



Australian Government

Defence Honours and Awards Appeals Tribunal

**REPORT ON THE INQUIRY INTO RECOGNITION OF SERVICE
WITH OPERATION GATEWAY**

LETTER OF TRANSMISSION

Inquiry into Recognition of Service with Operation GATEWAY

Senator the Hon. David Feeney
Parliamentary Secretary for Defence
Parliament House
Canberra ACT 2600

Dear Parliamentary Secretary,

I am pleased to present the Defence Honours and Awards Appeals Tribunal's Report on the *Inquiry into recognition of Service with Operation GATEWAY*.

The inquiry was conducted in accordance with the Terms of Reference approved by you on 18 March 2011. The panel of the Tribunal that conducted the inquiry arrived unanimously at the findings and recommendations set out in its report.

In accordance with the *Defence Honours and Awards Appeals Tribunal Procedural Rules 2011*, a copy of this report will be published on the Tribunal's website – www.defence-honours-tribunal.gov.au – 20 working days after the day this report is provided to you.

I would be grateful for advice on your response to this report when available.

Yours sincerely



Mr Alan Rose
Chair
Defence Honours and Awards Appeals Tribunal

/ February 2013

TERMS OF REFERENCE

The Defence Honours and Awards Appeals Tribunal (the Tribunal) is directed to inquire into and report on recognition for members of the Australian Defence Force who served with Operation GATEWAY.

In particular the Tribunal is to examine the Defence policy on the granting of an award where more than one operation is involved, in relation to service in South-East Asia between 1945 and the present, while considering the nature and context of this service in relation to the criteria for an Australian Service Medal.

The Tribunal is to determine its own procedures, in accordance with the general principles of procedural fairness, when conducting its inquiry as set out in these Terms of Reference. In this regard the Tribunal may interview such persons as it considers appropriate and consider material provided to it that is relevant to these Terms of Reference.

The Tribunal is to report, in writing, to the Parliamentary Secretary for Defence on the findings and recommendations that arise from the inquiry.

In making its findings and formulating its recommendations the Tribunal is to arrive at a fair and sustainable response to current and future claims for recognition. It is to maintain the integrity of the Australian honours system and identify any consequential impact any finding or recommendation may have on that system.

EXECUTIVE SUMMARY

1. The Defence Honours and Awards Appeals Tribunal (the Tribunal) is established under the *Defence Act 1903* (the Act). Section 110UA of the Act sets out the functions of the Tribunal which includes inquiring into matters concerning Defence honours or awards for eligible service. Section 110W of the Act provides that the Minister for Defence may give the Tribunal a direction in writing to hold an inquiry into a specified matter. The Tribunal then must hold an inquiry into that specified matter and report with recommendations the Tribunal considers appropriate, to the Minister.
2. On 18 March 2011 the Parliamentary Secretary for Defence gave a direction to the Tribunal to hold an inquiry into recognition for members of the Australian Defence Force who served with Operation GATEWAY.
3. The relevant medals under consideration were the Australian Active Service Medal, the Australian Service Medal and the Operational Service Medal.
4. The inquiry was undertaken by the following members of the Tribunal:

Air Commodore Mark Lax OAM, CSM, (Retd) (Presiding Member)
Ms Christine Heazlewood
Mr John Jones AM
5. The Tribunal took ten submissions from the public and organisations and took oral evidence from seven persons or organisations. A further eight persons provided registrations of interest.
6. When considering the eligibility of individuals for medallic recognition and the eligibility criteria for the relevant medal, The Tribunal carefully examined the basis on which the medals had been created and the circumstances in which they had been awarded. It paid heed to the integrity of the Australian system of honours and awards and the consequential impact any finding or recommendation may have on that system.

THE TRIBUNAL'S FINDINGS

7. After considering the evidence presented, the Tribunal is satisfied that the existing recognition is appropriate for Australian Defence Force personnel who served with Operation GATEWAY.
8. In relation to service in South-East Asia from 1945 to the present, the Tribunal determined that the Defence policy should reflect four principles set out in the recommendations.

RECOMMENDATIONS

9. The Tribunal recommends that there be no change to the existing provisions and policy approach to medallic recognition for members of the ADF who served with Operation GATEWAY.

10. In regards to the Tribunal consideration of the policy as required by the Terms of Reference, the following principles should govern the eligibility for awards for service in South-East Asia from 1945 to the present where more than one operation is involved:

- if any operation merits an award in its own right, then the member should be eligible for that award for that operation; or
- if an operation merits an award in its own right, and the member has already received an award for that operation, then they should not receive a second award; or
- if an operation does not merit an award in its own right, but the service meets the criteria of a more general award, then the member should be eligible for that more general award; or
- if an operation is recognised retrospectively as deserving an award in its own right, and the member has the more general award for service in respect of that operation, then the member should be given the option to elect to receive either award, but not both.

REPORT OF THE TRIBUNAL

Conduct of the Inquiry

1. The Defence Honours and Awards Appeals Tribunal (the Tribunal) is established under the *Defence Act 1903* (the Act). Section 110UA of the Act sets out the functions of the Tribunal which includes inquiring into matters concerning Defence honours or awards for eligible service. Section 110W of the Act provides that the Minister for Defence may give the Tribunal a direction in writing to hold an inquiry into a specified matter. The Tribunal then must hold an inquiry into that specified matter and report with recommendations the Tribunal considers appropriate, to the Minister.

2. On 18 March 2011 the Parliamentary Secretary for Defence gave a direction to the Tribunal to hold an inquiry into recognition for members of the Australian Defence Force who served with Operation GATEWAY. The Terms of Reference for the inquiry appear earlier in this report.

3. The inquiry was undertaken by the following members of the Tribunal:

Air Commodore Mark Lax OAM, CSM, (Retd) (Presiding Member)
Ms Christine Heazlewood
Mr John Jones AM

Steps taken in the inquiry

4. The inquiry commenced on 6 May 2011 with a press release and advertisements being placed in major newspapers nationally giving notice of the inquiry and calling for submissions by 3 June 2011. The Tribunal also wrote to individuals who had previously made representations relating to recognition of service with Operation GATEWAY and requested a submission from the Department of Defence (Defence).

5. By the closing date, the Tribunal had received ten written submissions¹ from individuals as well as registrations of interest from a further eight people. Defence also provided a written submission. Appendix 1 is a list of the submitters and registrants. The Tribunal agreed to accept two late submissions after the Government had promulgated the creation of the Operational Service Medal (OSM) in May 2012.

6. The Tribunal wrote to Defence on 5 April 2012 requesting copies of all policies *on the granting of an award where more than one operation is involved, in relation to service in South-East Asia between 1945 and the present, while considering the nature and context of this service in relation to the criteria for an Australian Service Medal*. In response to this request Defence provided draft copies of Volumes 1 and 2 of the Defence Honours and Awards Manual (DHAM).² The DHAM is a *consolidated reference to the policies and processes applicable to honours and awards within the Australian system*. The Manual sets

¹ A late submission, which was made after the creation of the Australian Operational Service Medal, was accepted by the Tribunal.

² The DHAM was officially released to Defence staff on 17 September 2012. DEFGRAM 635/2012 refers.

*out the policies which support the awarding of medals.*³ The DHAM replaces a number of previous policy documents and DEFGRAMS.⁴

7. The Tribunal also requested that Defence provide a copy of the policy regarding the issue of ‘double-medalling’ – the awarding of two medals for the same operation. Defence did not provide any policy documents, and the Tribunal could not locate any relevant statement of the policy in any published official papers.

8. The Tribunal conducted public hearings in Canberra on 10 August 2011 and in Adelaide on 16 August 2011. Four people made oral submissions to the Tribunal. A further three witnesses were interviewed by teleconference. Appendix 2 provides details of the Tribunal hearings and the witnesses who appeared.

