



Australian Government

Defence Honours and Awards Appeals Tribunal

John Fitzgerald and the Department of Defence [2014] DHAAT 17 (7 May 2014)

File Number(s) 2013/011

Re **John Francis Fitzgerald**
Applicant

And **Department of Defence**
Respondent

Tribunal Brigadier G. Bornholt AM, CSC (Retd) (Presiding Member)
Air Commodore M. Lax OAM, CSM (Retd)

Hearing Date 12 February 2014

DECISION

On 7 May 2014 the Tribunal decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Mr John Francis Fitzgerald is not eligible for the award of the Australian Service Medal 1945-75 Clasp 'SE ASIA'.

CATCHWORDS

DEFENCE AWARD – Australian Service Medal 1945-75 Clasp 'SE ASIA'

LEGISLATION

Defence Act 1903 – ss 110T, 110V, 110VA, 110VB(2)
Defence Force Regulations 1952 - reg 93C and Schd 3
Australian Service Medal 1945-1975 Letters Patent and Regulations 1995
Australian Service Medal 1945-1975 Regulations 2001

REASONS FOR DECISION

Introduction

1. The applicant, Mr John Francis Fitzgerald (Mr Fitzgerald), a former member of the Royal Australian Navy (RAN), seeks review of a decision of the Directorate of Honours and Awards of the Department of Defence (the Directorate), to refuse to recommend him for the Australian Service Medal 1945-1975 Clasp 'SE ASIA' (ASM 1945-75 Clasp 'SE ASIA'). Mr Fitzgerald's application for the award has been made on the basis of his service in the RAN between 1 November 1971 and 17 April 1972.

Mr Fitzgerald lodged an application with the Directorate for the award of the ASM 1945-75 Clasp 'SE ASIA' on 4 December 2012. On 4 March 2013, the Directorate refused his application. On 2 April 2013, Mr Fitzgerald lodged an application for review with the Tribunal to appeal the decision of the Directorate to refuse to recommend him for the award.

The Tribunal's jurisdiction

3. There is no dispute that the Tribunal has jurisdiction to hear and determine Mr Fitzgerald's application for review (see ss 110V, 110VA and 110VB(2) of the *Defence Act 1903* and reg 93C of the *Defence Force Regulations 1952*). The role of the Tribunal is to determine whether the decision of the Directorate is the correct and preferred decision having regard to the applicable law and the relevant facts.

Steps taken in the conduct of this review

4. In accordance with the *Defence Honours and Awards Appeals Tribunal Procedural Rules 2011 (No.1)*, on 8 May 2013, the Tribunal wrote to the Secretary of the Department of Defence informing him of Mr Fitzgerald's application for review and requesting that he provide a report. The Directorate, on behalf of the Secretary, provided the Tribunal with a report on 5 June 2013. In that report, the Directorate confirmed its position that Mr Fitzgerald's service did not meet the eligibility criteria for the award he sought. On 14 June 2013, a copy of the report was forwarded to Mr Fitzgerald for comment. Mr Fitzgerald chose not to comment in writing but instead responded at a subsequent hearing of the Tribunal.

5. The Tribunal met on 28 November 2013 to consider the material provided by Mr Fitzgerald and the Directorate and scheduled a hearing for 12 February 2014. The hearing was held in Canberra and attended by the Directorate with Mr Fitzgerald participating by telephone. Subsequent to the hearing, the Tribunal wrote to Defence on 14 February 2014 requesting additional information be provided by 28 February 2014. Defence responded on 24 March 2014.

Background to the Application

6. The British Commonwealth Far East Strategic Reserve (FESR) was established in 1955 to deter against communist Chinese aggression in South East Asia

and confront continued armed Malayan communist terrorism. Australia announced its decision to contribute units from the Navy, Army and Air Force to FESR in April 1955. The government agreed that the Navy contribution to FESR could be:

... employed in defence of the Federation of Malaya and Singapore and of the sea communications in the Malayan area against external aggression... (and) as far as possible, H.M.A. ships allocated to the Strategic Reserve be detailed for flag showing duties in South East Asian waters in order that their participation in the Strategic Reserve may be fully appreciated in the countries in this area.¹

7. FESR remained in place for the next 16 years, but with the emerging British Government policy of their withdrawal from East of Suez by the end of 1971, the British Government sought to maintain a 'modest permanent force' in the South East Asian region. A combined force from Australia, New Zealand and the United Kingdom was proposed to allow for greater defence efficiencies, as a deterrent to armed attack or the threat of such attack, and to be gradually integrated with forces from Malaysia and Singapore. The term ANZUK was adopted for this combined force which came into being from 31 October 1971. ANZUK at its peak comprised approximately 9,000 personnel, the greater majority of whom came from Australia. The initial ANZUK force commander was an Australian Rear Admiral. Australia's military contribution to ANZUK, in addition to RAAF and Army units, included one RAN escort permanently based in Singapore, with other RAN ships visiting the area for exercises from time to time.²

