folio #64

<sup>38</sup> HMAS *Melbourne* Ship Log – Folio #50

<sup>39</sup> HMAS *Melbourne* ROP May 1957 – Folio #93

<sup>40</sup> NAA: A1838 688/25/1, *SEATO - Naval and Military Exercises - Exercise ASTRA*

54. **Eligibility for Awards and the Veterans' Entitlement Act.** The Tribunal noted Mr Hammond's evidence that his service with the FESR had been declared as operational for the purposes of the VEA.<sup>41</sup> The Tribunal dismissed the implied linkage to the VEA as this is different legislation for different purposes and is not related to medallic recognition. The VEA and declarations made pursuant to it, provide for repatriation benefits not defence awards.

### **Finding**

55. The Tribunal finds that Mr Hammond rendered service aboard HMAS *Melbourne* and HMAS *Tobruk* for a total of 33 days in 1957 and 1960 when the ships entered and remained within the qualifying area for the NGSM 1915-62 with Clasp 'MALAYA'. The Tribunal finds that Mr Hammond's service cannot be classified as 'patrolling off the Malayan coast in support of operations against bandits', and accordingly, he does not meet the eligibility criteria for the award of the NGSM 1915-62 with Clasp 'MALAYA'.

### **DECISION**

56. The Tribunal decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Mr Russell Hammond is not eligible for the award of the Naval General Service Medal 1915-62 with Clasp 'MALAYA'.

### **RECOMMENDATION**

57. **Commonwealth Precedent.** The Tribunal notes that in relation to the conditions for the NGSM 1915-62 with Clasp 'MALAYA', the New Zealand Defence Force declares the award to be for eligible service between 16 June 1948 and 31 July 1960.<sup>42</sup> Significantly, a note to their schedule, which also requires '28 days service in ships or craft patrolling off the Malayan coast in support of operations against bandits' states:

*... days in port in Singapore or in Malayan ports cannot be counted towards the required 28 days service ...*

58. The Tribunal discussed this with Defence during the hearing and, as a result of that discussion, now recommends that Defence consider making a note in the Honours and Awards Manual to the effect that, when considering future claims for the NGSM 1915-62 with Clasp 'MALAYA', days spent in Singaporean or Malayan ports should not be counted towards the required 28 days service.

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<sup>41</sup> DVA Letter to Mr Hammond, QSR00939 dated 16 August 2007 – Folio #8

<sup>42</sup> NZDF Medals <http://medals.nzdf.mil.nz/category/h/h20.html> *The Naval General Service Medal 1915-62* accessed 18 June 2018