Background to Operation GATEWAY

9. Operation GATEWAY involves maritime surveillance by aircraft of the Royal Australian Air Force (RAAF) of the area from the North Indian Ocean, via the Andaman Sea to the Straits of Malacca and the South China Sea. Operation GATEWAY, which was established in February 1981, is based out of Butterworth, Malaysia, under the provisions of the Five Power Defence Arrangements (FPDA) of 1971. The ‘five powers’ are the United Kingdom, Malaysia, Singapore, Australia and New Zealand. The original purpose of Operation GATEWAY, as part of Australia’s intelligence contribution to the western alliance, was to monitor Soviet shipping, and in particular submarines, transiting the region. With the end of the Cold War in 1989, the emphasis moved to the preservation of regional security and stability in South East Asia by providing maritime surveillance patrols in the North Indian Ocean and South China Sea.⁵ Operation GATEWAY is an ongoing operation and flights have also occasionally become involved in anti-piracy measures and rescue operations. Missions have been flown as far west as Sri Lanka and out to the Philippines in the east. GATEWAY is conducted in co-operation with the armed forces of Malaysia and Singapore.

10. The surveillance flights, which currently use RAAF AP-3C Orion aircraft, are flown by Detachment ‘A’ of No. 92 Wing, RAAF operating from Royal Malaysian Air Force Base (RMAF) Butterworth, in the Malaysian state of Penang. The RAAF maintains a small, permanent presence in Butterworth, which supports Operation GATEWAY when missions are being flown. On rare occasions, GATEWAY sorties have been flown out of Diego Garcia and the Cocos Islands.

11. During the Cold War (1945-1989), Operation GATEWAY was a much larger operation than it is today. In the 1980s, missions were flown throughout the year. This high mission rate was sustained by ground and air crew who rotated to Butterworth for one or two months at a time, twice a year. The typical mission monitored the movement of Soviet naval and merchant ships and submarines transiting between Vladivostok and the Indian Ocean. Since the breakup of the Soviet Union in 1989, the number of sorties flown has been reduced to about four or five each year, with five being flown in 2010-2011.⁶ The Tribunal was

³ DHAM, Vol 1, Chapter 1.

⁴ DEFGRAMS are internal Department of Defence periodic memos sent to all staff.

⁵ ‘Operation GATEWAY: Prosecuting Soviet Naval Movements in the Cold War’, *Pathfinder*, Issue No 162, Air Power Development Centre, August 2011; also www.defence.gov.au/op/southchinasea_indianocean/index.htm accessed 18 January 2013.

⁶ Defence Annual Report 2010-2011, p 162.

provided with a typical mission brief for July 2007 which had the stated mission objective of: ‘surveillance of the Indian Ocean, South China Sea, Straits of Malacca and Andaman Sea’ and also provided ‘crew training in the surveillance role with exposure to high-density shipping, inshore operations, weather and high terrain’.⁷

12. Former Defence Minister, and now Australian Ambassador to the United States, the Hon. Kim Beazley put Operation GATEWAY into perspective in a speech he gave in 2010:

The commitment we had to the Five Power Defence Arrangements, and more particularly, the rights of access to the Malaysian airfield at Butterworth, gave us an important role in countering Soviet presence. So we ran Operation Gateway, which was regular P-3 flights basically monitoring Soviet shipping and providing a substantial amount of intelligence on their activities in the region. The Indian Ocean, at least in its constituent parts, featured considerably in our policy at the time and it was a comprehension about the Two Ocean Navy Policy which entailed an Indian Ocean component.⁸

13. In 2012, Defence regards Operation GATEWAY as: *Australia’s enduring contribution to the preservation of regional security and stability in South-East Asia. In addition, the operation: helps maintain the bilateral Defence relationship between Australia and Malaysia and is part of Australia’s efforts to counter people smuggling in the region.*⁹

14. The Tribunal noted there was a United Nations Operation also called ‘GATEWAY’ around the same period, which was led by the US and provided support and training for UN weapons inspectors for the UN Special Commission on Iraq (UNSCOM). That Operation GATEWAY was based out of Bahrain and is unrelated to the subject of this inquiry. Australians who deployed on that operation were awarded the Australian Service Medal ‘Clasp KUWAIT’.

Current Recognition for Service with Operation GATEWAY

15. Recognition of service with Operation GATEWAY falls into two time periods. The first period runs from its inception in 1981 to 31 December 1989, and the second period runs from 1 January 1990 to the present and continuing. Service from 1981 to 1989 is recognised by the award of the Australian Service Medal (ASM) with Clasp ‘SE ASIA’. If a member has already been awarded the ASM 1945-1975 or the ASM with another clasp, then the member receives the Clasp ‘SE ASIA’ only. In other cases where a member has previously been awarded the ASM 1945-1975 with Clasp ‘SE ASIA’ or with Clasp ‘FESR’ (Far East Strategic Reserve), the member is not eligible for another ASM.

16. Service with Operation GATEWAY from 1 January 1990 is not recognised with any medallic award.

The Regulations and Policies in relation to Possible Awards

17. The Tribunal considered whether any of the following medals should be awarded to members for service with Operation Gateway:

⁷ No 92 Wing Risk Mission Profile (RMP) dated 27 Jul 07.

⁸ Kim Beazley on the Strategic Importance of the Indian Ocean to Australia, Future Directions International, Strategic Analysis Paper, 3 June 2010.

⁹ www.defence.gov.au/op/southchinasea_indianocean/index.htm accessed 30 July 2012.

- the Australian Active Service Medal (AASM);
- the ASM; and
- the Operational Service Medal (OSM).

The Australian Active Service Medal

The Regulations

18. The AASM was created by Letters Patent dated 13 September 1988 *for the purpose of according recognition to members of the Defence Force and other certain persons **who render service in certain warlike operations*** (emphasis added). The Schedule to the Letters Patent sets out the Regulations that govern the awarding of the AASM. A copy of the Letters Patent for the AASM is at Appendix 3.

19. Clause 4(1) of the Regulations provides that the AASM may be awarded for services in connection with a *prescribed operation*. The Governor-General, on the recommendation of the Minister for Defence, may declare a warlike operation in which members of the Australian Defence Forces were involved on or after 14 February 1975 as a *prescribed operation* for the purposes of the Regulations.¹⁰

20. The Tribunal noted that Operation GATEWAY has not been declared a *prescribed operation* under the Regulations.

The Policy

21. According to the policy statement in the DHAM, the AASM provides recognition for members of the ADF *who rendered service in operations declared to be a prescribed warlike operation on or after 14 February 1975*. Operations in Malaysia from 1981 onward are not included in the Schedule of warlike operations.

The Australian Service Medal

The Regulations

22. The **ASM** was created by Letters Patent dated 13 September 1988 as an Australian award instituted *for the purpose of according recognition to members of the Defence Force and certain other persons **who render service in certain non-warlike military operations*** (emphasis added). The Schedule sets out the Regulations. Regulation 3 states that the Governor-General on the recommendation of the Minister for Defence may declare a non-warlike operation on or after 14 February 1975 a *prescribed operation*.

23. In the Commonwealth of Australia Gazette, No. S 64 of 28 February 2002, the Governor-General made the following Declaration and Determination: *Defence Force activities on land in Malaysia during the period that commenced on 14 February 1975 and ended on 31 December 1989* is a declared operation for the purposes of the Regulations.

¹⁰ Clause 3 of the Regulations.

The Governor General then determined the conditions of service for the award of the ASM with Clasp 'SE ASIA' which included the period and type of service.

24. The declaration by the Governor-General went on to state that *a person is not eligible for an award of the Medal where:*

- (i) *a previous entitlement exists to the Australian Service Medal 1945-75 with Clasp 'SE ASIA' due to service prior to and including 14 March 1975;*
- (ii) *a separate award of the Australian Service Medal 1945-75 with Clasp 'SE ASIA' has been awarded; or*
- (iii) *a separate award of the Australian Service Medal 1945-75 with Clasp 'FESR' has been awarded.*

25. In the *Commonwealth Gazette* S230 of 29 June 2001, the Governor-General declared in relation to the ASM that *each special Australian Defence Force activity (being non-warlike operations) occurring on or after 14 February 1975 as is specified by the Chief of the Defence Force (CDF) is a prescribed operation.* The Governor-General then determined the conditions for the award of the ASM with Clasp 'Special Ops'.