8. As part of the changing circumstances in South East Asia, the Five Power Defence Arrangements (FPDA) also came into effect and replaced arrangements such as ANZAM³ and the FESR.⁴ The Five Powers were Australia, New Zealand, the United Kingdom, Malaysia and Singapore. ANZUK was the direct successor to ANZAM and FESR⁵ and while not an integral part of FPDA, it essentially operated as its naval element. ANZUK as a force was formally disbanded in December 1974.⁶ Australia's contribution to ANZUK had completely ceased by April 1975 and all activities were subsumed under the FPDA.⁷

9. The period of qualifying service with ANZUK for the purposes of Australian medallic recognition is from 31 October 1971 to 14 March 1975.⁸ Mr Fitzgerald served in RAN ships that were for certain periods assigned for service as part of

¹ *Directive for the Attachment of H.M.A. Ships to the Far East Fleet for Service with the Strategic Reserve*, Department of the Navy 13779 dated 21 December 1956 in Major General The Hon. R F Mohr, RFD ED (Retd), *The Review of Service Entitlement Anomalies in Respect of South-East Asian Service 1955-75*, Commonwealth of Australia, Defence Publishing Service, 2000, Enclosure 1, Chapter 3.

² *Defence Report 1971*, Department of Defence, Canberra, 1972, p 6.

³ Australia, New Zealand and Malaya (ANZAM) was an agreement between those countries to exercise command through the ANZAM Chiefs of Staff Committee in time of war. Australia's responsibility was largely confined to the defence of sea communications. Edwards, Peter, *Crises and Commitments: The Politics and Diplomacy of Australia's Involvement in Southeast Asian Conflicts 1948-1965*, Allen & Unwin, North Sydney, 1992, p 61.

⁴ The Five Power Arrangements and ANZUK. Defence Committee FPDA and ANZUK, Agendum 6/1972 dated 4 April 1972. NAA: A7942, F59.

⁵ Pfennigwerth, Ian, *Tiger Territory: The Untold Story of the Royal Australian Navy in Southeast Asia from 1948 to 1971*, Rosenberg Publishing, Sydney, 2008, p 242.

⁶ *Defence Report 1975*, AGPS, Canberra, 1975, p 8.

⁷ Five Power Arrangements – ANZUK. Cabinet Decision 823 dated 2 July 1973. NAA: A5931 CL285.

⁸ *Commonwealth of Australia Gazette* No. S 230 dated 29 June 2001 at para (b)(vi).

FESR, and after its disbandment, Mr Fitzgerald also served in an RAN ship that was assigned for service with ANZUK.

Mr Fitzgerald's Service Record

10. Mr Fitzgerald joined the RAN on 9 April 1965 and was discharged on 8 April 1974. Mr Fitzgerald's service record shows he was assigned to a number of HMA Ships. He has also served in South East Asia and Vietnam.
11. For his RAN service, Mr Fitzgerald was awarded the Australian Active Service Medal 1945-75 with Clasp 'VIETNAM', the Vietnam Logistic and Support Medal, the Australian Service Medal 1945-75 Clasp 'FESR' (ASM 1945-75 Clasp FESR), and the Australian Defence Medal.
12. Mr Fitzgerald's service record indicates that he qualified for the ASM 1945-75 Clasp 'FESR' between 24 September 1965 and 2 February 1968 due to his service with various HMA Ships formally allocated or assigned to the FESR. Mr Fitzgerald also served with ANZUK forces in HMAS *Swan* from 1 January 1971 to 31 December 1971. During that period, he completed 61 days service from 1 November 1971 to 31 December 1971, which was sufficient to meet the ASM 1945-75 Clasp 'SE ASIA' eligibility requirement of 30 days service.
13. A summary of Mr Fitzgerald's service is at Attachment 1.

Medal Regulations and Eligibility Criteria

The Australian Service Medal 1945-1975

14. The ASM 1945-75 is an Australian award instituted by Letters Patent on 22 February 1995 'for the purpose of according recognition to members of the Defence Force, and certain other persons, who rendered service in non-warlike military operations'. The Schedule sets out the *Regulations Governing the Award of the Australian Service Medal 1945-1975* (the Regulations).⁹ Regulation 3 states that the Governor-General, on the recommendation of a Minister may declare a non-warlike operation in which members of the Defence Force were engaged, between 3 September 1945 and 16 September 1975, to be a declared operation. Regulation 4 of the ASM 1945-75 Regulations sets out the conditions for the award of the medal as follows:

Conditions for award of the Medal

4.(1) The Medal may be awarded to:

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

who served in connection with a declared operation.

⁹ *Commonwealth of Australia Gazette* No. S122 dated 3 April 1995.

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

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

4.(4) An initial award of the Medal to a person is made in the form of the Medal with a clasp denoting the declared operation for which the Medal is being awarded.

4.(5) A subsequent award of the Medal to the person may only be made in the form of an additional clasp to the Medal.

15. On 7 June 1995, the Governor-General, acting under the provisions of paragraphs 6 and 7 of the Regulations, made a determination in respect of the medal¹⁰ in which paragraph 6 refers to further awards as follows:

Further awards

6. A further award or awards for subsequent service in another area or areas is recognised by the presentation of an additional clasp or clasps. The clasp or clasps are attached to the ribbon...

The Australian Service Medal 1945-1975 Clasp ‘FESR’

16. On 23 March 2001, the Governor-General determined the conditions for the award of the ASM 1945-75 Clasp ‘FESR’.¹¹ The Governor-General declared at paragraph (b):

... that non-warlike operations in which members of the Australian Defence Force were engaged in, namely participation by ships of the Royal Australian Navy in the Far East Strategic Reserve that commenced on 2 July 1955 and ended on 31 October 1971, and during such period as those ships were formally allocated or assigned to the Far East Strategic Reserve, to be a *declared operation* for the purpose of the Regulations.

17. The Governor-General then determined the conditions for the award of the medal, which included members who were posted or who served as a member of the Australian element of the declared operation or members who served as part of the contribution of a foreign Defence Force to the declared operation. The Determination also includes rules for ineligibility at paragraph (d):

... a member of the Australian Defence Force is not eligible for an award of the Medal where:

(i) a separate award of the Australian Service Medal 1945-75 with Clasp ‘SE ASIA’ has been awarded...

The Australian Service Medal 1945-1975 Clasp ‘SE ASIA’

18. On 8 June 2001, the Governor-General acting under ASM 1945-75 Regulation 3, revoked the Declaration and Determination made on 23 March 2001 and declared a number of non-warlike operations to be ‘a *declared operation* for the purpose of the

¹⁰ *Commonwealth of Australia Gazette* No. S220 dated 14 June 1995.

¹¹ *Commonwealth of Australia Gazette* No. S102 dated 27 March 2001.

Regulations'.¹² That declaration, as is relevant to Mr Fitzgerald's application, stated at paragraph (b):

... that the following non-warlike operations in which members of the Australian Defence Force were engaged with elements of the South East Asia Treaty Organisation; the Australia, New Zealand and the United States (Pacific Security) Treaty; Far East Strategic Reserve; the United Nations; the Australian, New Zealand and United Kingdom (ANZUK); Five Power Defence Arrangement; and Australian Army Survey Operations in South East Asia during the following periods to be a *declared operation* for the purpose of the Regulations:

- ... (vi) participation by ships of the Royal Australian Navy in the ANZUK Forces that commenced on 30 October 1971 and ended on 14 March 1975, and during such periods those ships were formally allocated or assigned to those Forces.

and at paragraph (d):

determine, for the purposes of this determination, that a person is not eligible for an award of the Medal where;

- (i) a separate award of the Australian Service Medal 1945-75 with Clasp 'FESR' has been awarded...

EVIDENCE AND ARGUMENTS

Arguments of Mr Fitzgerald

19. Mr Fitzgerald seeks further recognition for his RAN service in South East Asia between November 1971 and April 1972, claiming that the service he rendered with ANZUK meets the eligibility criteria for the award of the ASM 1945-75 Clasp 'SE ASIA'.

20. Mr Fitzgerald in his written submission claimed that the provisions in the various *Commonwealth of Australia Gazettes* support his proposition in that:

- 'Gazette s122 (and s220) states a subsequent award can only be in the form of an additional Clasp (whereas) Gazette s230 states (that) a person is not eligible for an award of the medal if a separate award with clasp FESR has been awarded'; and
- '(Gazette) s230 states the medal is the ASM with Clasp. ... I do not want another ASM. I only believe I am entitled to the Clasp SE ASIA.'

21. In his submission to the hearing, Mr Fitzgerald said that prior to the publishing of Gazette No. S230, a person 'could always get another clasp if (they) were in a different area of operations', he reiterated that when Gazette No. S230 was published, it provided for the awarding of 'the medal with clasp, not just the clasp'. Mr Fitzgerald also argued that Gazette No. S230 specifically provides eligibility for the ASM 1945-75 Clasp 'SE ASIA' for 'ships of the RAN in the ANZUK Forces (that) were formally allocated or assigned to those Forces'.

¹² *Commonwealth of Australia Gazette* No. S230 dated 29 June 2001.

Arguments of Defence

22. In its written submission to the Tribunal, Defence responded to Mr Fitzgerald's claims. It submitted that Mr Fitzgerald was not eligible 'for the Clasp 'SE ASIA' to the ASM 1945-75 ... because he has already been awarded the ASM 1945-75 with Clasp 'FESR''. Defence submitted that:

the *Instrument of Declaration and Determination for the Australian Service Medal 1945-75 with Clasp 'SE ASIA'* clearly states ... (that) a person is not eligible for this award if:

- (i) a separate award of the Australian Service Medal 1945-75 with Clasp 'FESR' has been awarded; or
- (ii) a separate award of the Australian Service Medal with Clasp 'SE ASIA' has been awarded.

23. At the Tribunal hearing, Defence submitted that the ASM 1945-75 Clasp 'FESR' was 'introduced in 1996 and [was] limited to Naval service'. *The Review of Service Entitlement Anomalies in Respect of South-East Asian Service 1955-75* (known as the Mohr Review) recommended that the award be extended to 'members of the Army, RAAF and RAN personnel serving ashore'¹³. In response to that recommendation, the ASM 1945-75 Clasp 'SE ASIA' was introduced. That medal was specifically intended to recognise 'broader participation in other treaty and agreement obligations in South-East Asia' that are declared in Gazette No. S230 Declaration (b), including land and air force participation in FESR dating back to 1955. Defence said that those members although they served in FESR, are awarded the ASM 1945-75 Clasp 'SE ASIA', not the Clasp 'FESR' because both awards 'recognise one period of service'.