26. As a separate and later initiative, the **ASM 1945-1975** was created by Letters Patent dated 22 February 1995 as an Australian medal instituted *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. Regulation 3 states that the Governor-General on the recommendation of the Minister for Defence may declare a non-warlike operation between 3 September 1945 and 16 September 1975 a *declared operation*. Copies of the Letters Patent are at Appendix 4.

27. In the *Special Gazette* No. S102 of 27 March 2001, the Governor-General determined the conditions for the award of the Clasp 'FESR' to the ASM 1945-1975. The Governor-General declared *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 periods as those ships were formally allocated or assigned to the Far East Strategic Reserve, was a declared operation.* The Governor-General then determined the conditions for the award of the Clasp, 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.

28. In the *Commonwealth Gazette* No. S230 of 29 June 2001, the Governor-General determined the conditions for the award of the Clasp South-East Asia (SE ASIA) to the ASM 1945-1975. The Governor-General declared that certain non-warlike operations were *declared operations*. Those declared operations included activities on land in Malaysia, Singapore, Thailand, Vietnam, Indonesia, Laos and Cambodia between certain dates.

29. The Governor-General also determined amongst other matters that a person was not eligible for an award of the ASM 1945-1975 Clasp 'SE ASIA' if a separate award of the ASM 1945-1975 with Clasp 'FESR' had been awarded or a separate award of the ASM 1945-1975 with Clasp 'SE ASIA' has been awarded.

The Policy concerning eligibility for the ASM

30. According to the DHAM the ASM provides *recognition for members of the Australian Defence Force (ADF) ... who rendered service in certain operations, declared to be prescribed non-warlike operations during the period that commenced on or after 14 February 1975*. Included in the prescribed non-warlike operations is service in South-East Asia, and in particular service on land in Malaysia from 14 February 1975 to 31 December 1989. The member must be posted or attached for at least 30 days.

31. Defence advised the Tribunal in its submission of 23 June 2011 that DEFGRAM No 233/2001 *Awards for Service in South-East Asia 1955-1989* had summarised the policy underlying the award of the ASM Clasp 'SE ASIA' in 2001. It set out the eligibility criteria for the award of the ASM and the ASM 1945-1975 for non-warlike service in South-East Asia. The DEFGRAM then considered whether the policy should be amended and whether several clasps should be established to recognise the different operations in South-East Asia or whether one Clasp should cover all operations. The DEFGRAM concluded that all operations *existed essentially with the one aim - to provide security within the South-East Asia region* - and it was appropriate that one Clasp should cover all operations.¹¹ Defence did not provide any other policy documents in relation to the ASM other than the DHAM.

32. The DEFGRAM also referred to the Government policy relating to 'double medalling' and noted that the effect of this policy 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' ... The ASM 1945-1975 and the current ASM are, in effect, the same medal*.¹² Defence advised that the policy contained within the DEFGRAM remains extant (see paragraphs 24 and 29).

The Operational Service Medal

The Regulations

33. The **Operational Service Medal (OSM)** was created by Letters Patent dated 22 May 2012 as an Australian Medal instituted *for the purpose of according recognition to members of the Australian Defence Force and certain Australian civilians who render service in certain military operations*. The Schedule sets out the Regulations. Regulation 3 states that the Governor-General, on the recommendation of the Minister for Defence after regard to the recommendation of the Chief of the Defence Forces (CDF), may declare an operation ***that is or was carried out in conditions that are hazardous*** (emphasis added) a declared operation. The Letters Patent are at Appendix 5.

34. The *Commonwealth Gazette* No. S 67 of 6 June 2012, gave the Governor-General the power to declare an operation for the purposes of the OSM Regulations *a declared operation*. The Regulations allow the Governor-General to determine any conditions. Regulations specifically prohibit the award of the OSM where another award has been made for the same operation.

¹¹ DEFGRAM 233/2001 dated 2 Jul 01. Policy aspects.

¹² Ibid.

35. On 18 July 2012, the Governor-General declared a number of operations related to border protection activities as eligible for the OSM, but Operation GATEWAY was not listed among them.

The Policy

36. As the OSM is a new award, the DHAM is yet to be updated to include it.

Definitions of ‘Peacetime’, ‘Warlike’, ‘Non-Warlike’, and ‘Hazardous’ Service

37. Because the Regulations refer to terms such as ‘peacetime’, ‘warlike’, ‘non-warlike’ and ‘hazardous’ service, the Tribunal next examined the Defence definitions of these terms.

Peacetime Service

38. The 1994 Committee of Inquiry into Defence and Defence Related Awards (CIDA) set out a Statement of Principles in which it referred to service. The first principle states:

Recognition of service by medals (other than medals for long service or special occasions such as a coronation) should only occur when that service has been rendered beyond the normal requirements of peacetime. Normal duties such as training and garrison duties should not be recognised by the award of a medal, even though they may be demanding, hazardous and uncomfortable, and may be undertaken in countries other than Australia. As a general rule, medals should be reserved for the recognition of service in military campaigns, peacekeeping or other military activities clearly and markedly more demanding than normal peacetime service.¹³

39. In 1993, the Government defined the terms ‘warlike’ and ‘non-warlike’ which Defence has subsequently adopted for its classification of the nature of service. In current practice, the ADF uses a Nature of Service (NOS) framework to define categories of service based on these Government approved definitions. NOS reviews are conducted regularly and the definitions can be applied retrospectively. The framework defines two types of operations:¹⁴

Peacetime Operations, which are defined as activities that may involve an elevated level of exposure to the risk of harm, but they will *not* involve a threat or exposure to the risk of harm from hostile or belligerent elements (people); and

Security Operations, which are defined as military activities approved by Government, in defence of the nation and its security interests, that deal with a direct or indirect threat from belligerent elements (people) that have been assessed as having the ability and or preparedness to use force or offer violence to achieve their objectives. Security operations might be conducted anywhere, not only overseas, and they require deployment into or within an area of operations within a specified timeframe. Security Operations are further divided into two operational descriptors:

¹³ Report of the Committee of Inquiry into Defence and Defence Related Awards (CIDA), AGPS, Canberra, 1994, p 5.

¹⁴ Defence Pay and Conditions Manual (PACMAN) Ch 17 – Warlike and Non-Warlike Deployments; and CIDA Report, Appendices, p 163.

- **Non-Warlike Operations** which are defined as military activities short of warlike operations where there is risk associated with the assigned task(s) and where the application of force is limited to self defence; casualties could occur but are not expected. Non-warlike operations can include **hazardous** activities that expose individuals to physical or environmental risk above and beyond that of normal peacetime duties; and
- **Warlike Operations** which are defined as military activities where the application of force is authorised to achieve specific military objectives and there is an expectation of casualties.

40. By the creation in 2012 of the OSM, for which an operation must have been carried out in conditions that are hazardous, the Government has added a fourth category in the classification of the nature of service which, in the opinion of the panel, sits between peacetime activity and non-warlike operations. As noted in paragraph 38 above, CIDA (1994) found that ‘Normal duties such as training and garrison duties should **not** be recognised by the award of a medal, even though they may be demanding, **hazardous** and uncomfortable, and may be undertaken in countries other than Australia’ (emphases added).