24. Defence also submitted that the 'records at the time reflect that service under ANZUK arrangements was seen as a flow-on from FESR ... it was all one type of service'. In other words they are not adjudged as being two distinct and separate operations for the purpose of the Regulations. Defence added to this statement in responding to clarifications requested by the Tribunal. It was submitted that:

Notwithstanding any technical difference in command and control arrangements between FESR and ANZUK, the service continued to be a commitment to the ongoing strategic security of the region¹⁴. This was agreed by the Minister Assisting the Minister for Defence on 18 April 2001 in approving the award of the Australian Service Medal 1945-75 and Australian Service Medal with Clasp 'SE ASIA' for service in South-East Asia from 31 October 1971 to 31 December 1989.

In a previous Ministerial submission, the Minister Assisting the Minister for Defence agreed that service that qualified for the Clasp 'FESR' was the same as that for 'SE ASIA' and both clasps could not be awarded.

¹³*The Review of Service Entitlement Anomalies in Respect of South-East Asian Service 1955-75*, Major General The Hon. R F Mohr, RFD ED (Retd), Commonwealth of Australia, Defence Publishing Service, 2000, p 36.

¹⁴ *CDF Minute 249/01 dated 10 April 2001 and approved by the Minister on 18 April 2001* stated that 'Following the cessation of the Far East Strategic Reserve (FESR) on 30 Oct 71, Australia maintained a presence in South-East Asia under similar arrangements with the Australian, New Zealand and United Kingdom (ANZUK) force until Apr 75.' Received under cover of the Defence Submission dated 24 March 2014.

25. As part of its report, the Directorate included a copy of DEFGRAM 233/2001 entitled *Awards for Service in South-East Asia 1955-1989*. The Directorate also provided written clarification regarding the relevance of this DEFGRAM which was issued on 2 July 2001:

... to widely promulgate the extension of the awards and to inform personnel of the administrative arrangements that applied to the respective awards, including those issued before 31 October 1971. The DEFGRAM also advised the eligibility criteria and policy background to the various awards for service in South-East Asia. While the DEFGRAM itself has expired, the key elements contained within it remain in the relevant executive instruments and policies agreed by the government of the time.

A copy of the DEFGRAM is at Attachment 2.

THE TRIBUNAL'S CONSIDERATION

26. The Tribunal's consideration focused on the eligibility criteria of the ASM 1945-75 Clasp 'FESR' and Clasp 'SE ASIA', the Declarations and Determinations made under the Regulations and whether the Directorate's actions were consistent with those Regulations.

27. There is no dispute about Mr Fitzgerald's service record and his posting to various HMA Ships and his service in South East Asia between 1965 and 1972. The Tribunal accepts that he served in the FESR and with ANZUK naval forces at two different times.

28. Mr Fitzgerald claimed that the service he rendered between November 1971 and April 1972 met the eligibility criteria for the award of the ASM 1945-75 Clasp 'SE ASIA'. The Tribunal accepts that this singular proposition is correct *prima facie*. Therefore, the Tribunal, in its research and its questions to Defence subsequent to the hearing, focussed particularly on whether there was a valid rebuttal to Mr Fitzgerald's proposition. In doing so, the Tribunal relied upon the provisions of the various medal Regulations and the historical record.

FESR and ANZUK - a historical continuum?

29. In considering whether FESR and ANZUK were essentially an extension from one to the other, no material was presented nor did the Tribunal's research reveal any evidence that would suggest anything other than when FESR was disbanded its roles as outlined in paragraph 6 of this report continued to be undertaken by ANZUK and FPDA as separate entities. Therefore, to the extent that it was relevant to its consideration of the issues in this case, the Tribunal accepts the historical basis put by Defence that 'notwithstanding any technical difference in command and control arrangements between FESR and ANZUK, the commitment continued to be focussed on the ongoing strategic security of the region'. As such, the Tribunal also accepts the contention that the RAN contribution to both FESR and ANZUK are considered as 'one period of service'.

Medals Policy

30. In arriving at its position on the issuing of one medal and one clasp for this 'one period of service', Defence relied on information such as that contained in

DEFGRAM 233/2001. Defence submitted at the Hearing that this publication is an internal ‘information document for serving members... [which is] difficult for former members to access’... it ‘advises the intent of policy’. Defence further added in its written response to the Tribunal that ‘while the DEFGRAM itself has expired (in 2002), the key elements contained within it remain in the relevant executive instruments and policies agreed by the government of the time’.

31. Mr Fitzgerald left the RAN in 1974, some 27 years before the DEFGRAM was issued. While a ministerial media release was issued on 9 May 2001, it only announced the instituting of the ASM 1945-75 Clasp ‘SE ASIA’ and its eligibility criteria. There was no mention of ANZUK forces eligibility. Additionally, the Tribunal could not find any evidence that the policy aspects explaining the context of the award, as contained in the internal to Defence DEFGRAM, have ever been made public. The Tribunal therefore concluded that in all likelihood Mr Fitzgerald could never have been adequately apprised of the background policy surrounding the awards.

The Regulations

32. **The Clasps.** Mr Fitzgerald argued that Gazette No. S230 specifically provides eligibility for the ASM 1945-75 Clasp ‘SE ASIA’ for ‘ships of the RAN in the ANZUK Forces (that) were formally allocated or assigned to those Forces’.

33. The Regulations for both the ASM 1945-75 Clasp ‘FESR’ and Clasp ‘SE ASIA’ require that to be eligible for those awards a member must render 30 days service on an operation declared in the Regulations between the following dates:

- Clasp ‘FESR’ - 2 July 1955 to 31 October 1971.
- Clasp ‘SE ASIA’ for service on RAN Ships with ANZUK Forces - 31 October 1971 to 14 March 1975.

34. Mr Fitzgerald submitted that since the FESR period ended on 31 October 1971 and the South East Asia period began that day, the two Clasps are separate awards for different periods of service. The Tribunal however considers that it is reasonable to conclude that the Minister’s advice to the Governor-General, which resulted in the awards being instituted, is based on the proposition that ‘both Clasps will recognise the one period of service, which includes service to the FESR’.¹⁵ The Tribunal considers that this proposition carries forward into the Regulations resulting in the ‘one period of service’ being from 2 July 1955 to 14 March 1975.

35. Mr Fitzgerald submitted that ‘prior to the publishing of Gazette s230 on 29 June 2001, a person ‘could always get another clasp if (they) were in a different area of operations’. The Tribunal examined the ASM 1945-75 Regulations dated 3 April 1995 which require that ‘an initial award (to a person)... is made in the form of the Medal with a clasp...’ while ‘a subsequent award... to (that) person may only be made in the form of an additional clasp...’. It is clear therefore that the Regulations provide that no person can be awarded two ASM 1945-75 ‘medals’, regardless of

¹⁵ *Defence Minute* CMP 520/2000 dated 29 August 2000 and approved by the Minister on the same day.

duty, but instead the second ‘medal’ is awarded as ‘a clasp... attached to the ribbon of the Medal above the original clasp’¹⁶.

36. **Terminology and Inconsistency.** The Tribunal further considered whether there was merit in Mr Fitzgerald’s submission regarding the effect of the *Declaration and Determination under the ASM 1945-75 Regulations* which instituted the Clasp ‘SE ASIA’ (Gazette No. S230).

37. The ASM 1945-75 Regulations set out in the Schedule to the Letters Patent are clear. However, the Tribunal’s examination of the Declarations and Determinations made under the Regulations revealed two areas of inconsistency in terminology that could lead to ambiguity and confusion in the interpretation of the Regulations.

38. For the purpose of the (various) Regulations as gazetted, ‘the Medal’ is defined as follows:

- a. ‘the Australian Service Medal 1945-1975’ (Gazette No. S122 (the Regulations of 3 April 1995))
- b. ‘the Australian Service Medal 1945-1975’ (Gazette No. S220 (Determination of 7 June 1995))
- c. ‘the Australian Service Medal 1945-1975 Clasp ‘FESR’ (Gazette No. S102 (c) (Declaration instituting the Clasp ‘FESR’ of 27 March 2001)
- d. ‘the Australian Service Medal 1945-1975 Clasp ‘SE ASIA’ (Gazette No. S230 (c) (Declaration instituting the Clasp ‘SE ASIA’ of 29 June 2001).

39. However, Gazette No. S102 (d) (i) and (ii) then introduces a new term ‘with’ and states that a member is not eligible for the award of the medal, as defined, where ‘(i) a separate award of the ASM 1945-75 with Clasp ‘SE ASIA’ has been awarded’.

40. The Tribunal noted that this use of the term ‘ASM 1945-75 with Clasp ...’, as part of the definition of ‘the medal’ occurs for all Regulations for ASM 1945-75 Clasps except SE ASIA, FESR, Berlin and Thailand. This inconsistent use of terminology within the same Regulations appears to have led Mr Fitzgerald to misinterpret the intention of the exclusions to eligibility contained in the Regulations for Clasp ‘SE ASIA’ and Clasp ‘FESR’ which infers eligibility where a medal with a Clasp has previously been awarded, as opposed to just the Clasp.

41. It is the Tribunal’s view that the declarations made by the Governor-General that instituted the ASM 1945-75 Clasps FESR, SE ASIA, Thailand and Berlin, should be amended to align definitions of ‘the Medal’ in the same way as it is defined in the declarations made for all other ASM 1945-75 Clasps.

42. The Tribunal also considered that a second area of ambiguity in the Regulations has led Mr Fitzgerald to a conclusion that prior to the publishing of Gazette No. S230, a person ‘could always get another clasp if (they) were in a different area of operations’. An examination of the Regulations for the award made on 3 April 1995 (Gazette No. S122) clearly states at regulation 4(1) that the medal may be awarded for service ‘in connection with a declared operation’ and at regulation 4(5) that ‘a subsequent award of the Medal to the person may only be made in the form of an additional clasp to the Medal’. On 7 June 1995 (Gazette No. S220), the Governor-General in a Determination ‘acting under the provisions of regulations 6

¹⁶ *Commonwealth of Australia Gazette* No. S220 dated 7 June 1995.

(design of the medal) and 7 (wearing of the medal) of the Regulations' introduced the following at paragraph 6:

A further award or awards for subsequent service in another area or areas is recognised by the presentation of an additional clasp or clasps.