41. In 1994, CIDA adopted the term *hazardous* as meaning: ‘Activities exposing individuals or units to a degree of hazard above and beyond that of normal peacetime duty such as mine avoidance and clearance, weapons inspections and destruction, Defence Force aid to the Civil power, service protected or assisted evacuations and other operations requiring the application of minimum force to effect the protection of personnel or property, to other like activities.’¹⁵

42. In deciding whether an activity should be categorised as a security operation or hazardous, the ADF uses a Military Threat Assessment to determine the possibility of exposure to the risk of harm to an ADF member confronting a belligerent or adversary.¹⁶ It follows that if there is a threat, such a planned activity should be prescribed as a Security Operation. In this context it is important to note that regardless of any other factor, where there is the possibility (not probability) that a belligerent or adversary could be present in the area of operations, that is sufficient to justify designation as a Security Operation.

43. Furthermore, ‘warlike’ operations can encompass but are not limited to:

- a state of declared war;
- conventional combat operations against an armed adversary; and
- peace enforcement operations which are military operations in support of diplomatic efforts to restore peace between belligerents who may not be consenting to intervention and may be engaged in combat activities.

¹⁵ CIDA, p 163.

¹⁶ A Military Threat Assessment is an analytical matrix which assesses the extent to which an individual is potentially exposed to harm or the risk of harm brought about by a belligerent, the environment, health/psychological factors and other operational circumstances. Commodore P.G. Kinghorne RAN, Director General, Nature of Service, oral submission, Public Hearing Canberra on 10 August 2011 and letter to the Tribunal, Operation GATEWAY – Nature of Service Review, dated 11 November 2011.

44. Defence regularly conducts Nature of Service reviews to determine if an operation is 'warlike', 'non-warlike', or 'peacetime' service. Since 1982, Operation GATEWAY has been classified as normal peacetime service. Defence advised the Tribunal that the most recent biannual review of Operation GATEWAY reiterated this classification in 2011 and the operation continues to be 'peacetime' service.¹⁷

Operation GATEWAY - Service between 1981 and 1989

45. The application of the above regulations and policies to service with Operation GATEWAY indicates that those members who served on that operation prior to 1990 are eligible for the ASM Clasp 'SE ASIA' by virtue of the Butterworth basing location. There is no specific recognition for Operation GATEWAY because it has been classified as normal peacetime service. Operation GATEWAY has not been declared a prescribed operation for the purposes of the ASM or the AASM. Service with Operation GATEWAY at Butterworth prior to the end of 1989 is viewed as being the same as service in Singapore and Butterworth prior to the commencement of Operation GATEWAY.

Operation GATEWAY - Service after 1989

46. Since the signing of the peace treaty in December 1989 between the Government of Malaysia and Chin Peng on behalf of the Malaysian Communist Party, service at Butterworth has not earned eligibility for any medallic recognition. Accordingly those who have served with Operation GATEWAY after the end of 1989 are not eligible for any medallic recognition. In addition, the Schedule to the OSM Regulations does not include Operation GATEWAY as a declared operation.

Submissions to the Tribunal

47. The submitters variously put forward four propositions for recognition of their service with Operation GATEWAY. These are summarised as:

- a. those members who served as part of Operation GATEWAY prior to the end of 1989 and had already been awarded the ASM 1945-1975 with either the Clasp 'SE ASIA' or the Clasp 'FESR' should be eligible for further recognition for their service with Operation GATEWAY. These members should be eligible for the ASM with Clasp 'SE ASIA' or with a new clasp, which could be 'GATEWAY', 'OPERATION GATEWAY' or 'SPECIAL OPS';
- b. those members who served with Operation GATEWAY after 1989 should be eligible for the ASM with a new clasp (see sub-para a. above), because of the ongoing nature of the operation;
- c. service with Operation GATEWAY prior to the end of 1989 should be recognised by award of the Australian Active Service Medal (AASM) with Clasp 'SE ASIA' because the nature of the operation at the height of the Cold War in the 1980s was warlike; and

¹⁷ Commodore P.G. Kinghorne RAN, Letter to the Tribunal, Operation GATEWAY – Nature of Service Review, 11 November 2011.

- d. those who served with Operation GATEWAY should be recognised by a separate award made possible by the creation of the OSM.

48. Two principal arguments have been advanced to support the above claims. The first is that service with Operation GATEWAY should be recognised in its own right and not be regarded as part of service at Butterworth. This argument holds that Operation GATEWAY was a commitment by Australia to the Cold War western alliance rather than a contribution to the security of South-East Asia. The mounting of the missions from Butterworth is coincidental and irrelevant in terms of determining appropriate medallic recognition. According to this argument the ASM Clasp 'SE ASIA' is not appropriate recognition for service with Operation GATEWAY. The signing of the peace treaty in December 1989 between the Malaysian Government and the Malaysian Communist Party, which resulted in the cessation of medallic recognition for service at Butterworth, had no impact on the need for, or the execution of, missions for Operation GATEWAY. The event that led to changes in Operation GATEWAY in terms of tasking and intensity was the break-up of the Soviet Union which also occurred in 1989.

49. A corollary to this argument is that if separate recognition were afforded Operation GATEWAY by the creation of a Clasp to the ASM which was specific to Operation GATEWAY, or by the award of the OSM, then the previous award of the ASM 1945-1975 with Clasp 'SE ASIA' or Clasp 'FESR', or the ASM with Clasp 'SE ASIA' (for service not related to Operation GATEWAY) could be retained without offending the policy of not issuing two medals for the same service.

50. The second argument is that missions flown under Operation GATEWAY prior to 1990 were sometimes sufficiently hazardous as to warrant recognition with the award of the AASM. Witnesses and written submissions suggested there were occasions when crew members of vessels in the surveillance area fired at RAAF aircraft on Operation GATEWAY missions.¹⁸ One submitter, Wing Commander Martin Ball RAAFAR, claimed that he was on a GATEWAY flight in the late 1980s that was intercepted by an Indonesian Air Force F-5 fighter while the P-3 was crossing the Malacca Strait, but that the fighter took no aggressive action.

51. With the recent establishment of the OSM, it was argued that Operation GATEWAY should be included in the Schedule as a *declared operation*, with a backdating of eligibility to 1 January 1990.

The Defence Submission

52. The counter-arguments presented by the Department of Defence were:

- a. service with Operation GATEWAY has been found and confirmed by previous reviews to constitute peacetime service and accordingly cannot be recognised with the award of either the AASM or the ASM. In addition, the Department of

¹⁸ A search of the No. 92 Wing Operational Records (Unit Histories) related to Operation GATEWAY revealed only one instance when an aircraft was fired upon in 150 sorties examined. A Vietnamese patrol boat fired upon Gateway A-9 on 20 July 1990, but this was only discovered when photos of the vessel were developed.

Prime Minister and Cabinet (PM&C) has advised Defence that 'peacetime' service is not consistent with the requirements for an ASM;¹⁹

- b. the award of the ASM Clasp 'SE ASIA' to members of the ADF who satisfied the requirements of the ASM regulations through their service at Butterworth with Operation GATEWAY is appropriate; and
- c. the principle of not awarding two medals for the same service must be upheld.

Oral Evidence

53. Commodore Paul Kinghorne RAN, Director General, Nature of Service, Department of Defence, appeared before the Tribunal in Canberra on 10 August 2011. In his evidence Commodore Kinghorne supported the submission of the Department of Defence and its conclusion that there is no justification for changing the current recognition arrangements relating to ADF members who served on Operation GATEWAY. He stated that a review of the nature of service for Operation GATEWAY conducted in 2002 resulted in the Vice Chief of the Defence Force confirming in 2005 that Operation GATEWAY constituted peacetime service which means that it does not provide eligibility for any medallic recognition other than that which arises due to its location at Butterworth in the period ending 31 December 1989.

54. Air Commodore Ian Pearson (RAAFAR) also attended the Tribunal hearing in Canberra on 10 August 2011. In his evidence he stated that the ASM with Clasp 'SE ASIA' is inappropriate recognition for service with Operation GATEWAY because the objective of that operation had nothing to do with the security of South-East-Asia. However, he argued Operation GATEWAY played a role in winning the Cold War. For this reason Air Commodore Pearson believes that the operation should be recognised with its own medal. He emphasised that the operation was not peacetime service and indeed could be determined to have constituted warlike service for much of the period of the 1980s and so should be recognised for that period with award of the AASM. He confirmed that after 1989, with the breakup of the Soviet Union, the environment for Operation GATEWAY was much less threatening.