43. The inclusion of this sentence in the Determination is not relevant to regulation 6 'design of the award' or 7 'wearing of the medal'. It is in effect a change to regulation 4(1) of the Regulations by implying that not only may the medal be awarded for service 'in connection with a declared operation', but also for service 'in another area or areas'. The Tribunal considers that this is inconsistent with the Regulations and as was discussed at the Hearing, seems to have contributed to Mr Fitzgerald misunderstanding the Regulations. The Tribunal also notes that the phrase 'in another area or areas' is not used in the Regulations for the Australian Service Medal or in the *Defence Honours and Awards Manual*.

44. It is the Tribunal's view that the Determination of 7 June 1995 (Gazette No. S220) made under the Regulations by the Governor-General should be amended by deleting 'another area or areas' in the first sentence of paragraph 6, and inserting 'other declared operations' in its place.

FINDINGS

45. From the material before it, the Tribunal finds that Australia's contribution to operations under FESR and ANZUK occurred in 'one period of service' from 2 July 1955 to 14 March 1975.

46. The Tribunal also finds that notwithstanding the inconsistency and ambiguity in terminology, it is the intent of the Regulations that since Mr Fitzgerald has been awarded the ASM 1945-75 Clasp 'FESR', he is ineligible for the ASM 1945-75 Clasp 'SE ASIA'. The Tribunal is therefore satisfied that the decision of the Directorate is consistent with the provisions of the ASM 1945-75 Regulations.

47. In regard to the inconsistency and ambiguity in terminology in the ASM 1945-75 Regulations as outlined in paragraphs 36-44 of this report, the Tribunal has decided to bring its concern expressly to the attention of the Chief of the Defence Force and the Secretary. Additionally and because the Governor-General in making the Determination of 7 June 1995, acted on the advice of the Minister then responsible, the Tribunal has also provided a copy of this decision to the Parliamentary Secretary for Defence.

48. For the reasons outlined above, the Tribunal finds that Mr Fitzgerald is not eligible for the ASM 1945-75 Clasp 'SE ASIA'.

DECISION

49. The Tribunal decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Mr John Francis Fitzgerald is not eligible for the award of the Australian Service Medal 1945-75 Clasp 'SE ASIA'.

Attachments:

1. Extract of Mr Fitzgerald's Service Record.
2. DEFGRAM 233/2001.

Extract of Mr Fitzgerald's Service History

| Period From | Period To | Ship | Location | Medal | Medal Dates | Notes |
|--------------------|------------------|-------------------|-----------------|---|-------------------------|--|
| 9 Apr 1965 | 15 Jul 1965 | <i>Cerberus</i> | Victoria | | | Training |
| 15 Jul 1965 | 14 Apr 1966 | <i>Sydney</i> | At sea | ASM 1945-75 Clasp 'FESR' | 24 Sep 65 - 2 Feb 68 | Vietnam 14 Sep 1965 - 20 Oct 1965 |
| 15 Apr 1966 | 17 Feb 1967 | <i>Cerberus</i> | Victoria | | | Training |
| 18 Feb 1967 | 1 Apr 1968 | <i>Stuart II</i> | At sea | AASM 1945-75 with Clasp 'Vietnam' | | Vietnam 16 May 1967 - 8 June 1967 |
| 16 Apr 1968 | 24 Mar 1969 | <i>Penguin</i> | Sydney | | | Training |
| 25 Mar 1969 | 11 Aug 1969 | <i>Diamantina</i> | At sea | | | Survey & training ship |
| 11 Aug 1969 | 19 Jan 1970 | <i>Cerberus</i> | Victoria | | | Training |
| 19 Jan 1970 | 7 May 1972 | <i>Swan</i> # | At sea | | | Posted period with Commonwealth Strategic Reserve Feb 71 - 17 Apr 1972 |
| 8 May 1972 | 8 Apr 1974 | <i>Kuttabul</i> | Sydney | | | Discharge 7 May 1974 |

Further details of Mr Fitzgerald's Service on HMAS *Swan* are detailed below.

Mr Fitzgerald's Service with HMAS *Swan*

| Period From | Period To | Ship | Location | Medal | Medal Dates | Notes |
|--------------------|------------------|-------------|-----------------|--------------|--------------------|--|
| 19 Jan 1970 | 30 Sep 1970 | <i>Swan</i> | Ports | | | Various ports in Eastern Australia |
| 6 Oct 1970 | 14 Oct 1970 | <i>Swan</i> | Fiji | | | Returned due medical emergency |
| 1 Dec 1970 | 31 Dec 1970 | <i>Swan</i> | At sea | | | Sydney to Fremantle & return |
| Feb 1971 | Nov 1971 | <i>Swan</i> | At sea | | | Swan present at Singapore Commonwealth Strategic Reserve ANZUK from 16 Sep - 1 Nov 1971. |
| 4 Oct 1971 | 14 Oct 1971 | <i>Swan</i> | Vietnam | VLSM | | Vietnam |
| 5 Oct 1971 | 31 Dec 1971 | <i>Swan</i> | | | | Singapore & Hong Kong, Vietnam 6 - 11 Dec 1971 |
| 1 Jan 1972 | 31 Jan 1972 | <i>Swan</i> | At sea | | | Japan, Singapore, Thailand |
| 1 Feb 1972 | 17 Apr 1972 | <i>Swan</i> | At sea | | | South China Sea |

DEFGRAM 233/2001

Department of Defence

DEFGRAM NO 233/2001

2 July 2001

Note: DEFGRAMS need only be retained while the information is relevant. Publications can be accessed on the Defence Intranet at <http://defweb.cbr.defence.gov.au/home/documents/departme.htm>

AWARDS FOR SERVICE IN SOUTH-EAST ASIA 1955-1989

Aim

The aim of this DEFGRAM is to advise the eligibility criteria and policy background to the award of the Australian Service Medal (ASM) 1945-1975/ASM for service in South-East Asia between 1955 and 1989.