55. Air Commodore Pearson clarified that the aircraft used in Operation GATEWAY were unarmed and that there was never any authorisation given for the use of force by ADF members but stated that he believed that the use of force must have been authorised for the other side because to his knowledge, Operation GATEWAY aircraft were fired at on a number of occasions. He said that he and others serving with Operation GATEWAY expected that casualties would occur.

56. In his evidence to the Tribunal at the hearing in Adelaide on 16 August 2011, Squadron Leader Andrew Maitland (Retd) pointed out the difference between Operation GATEWAY, with its objective of contributing to the Cold War, and other service at Butterworth in support of the security of South-East Asia. In his introduction Squadron Leader Maitland provided a brief history of the efforts made by him and others to gain recognition for Operation GATEWAY that have to date been unsuccessful. He also gave an account of his experience of the conduct of Operation GATEWAY missions.

¹⁹ Defence Submission, paragraph 27

57. Squadron Leader Maitland also stated that he sees DEFGRAM No. 233/2001 as the main obstacle to individuals who served with Operation GATEWAY receiving proper recognition. In his oral evidence and his written submission, he argued that prior service which earned the award of the ASM 1945-1975 with Clasp 'SE ASIA' or 'FESR' should not make ADF members who served with Operation GATEWAY in the period from its inception up to the end of 1989 ineligible for the ASM for their Operation GATEWAY service. He went on to say that a new clasp, 'GATEWAY', should be created for this purpose. He further suggested that Operation GATEWAY should be declared an operation for the purposes of the ASM until 1993 when the operation effectively ceased. He stated that he was not arguing for the AASM to be awarded to participants in Operation GATEWAY.

58. Mr Chris Thompson appeared before the Tribunal in Adelaide on 16 August 2011. He served as an avionics technician with the rank of Corporal in support of Operation GATEWAY on several deployments to Butterworth. He gave evidence that repeated deployments to Butterworth were arduous and particularly demanding on families left at home. He confirmed that the aircraft were unarmed. He also felt that the aircrew participating in Operation GATEWAY deserved the AASM.

59. Air Commodore Jeff McCullough (Retd) gave evidence by telephone from Adelaide on 6 September 2011. In his evidence he recounted that in 1980 he was serving as operations officer at Maritime Headquarters. Operation GATEWAY, which was developed while he was serving in that position, was in response to the Soviet invasion of Afghanistan and was designed to track Soviet shipping between the Straits of Malacca and Sri Lanka. Butterworth was chosen as the base for the operation in preference to the option of Sumatra or Singapore. He stated that he believes that the operation was instigated in response to a request from the US Navy although it was mounted under the auspices of the Five Power Defence Arrangements. In 1982 he was serving as the commanding officer of No. 292 Squadron when missions as part of Operation GATEWAY commenced. In 1990 he assumed the role of Officer Commanding No. 92 Wing with responsibility for the Detachment serving at Butterworth on Operation GATEWAY.

60. Air Commodore McCullough went on to say that at the time of its inception, the nature of service for the operation was not given formal consideration, but that the length and frequency of absences from their home base in South Australia was considered to be more of an issue than the nature of the operation. The threat assessment led to a policy of following the normal international rules and laws relating to flight in proximity to armed ships. It was not unusual for ships in the surveillance area to lock on to the surveillance aircraft with gun and missile radar systems but he never considered that there was a threat of hostile fire. He added that there were occasional diplomatic protests raised from the Indonesian Navy. The Indonesians appeared at times to be unclear about airspace management and consequently a policy of staying at least 20 nautical miles from Indonesia and Indonesian ships and aircraft was maintained. He recounted that on one occasion, a Vietnamese patrol boat, which had been mistaken for a fishing boat was approached, and fired a 50 calibre machine-gun at the aircraft, but the aircraft was not hit.

61. Air Commodore McCullough further stated that the operational tasking of the Operation GATEWAY Detachment at Butterworth was done directly by Headquarters Operational Command at RAAF Glenbrook without input from the Headquarters of the Butterworth Base. His assessment of service with Operation GATEWAY in the 1980s was that there was no special risk for ground crew supporting the aircraft, while the aircrews

operated in areas that were rich in surveillance targets and had to contend with hazards associated with the environment including visibility, weather and very long range missions.

62. Air Commodore McCullough stated that he commanded the Maritime Patrol Group between 1995 and 1998 and during that time the detachment of No. 92 Wing was closed down because no foreign naval vessels were being observed.

63. Mr Peter Pinkerton who served as a RAAF policeman at Butterworth from 1982 to 1985 also gave evidence by telephone on 6 September 2011. He stated that he has already been awarded the ASM with Clasp 'SE ASIA' and the AASM for his service in the Gulf War. His evidence included a statement that when he served at Butterworth in the period 1982 to 1985 weapons and guard dogs were used to guard the Operation GATEWAY aircraft but this was not so when he was in Butterworth in 1999 and 2000. He said that he is seeking recognition for the long hours served at Butterworth rather than for operational reasons.

64. Wing Commander Martin Ball provided the Tribunal with a late submission and gave oral evidence via teleconference on 6 December 2012. He stated that he had served on P-3 aircraft in the late 1980s and had undertaken several GATEWAY patrols. Wing Commander Ball mentioned that on one flight, the aircraft was intercepted by an Indonesian F-5 fighter aircraft, but that nothing further ensued. Wing Commander Ball went on to state that the award of the AASM was inappropriate as it 'didn't fit', but that he believed a case could be made for the award of the OSM for Operation GATEWAY crews.

TRIBUNAL CONSIDERATION

65. The Terms of Reference for this Inquiry direct the Tribunal to 'inquire into and report on recognition for members of the Australian Defence Force who served with Operation GATEWAY' and to 'examine the Defence policy on the granting of an award where more than one operation is involved, in relation to service in South-East Asia between 1945 and the present, while considering the nature and context of this service in relation to the criteria for an Australian Service Medal.' It was argued by those who provided submissions to the Inquiry that members who served with Operation GATEWAY could be awarded the AASM, the ASM or the OSM. The criteria for the award of those medals have been set out in paragraphs 17 to 36 above. The ASM and the AASM can only be awarded with a Clasp. To be eligible for the ASM with Clasp 'SE ASIA' prior to 1990 an ADF member must have served at least 30 days on land in Malaysia during the prescribed period. In relation to Operation GATEWAY the criteria for Clasp 'SE ASIA' were satisfied because Operation GATEWAY was based at the Butterworth base in Malaysia and crews were deployed for at least 30 days before 31 December 1989.

66. Therefore, a key question to be addressed by the Tribunal, based on the Terms of Reference and the submissions and evidence presented, is whether ADF members who served with Operation GATEWAY should be given medallic recognition on the basis of the nature of the operation as distinct from simply being in Butterworth where they served, and if so, what should that recognition be and what should be the criteria for eligibility?

67. If recognition for service with Operation GATEWAY, other than the existing award of the ASM with Clasp 'SE ASIA', is determined to be appropriate, then there would appear to be no issue with it being awarded to members of the ADF who had already been awarded the ASM with the Clasp 'SE ASIA' (for service other than Operation GATEWAY) or the ASM

1945-1975 with Clasp 'SE ASIA' or Clasp 'FESR'. There would no longer be an issue of 'double medalling' as this would involve the issue of a new clasp.

68. If the finding of the Tribunal is that separate recognition of service with Operation GATEWAY is not warranted, then the question of whether the ASM with Clasp 'SE ASIA' can be awarded to members, who have previously been awarded the ASM Clasp 'SE ASIA' or the ASM 1945-1975 with Clasp 'SE ASIA' or Clasp 'FESR', requires resolution. The Regulations to the Letters Patent for both the ASM and the ASM 1945-1975 reflect the present policy on 'double medalling' and prohibit the award of these medals to persons who have already been awarded the ASM with Clasp 'SE ASIA' or the ASM 1945-1975 with Clasp 'SE ASIA' or Clasp 'FESR'.

Recognition for Operation GATEWAY in its Own Right

69. Several of the submitters and witnesses who gave evidence to the Tribunal about the nature and context of service with Operation GATEWAY argued that the creation and execution of Operation GATEWAY was a contribution by Australia to the conduct of the Cold War and was not a part of Australia's contribution to the security of South-East Asia. By this argument the location of the aircraft at Butterworth was coincidental rather than a critical characteristic of the operation.

70. The Tribunal was urged to recommend that Operation GATEWAY be classified as a 'non-warlike' operation (leading to the award of the ASM) or 'warlike' operation (leading to the award of the AASM) with a separate and distinct clasp. This new clasp would be required to differentiate service in Operation GATEWAY from service in support of the security of South-East Asia. Suggestions for this include a Clasp 'GATEWAY', a Clasp 'OPERATION GATEWAY' or the Clasp 'SPECIAL OPS.'

71. The Department of Defence in its submission, which was supported by Commodore Kinghorne, argued that the nature of service for Operation GATEWAY has been determined, and subsequently regularly re-confirmed, to be peacetime service and that therefore no medallic recognition exclusively for the operation is possible. This view seems to be consistent with that of Air Commodore McCullough who was closely involved in the establishment, planning and conduct of the operation at various times through its life. No authority for the use of force by participants in the operation was ever established. Air Commodore McCullough confirmed that there was never any formal expectation of casualties even though some submitters and witnesses did state that they had thought casualties were possible and that some flights were flown under higher risk because of the danger of being fired upon. The evidence about being fired upon by shipping related to one incident only and there were no casualties. As to fighter intercepts related by Wing Commander Ball, the Tribunal accepts that fighter intercepts occurred from time-to-time, but no aggressive action was undertaken. The evidence of Commodore Kinghorne, supported in part by the evidence of Air Commodore McCullough, sustained the finding that service with Operation GATEWAY was peacetime service.

72. Furthermore, the Tribunal notes that the latest review in 2011 of the nature of service for Operation GATEWAY confirmed the previous determinations that Operation GATEWAY constituted peacetime service. The Tribunal accepts that the objective of Operation GATEWAY was to contribute to the Cold War effort. It was developed in response to the Soviet invasion of Afghanistan and was designed to track Soviet shipping between the Straits of Malacca and Sri Lanka. Butterworth was chosen as the base for the operation.

73. The evidence indicates, and the Tribunal so finds, that at the time of its inception, the nature of service for Operation GATEWAY was not given formal consideration. The length and frequency of absences from their home base in South Australia was considered to be more of an issue for members than the nature of the operation. The threat assessment at the time led to a policy of following the normal international rules and laws relating to flight in proximity to armed ships and aircraft. There was no authorisation for the use of force in relation to the activities of Operation GATEWAY. The Tribunal notes that some members thought that there could be casualties as a result of certain flights in relation to Operation GATEWAY. However the Tribunal finds that there were no expectation of casualties and no actual casualties as a result of the activities of Operation GATEWAY. One of the late submissions referred to interception by hostile aircraft but no aggressive action was taken.

74. The Tribunal recognised that during the Cold War, a great many ADF operations and RAAF flights in particular, conducted throughout South-East Asia resulted in the aircraft being locked onto by unknown and hostile radar and missile systems. This included flights over Burma, Cambodia, China, India, Indonesia, Laos, Pakistan and Vietnam. Therefore, the Tribunal could not find that maritime patrol operations of Operation GATEWAY were different in this respect.

75. The definition of ‘non-warlike operations’ includes risks associated with the assigned task and where the application of force is limited to self defence; casualties could occur but are not expected. The submissions argue that there was some risk associated with GATEWAY operations, but the Tribunal finds that this risk was no more than that experienced by similar operations, none of which have been designated ‘non-warlike’.²⁰ There was no expectation of casualties and there was no authorisation for the application of force in self defence. The Tribunal finds that Operation GATEWAY should not be considered a ‘non-warlike operation’ between 1981 and 1989.

76. The definition of ‘warlike operations’ is military activities where the application of force is authorised to achieve specific military objectives and there is an expectation of casualties. The Tribunal has found that there was no expectation of casualties and there was no authorisation for the use of force in the conduct of Operation GATEWAY. The Tribunal finds that Operation GATEWAY should not be considered ‘warlike’ between 1981 and 1989.

77. Therefore there is no basis for recognition of Operation GATEWAY in its own right with either the AASM or the ASM.

The ASM with Clasp ‘SPECIAL OPS’

78. The ASM Regulations provide that CDF may recommend to the Governor-General those activities which will be awarded the Clasp ‘SPECIAL OPS’. The activity must be declared to be a prescribed operation under the Regulations. The Regulations stipulate that the activity must be classified as a non-warlike operation occurring after 1945.

79. The Tribunal found that Operation GATEWAY was a peacetime operation, and therefore, the ASM with Clasp ‘SPECIAL OPS’ does not apply.

²⁰ PACMAN Annex 17.1.B lists similar operations.

The OSM

80. Under its regulations, the OSM cannot be awarded unless the operation involved is declared to be a declared operation for the purposes of the award and this would require a determination that the conditions under which the operation was conducted were 'hazardous'. Neither of these has occurred for Operation GATEWAY.

81. The OSM could not be awarded for Operation GATEWAY in the period before 1 January 1990 because recognition for another award, the ASM with Clasp 'SE ASIA', already exists in respect of service in this period.

The Policy - DEFGRAM No 233/2001

82. The argument that DEFGRAM No. 233/2001 should be revoked because it prevents the recognition of Operation GATEWAY as a separate operation cannot be sustained. The DEFGRAM summarised existing Government policy and arguments about whether that policy should be changed. The DEFGRAM has since been cancelled. The DEFGRAM predates the Declaration and Determination made pursuant to the ASM Regulations by the Governor-General dated 28 February 2002. The Declaration specifically provided that those members who had previously been awarded the ASM 1945–1975 with Clasp 'SE ASIA' or Clasp 'FESR' could not be awarded the ASM with Clasp 'SE ASIA' and the Declaration is law not policy.

The Nature of Service with Operation GATEWAY

83. The Report of the CIDA released in 1994 considered the nature of peacetime service. The Committee's first principle states:

Recognition of service by medals (other than medals for long service or special occasions such as a coronation) should only occur when that service has been rendered beyond the normal requirements of peacetime. As a general rule, medals should be reserved for the recognition of service in military campaigns, peacekeeping or other military activities clearly and markedly more demanding than normal peacetime service.²¹

84. The Tribunal is persuaded by Principle 1 of the CIDA Report that medallic recognition of service should occur where that service has been for more than the normal requirements of peacetime duties. Peacetime service may be demanding, uncomfortable and overseas and still be peacetime service. The evidence demonstrated that service on Operation GATEWAY was demanding, uncomfortable and overseas. However this was not enough to make the service 'non-warlike'. The Tribunal has not considered whether the service should be determined to be 'hazardous'.

85. The Tribunal notes that there have been previous inquiries into the recognition of service in South-East Asia that have concluded that that service should be recognised by declaring certain non-warlike operations to be a declared operation. Activities on and out of the land of Malaysia have been declared an operation for the purpose of the ASM Clasp 'SE ASIA'. Service with Operation GATEWAY took place on and out of the land of Malaysia, and that service has been recognised by the ASM with Clasp 'SE ASIA' where it occurred

²¹ CIDA, pp 5-6.

within the prescribed period. Therefore it is reasonable that service with Operation GATEWAY up to the end of 1989 is recognised by the ASM Clasp 'SE ASIA' because it satisfies the criteria for that award.