Background

In 1999, the Government commissioned an independent committee of inquiry into Defence service in South-East Asia between 1955 and 1975. The inquiry was called the *Review of Service Entitlement Anomalies in Respect of South-East Asian Service 1955-1975 (SEA Review)* and was conducted by the Honourable Bob Mohr RFD ED, former Judge of the Supreme Court of South Australia, and Rear Admiral Phillip Kennedy, AO (Retd). The Review made 47 recommendations concerning medals, 43 of which were accepted by the Government. However, the review only made recommendations in respect of service up to and including 30 October 1971, the end date of the Commonwealth Far East Strategic Reserve (FESR) in South-East Asia. A copy of the executive summary and recommendations may be found on the Defence Internet (see <http://www.minister.defence.gov.au/2000/sea.html>).

Following the Government's acceptance of the review recommendations, the Minister assisting the Minister for Defence directed that a further review be conducted by the Department into service in Singapore and Malaysia for the period 1971 onwards. This review was conducted and recommendations have been accepted by Government.

Eligibility criteria

The result of these reviews is that service, outside of warlike service in certain areas of South-East Asia during the Malayan Emergency 1948-1960, the Thai-Malay Border 1960-1966, the Indonesian Confrontation 1962-1966, Vietnam 1962-1973 and Thailand 1965-1968, will be eligible non-warlike service towards the ASM 1945-1975 or the ASM. Specifically, this is service with elements of the South-East Asia Treaty Organisation; the Australia, New Zealand and the United States (Pacific Security) Treaty (ANZUS); FESR; the United Nations; Australian New Zealand and United Kingdom (ANZUK) Force; Five Power Defence Arrangement (which includes the Rifle Company Butterworth); and Australian Army Survey Operations, in the following areas and periods:

- service in Malaysia, except that on the Thailand-Malaysia border as shown below, during the following periods:
 - 01 August 1960 and ended on 16 August 1964;
 - 12 August 1966 and ended on 31 December 1989;(warlike land operations on the Thailand-Malaysia border between 01 August 1960 and 16 August 1964, and warlike air operations on the border between 17 August 1964 and 30 March 1966, do not qualify);
 - Service on land in Singapore during the following periods:
 - 01 August 1960 and ended on 16 August 1964;
 - 12 August 1966 and ended on 30 April 1975;
-

- Defence Force activities on land in Thailand, except those non-warlike operations prescribed for the ASM 1945–1975 with Clasp ‘Thailand’ that occurred in Ubon and Ban Kok Talat, during the following periods;
 - 02 July 1955 and ended 30 June 1965;
 - 01 September 1968 and ended on 30 October 1971; and
- service on land in Vietnam 02 July 1955 and ended on 30 July 1962;
- service on land in Indonesia, Laos and Cambodia 02 July 1955 and ended on 14 March 1975.
- participation by ships of the Royal Australian Navy in the ANZUK forces that commenced on 31 October 1971 and ended on 30 April 1975.

The medal may be awarded for 30 days aggregate service as a posted member of a unit under one or any of the conditions above, or as an official visitor or on temporary duty. The medal may also be awarded for 30 operational sorties into or over one of the areas above during the relevant period, but is counted only where those sorties were conducted over a period of not less than an aggregate of 30 days at a rate of one sortie per day (ie more than one sortie a day will not count). It is stressed that just flying over or into an area in transit from one point to another will not qualify. The flight has to relate to the operation and result in a military outcome specific to the operation.

Policy aspects

There is a view that several clasps should be established to recognise service in each individual agreement or treaty which existed in South-East Asia, and that they should not be grouped for medals entitlements. Whilst the elements which make up the Clasp ‘SE Asia’ may have been independent agreements, they existed essentially with the one aim—to provide security within the South-East Asia region. Additionally, the ANZUK force was created with the same aims as FESR and from existing FESR resources at the time. In effect, ANZUK was FESR under another name.

There are fundamentals of the Australian honours and awards system which apply to awards for service in South-East Asia during the period 1955–1989. A specific Government policy relates to ‘double medalling’, ie the awarding of two Australian medals for the same service. The Government at the time of its announcement of the then proposed Australian Active Service Medal (AASM) and ASM in 1986 stated its policy in a Prime Minister’s media release that, ‘In accordance with established tradition, separate medals will be struck for each major campaign to recognise service in **major conflicts**, if and when the need arises in the future’. Major conflicts in the contemporary sense also means major warlike operations. This policy was reaffirmed by the current Government in 1997 during the establishment of the AASM 1945–1975. Basically, this means that for a major warlike operation, an AASM and specific campaign medal may be awarded together, eg AASM and INTERFET Medal for service with the International Force East Timor 1999–2000. Non-warlike operations do not attract two Australian awards. Similarly, a tenet of the Australian honours and awards system is that devices are not affixed to ribbons of operational service awards denoting multiple tours in operations.