86. Consequently, service on Operation GATEWAY before 1 January 1990 has already been recognised by the award of the Clasp 'SE ASIA' to the ASM for those who are deemed eligible. The Schedule to the Letters Patent prohibits the award of the ASM with the Clasp 'SE ASIA' if the member has previously been awarded the ASM 1945-1975 with either of the Clasps 'SE ASIA' and 'FESR'. The claimants had argued that this prohibition is unfair because service with Operation GATEWAY was not the same as other service in South-East Asia, namely it was service in conjunction with the Cold War and not to promote the security of the region. However, the Tribunal finds that service on Operation GATEWAY was peacetime service and as such, does not call for separate medallic recognition. On the basis of the evidence presented, the Tribunal finds that discrete medallic recognition for service with Operation GATEWAY is not warranted. For service with Operation GATEWAY post 1 January 1990, no medallic recognition is currently awarded.

Other Policy Aspects

87. In relation to service in South-East Asia from 1945 to the present, the Tribunal was asked to examine the policy on the granting of an award where more than one operation was involved. The Tribunal believes that the Defence policy should reflect the following principles:

- a. if the operation merits an award in its own right, then the member should be eligible for that award for that operation; or
- b. if the operation merits an award in its own right, and the member has already received an award for that operation, then they should not receive a second award; or
- c. if the operation does not merit an award in its own right, but the service meets the criteria of a more general award, then the member should be eligible for that award; or
- d. if the operation is recognised retrospectively, and the member has the more general award for service in respect of that operation, then the member should be given the option to elect either award but not both.

88. The Tribunal finds that:

- a. the existing recognition of those members of the ADF who served with Operation GATEWAY is appropriate; and
- b. the Defence policy on the granting of an award where more than one operation is involved in relation to service in South-East Asia between 1945 and the present, while taking into account the nature and context of this service in relation to the criteria for an ASM, ASM 1945-1975 and the OSM, should be consistent with the principles set out in paragraph 87 above.

Recommendations

89. The Tribunal recommends that there be no change to the existing provisions and policy approach to medallic recognition for members of the ADF who served with Operation GATEWAY.

90. In regards to the Tribunal consideration of the policy as required by the TORs, the following principles should govern the eligibility for awards for service in South-East Asia from 1945 to the present where more than one operation is involved:

- a. if any operation merits an award in its own right, then the member should be eligible for that award for that operation; or
- b. if an operation merits an award in its own right, and the member has already received an award for that operation, then they should not receive a second award; or
- c. if an operation does not merit an award in its own right, but the service meets the criteria of a more general award, then the member should be eligible for that more general award; or
- d. if an operation is recognised retrospectively as deserving an award in its own right, and the member has the more general award for service in respect of that operation, then the member should be given the option to elect to receive either award, but not both.

Appendix 1 – List of Submissions

The Tribunal received submissions from the following individuals and organisations:

Name and Organisation (as applicable)

Wing Commander Martin Ball RAAFAR
Wing Commander Leigh Collins
Wing Commander Tim Creevey
Squadron Leader Scott Dagg
Squadron Leader Andrew C.G. Maitland (Retd)
Air Commodore Ian Pearson RAAFAR
Mr Peter Pinkerton
Warrant Officer Darrell Roberts
Mr Chris Thompson
Mr Anthony Wills

Information was sought and received from the following organisation and individual:

Department of Defence, Lieutenant General David Hurley, Vice Chief of the Defence Force
Department of Defence, Commodore Paul Kinghorne RAN, Director General Nature of Service Branch

Letters of Support for an Award

Sergeant Lee Fuller
Warrant Officer Ian Gosper
Mr Tony Marshall
Mr Gary Matthews
Corporal Charlene Morgan
Squadron Leader T. Moxham (Retd)
Corporal Paul Randall
Flight Lieutenant Andrew Sibenaler

APPENDIX 2 – Tribunal Meeting and Hearing Dates and Witnesses

6 June 2011

Tribunal Members

Presiding Member: Air Commodore Mark Lax OAM, CSM, (Retd)
Members: Ms Christine Heazlewood
Mr John Jones AM

5 July 2011

Tribunal Members

Presiding Member: Air Commodore Mark Lax OAM, CSM, (Retd)
Members: Ms Christine Heazlewood
Mr John Jones AM

10 August 2011

Tribunal Members

Presiding Member: Air Commodore Mark Lax OAM, CSM, (Retd)
Members: Ms Christine Heazlewood
Mr John Jones AM

Witnesses

Department of Defence, Director General Nature of Service - Commodore Paul Kinghorne –
Air Commodore Ian Pearson (RAAFAR)

16 August 2011

Tribunal Members

Presiding Member: Air Commodore Mark Lax OAM, CSM, (Retd)
Members: Ms Christine Heazlewood
Mr John Jones AM

Witnesses

Squadron Leader Andrew Maitland (Retd)
Mr Chris Thompson

6 September 2011

Tribunal Members

Presiding Member: Air Commodore Mark Lax OAM, CSM, (Retd)
Members: Ms Christine Heazlewood
Mr John Jones AM

Witnesses (via teleconference)

Air Commodore Jeff McCullough (Retd)
Mr Peter Pinkerton

26 March 2012

Tribunal Members

Presiding Member:

Air Commodore Mark Lax OAM, CSM, (Retd)

Members:

Ms Christine Heazlewood

Mr John Jones AM

30 July 2012

Tribunal Members

Presiding Member:

Air Commodore Mark Lax OAM, CSM, (Retd)

Members:

Ms Christine Heazlewood

Mr John Jones AM

6 December 2012

Tribunal Members

Presiding Member:

Air Commodore Mark Lax OAM, CSM, (Retd)

Members:


Ms Christine Heazlewood

Mr John Jones AM


Witness (via teleconference)

Wing Commander Martin Ball RAAFAR

APPENDIX 3 – LETTERS PATENT – AUSTRALIAN ACTIVE SERVICE MEDAL

	Commonwealth of Australia	Gazette
S 335, Wednesday, 2 November 1988 <small>Printed by the Australian Government Publishing Service, Canberra</small>		SPECIAL

Elizabeth R



ELIZABETH THE SECOND, by the Grace of God Queen of Australia
and Her other Realms and Territories, Head of the Commonwealth:

TO ALL to whom these Presents shall come,

GREETING:

WHEREAS it is desirable that there be instituted an Australian medal
for the purpose of according recognition to members of the Defence Force and
certain other persons who render service in certain warlike operations:


KNOW YOU that We do by these Presents institute a medal to be
designated and styled the Australian Active Service Medal:


AND WE DO ordain that the award of the Australian Active Service
Medal shall be governed by the Regulations set out in the Schedule.

IN WITNESS whereof We have caused these Our Letters to be made
Patent.

GIVEN under the Great Seal
of Australia at Our Court at
St James's on 13 *September* 1988.

By Her Majesty's Command,


Prime Minister



5134/88 Cat No. 88 6320 8
Commonwealth of Australia

SCHEDULE

AUSTRALIAN ACTIVE SERVICE MEDAL REGULATIONS

Short title

1. These Regulations may be cited as the Australian Active Service Medal Regulations.

Interpretation

2. In these Regulations—

“clasp” means a device to denote a prescribed operation;

“Defence Force” has the same meaning as in the *Defence Act 1903*;

“Medal” means the Australian Active Service Medal;

“Minister” means the Minister of State for Defence;

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

Declaration of prescribed operations

3. The Governor-General, on the recommendation of the Minister, may declare a warlike operation in which members of the Defence Force are, or have been on or after 14 February 1975, engaged, to be a prescribed operation for the purposes of these Regulations.

Conditions for award of the Medal

4. (1) The Medal may be awarded for service in or in connection with a prescribed operation.

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

(3) Any subsequent award of the Medal to the same person shall be made in the form of a further clasp to the Medal.

(4) The persons to whom the Medal may be awarded are—

(a) persons who served in a prescribed operation as members of the Defence Force; and

(b) persons included in a class of persons determined by the Minister, for the purposes of this regulation.