The effect of this is that a person who has been awarded the ASM 1945–1975 with Clasp ‘SE Asia’ for service up to February 1975 will not be awarded the ASM with Clasp ‘SE Asia’ for service at a later date. Equally, a person who has been awarded the ASM 1945–1975 with Clasp ‘FESR’ will not receive an award of the ASM 1945–1975 or ASM with Clasp ‘SE Asia’. Although different to the ‘SE Asia’ Clasp, the ‘FESR’ clasp still recognises service in ‘SE Asia’ for the same operation (see paragraph above).

The ASM 1945–1975 and the current ASM are, in effect, the same medal except that through circumstances, they reflect two different periods. This is because during the 1993/1994 Committee of Inquiry into Defence and Defence Related Awards (CIDDRA), the Inquiry looked at service up to 1975 (the year of introduction of the Australian honours and awards system from which point the current ASM is awarded), and decided that for service which needed recognition before that year and from the end of World War II hostilities, a new ASM 1945–1975 would be appropriate. It was never envisaged that subsequent reviews and extension of eligibility for both the ASM’s would result in a situation whereby an operation would extend over a 25 year period, running through 14 February 1975, and in which people would rotate through many times.

In this situation, where a person had one rotation occurring before 14 February 1975 then another after, the earlier rotation will be recognised first (which is the same for all operations) by the ASM 1945–1975. As both medals mean the same thing, awarding both would equate to recognising multiple tours of the same operation and double medalling. In an attempt to optimise their medal allocation, some individuals are wishing to choose the period they want recognised, eg a person with a prior award of the ASM 1945–1975 with Clasp 'Korea', who served in Singapore in 1974, then again in Butterworth in 1976, cannot choose to have the 1976 service recognised for the sake of getting the later ASM; they will get a Clasp to their ASM 1945–1975. This is also why the 'FESR' and 'SE Asia' Clasps will not be awarded together.

There is sufficient precedent for this policy, eg the awards of the Pacific Star during World War II for activities in various parts of the Pacific in different operations as an overall campaign, and the award of the Vietnam Medal not attracting the award of the Vietnam Logistic and Support Medal.

Lastly, this policy should not be confused with situations in which the AASM and the ASM may be awarded for the one period of service, eg the Persian Gulf during 1990/1991. In cases where a non-warlike operation becomes warlike due to a change of operational circumstances, this change of conditions allows the awarding of these two distinctly different medals to recognise the type of service rendered.

Australian Service Medal 1945–75/Australian Service Medal with Clasp 'Special Ops' for South-East Asian service

The Clasp 'Special Ops' was established following a recommendation of CIDDRA. It was established on the basis that certain activities are conducted outside of a formal declaration of a warlike or non-warlike operation by the Minister for Defence. Due to the special nature of these activities, and the hazards and difficulties associated with them, an award was considered appropriate. Under Instruments of the ASM 1945–1975/ASM regulations, the Chief of the Defence Force has the sole responsibility of specifying which activities will be awarded the Clasp 'Special Ops', and will only do so on recommendation of an appropriate Chief of Service.

For non-warlike operations that have been declared by the Minister, normal procedures apply in the establishment of an appropriate Clasp to the ASM for that operation. The Clasp 'Special Ops' was not established to be a 'default' award to those personnel who do not qualify under the normal qualifying conditions that relate to a declared operation. Accordingly, where service has counted towards the ASM Clasp 'SE Asia' or 'FESR', the Clasp 'Special Ops' will not be awarded.

It is acknowledged that the SEA Review recommended awards of the ASM 1945–1975/ASM with Clasp 'Special Ops' for some service in South-East Asia, eg radio operators in the Embassy at Vientiane in Laos. However, as service in Laos counts towards the Clasp 'SE Asia', the Clasp 'Special Ops' will not be awarded. At this stage, there is no award of the ASM 1945–1975/ASM with Clasp 'Special Ops' envisaged in respect of South-East Asian service for the period 1955–1989.

Applications for awards

The Service Medals Sections do not have the capacity to examine the hundreds of thousands of personal files in order to establish entitlements. Accordingly, application will need to be made for award of the appropriate medals. Application forms may be downloaded from the Head Defence Personnel Executive Defence Internet site at http://www.defence.gov.au/dpe/dpe_site/resources/index.htm and mailed to the appropriate address on the form.

Due to the many thousands of applications received concerning the SEA Review, and the requirement to maintain other current commitments, there are backlogs of several months in the Service Medal Sections. As a result, individuals should expect lengthy delays before receiving advice of their eligibility and subsequent delivery of any awards.

While it is appreciated that individuals are keen to receive their medals entitlements, it must be borne in mind that other applicants are equally anxious to receive their due. This includes outstanding claims of veterans from World War II, and the Korean and Vietnam Wars. Any delays are regretted and patience is requested.



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