(5) The Medal may not be awarded except to a person who fulfils the conditions for the award of the Medal.

Making of awards

5. Awards of the Medal shall be made by the Governor-General on the recommendation of the Chief of the Defence Force or his delegate.

Design of the Medal

6. The design of the Medal shall be as prescribed.

Wearing of the Medal

7. The manner of wearing the Medal shall be as determined by the Governor-General.

Registrar of Awards

8. (1) There shall be a Registrar of Awards who shall be appointed by the Governor-General and who shall maintain a Register of the names of persons to whom the Medal has been awarded.

(2) The Registrar shall keep such other records relating to the award of the Medal as the Governor-General directs.

Cancellation and reinstatement


9. (1) The Governor-General may cancel an award of the Medal and may reinstate an award so cancelled.



(2) Where an award of the Medal is cancelled, the name of the person to whom the award was made shall be erased from the Register and the person shall return the Medal to the Registrar.

(3) Where an award that has been cancelled pursuant to sub-regulation (1) is reinstated, the Registrar shall restore the entry or entries in the Register that had been erased.

**APPENDIX 4 – LETTERS PATENT – AUSTRALIAN SERVICE MEDAL AND
AUSTRALIAN SERVICE MEDAL 1945-1975**

AUSTRALIAN SERVICE MEDAL

	Commonwealth of Australia	Gazette
No. S 336, Wednesday, 2 November 1988 Published by the Australian Government Publishing Service, Canberra		SPECIAL



ELIZABETH THE SECOND, by the Grace of God Queen of Australia
and Her other Realms and Territories, Head of the Commonwealth:

TO ALL to whom these Presents shall come,

GREETING:

WHEREAS it is desirable that there be instituted an Australian medal
for the purpose of according recognition to members of the Defence Force and
certain other persons who render service in certain non-warlike military
operations:


KNOW YOU that We do by these Presents institute a medal to be
designated and styled the Australian Service Medal:


AND WE DO ordain that the award of the Australian Service Medal
shall be governed by the Regulations set out in the Schedule.

IN WITNESS whereof We have caused these Our Letters to be made
Patent.

GIVEN under the Great Seal
of Australia at Our Court at
St James's on 13 September 1988.

By Her Majesty's Command,


Prime Minister



15135/88 Cat No. 88 6326 9
© Commonwealth of Australia

SCHEDULE

AUSTRALIAN SERVICE MEDAL REGULATIONS

Short title

1. These Regulations may be cited as the Australian Service Medal Regulations.

Interpretation

2. In these Regulations—

- "clasp" means a device to denote a prescribed operation;
- "Defence Force" has the same meaning as in the *Defence Act 1903*;
- "Medal" means the Australian Service Medal;
- "Minister" means the Minister of State for Defence;
- "prescribed operation" means an operation in respect of which a declaration has been made under regulation 3.

Declaration of prescribed operations

3. The Governor-General, on the recommendation of the Minister, may declare a non-warlike operation, in which members of the Defence Force are, or have been on or after 14 February 1975, engaged, to be a prescribed operation for the purposes of these Regulations.

Conditions for award of the Medal

4. (1) The Medal may be awarded for service in or in connection with a prescribed operation.

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

(3) Any subsequent award of the Medal to the same person shall be made in the form of a further clasp to the Medal.

(4) The persons to whom the Medal may be awarded are—

- (a) persons who served in a prescribed operation as members of the Defence Force; and
- (b) persons included in a class of persons determined by the Minister, for the purposes of this regulation.

(5) The Medal may not be awarded except to a person who fulfils the conditions for the award of the Medal.

Making of awards

5. Awards of the Medal shall be made by the Governor-General on the recommendation of the Chief of the Defence Force or his delegate.

Design of the Medal

6. The design of the Medal shall be as prescribed.

Wearing of the Medal

7. The manner of wearing the Medal shall be as determined by the Governor-General.

Registrar of Awards

8. (1) There shall be a Registrar of Awards who shall be appointed by the Governor-General and who shall maintain a Register of the names of persons to whom the Medal has been awarded.

(2) The Registrar shall keep such other records relating to the award of the Medal as the Governor-General directs.

Cancellation and reinstatement

9. (1) The Governor-General may cancel an award of the Medal and may reinstate an award so cancelled.

(2) Where an award of the Medal is cancelled, the name of the person to whom the award was made shall be erased from the Register and the person shall return the Medal to the Registrar.

(3) Where an award that has been cancelled pursuant to sub-regulation (1) is reinstated, the Registrar shall restore the entry or entries in the Register that had been erased.

COMMONWEALTH OF AUSTRALIA
AUSTRALIAN SERVICE MEDAL REGULATIONS
DETERMINATION BY THE MINISTER OF STATE FOR DEFENCE

Pursuant to Paragraphs 2 and 4(b) of the Australian Service Medal Regulations which are set out in the Schedule of Letters Patent given on 13 September 1988 I, Robert Francis Ray, the Minister of State for Defence, HEREBY DETERMINE that members of foreign defence forces who render service with the Australian Defence Force in prescribed operations to be persons eligible for the award of the Australian Service Medal.

Dated this *Eleventh* day of *May* 1992



ROBERT RAY

AUSTRALIAN SERVICE MEDAL 1945-1975

	Commonwealth of Australia	Gazette
No. S 122, Monday, 3 April 1995 <small>Published by the Australian Government Publishing Service, Canberra</small>		SPECIAL
 		

ELIZABETH THE SECOND, by the Grace of God Queen of Australia and Her other Realms and Territories, Head of the Commonwealth:

TO ALL to whom these Presents shall come,

GREETING:

WHEREAS it is desirable that there be instituted an Australian medal for the purpose of according recognition to members of the Defence Force, and certain other persons, who rendered service in non-warlike military operations:

'KNOW YOU that We do by these Presents institute a medal to be called the Australian Service Medal 1945-1975:

AND WE DO ordain that the award of the Australian Service Medal 1945-1975 is governed by the Regulations set out in the Schedule.

IN WITNESS whereof We have caused these Our Letters to be made Patent.

GIVEN under the Great
Seal of Australia at Our
Court at St James's on
22 February, 1995.

By Her Majesty's Command,



Prime Minister

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SCHEDULE

**REGULATIONS GOVERNING THE AWARD OF THE AUSTRALIAN SERVICE
MEDAL 1945-1975**

Citation

1. These Regulations may be cited as the Australian Service Medal 1945-1975 Regulations.

Interpretation

2. In these Regulations:

"declared operation" means an operation in respect of which a declaration has been made under regulation 3;

"Defence Force" has the same meaning as in the *Defence Act 1903*;

"Medal" means the Australian Service Medal 1945-1975;

"Minister" means a Minister administering the Department of Defence;

"Registrar" means the Registrar of Awards appointed under subregulation 8(1);

"Register" means the Register maintained under subregulation 8(2).

Declared operations

3. The Governor-General, on the recommendation of a Minister, may declare a non-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 16 September 1975, to be a declared operation for the purposes of these Regulations.

Conditions for award of the Medal

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

(a) a member, or a former member, of the Defence Force; or

(b) a person in a class of persons determined by a Minister for the purposes of these Regulations;

who served in connection with a declared operation.

(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.

(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.

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

Making of awards

5. An award of the Medal is to be made by the Governor-General on the recommendation of the Chief of the Defence Force or his or her delegate.

Design of the Medal

6. The design of the Medal is as determined by the Governor-General.

Wearing of the Medal

7. The manner of wearing of the Medal is as determined by the Governor-General.

Registrar of Awards

8. (1) The Governor-General must appoint a Registrar of Awards.

(2) The Registrar must:

- (a) maintain a Register of the names of persons to whom the Medal has been awarded; and
- (b) keep such other records relating to the award of the Medal as the Governor-General directs.

Cancellation and reinstatement

9. (1) The Governor-General may cancel an award of the Medal and may reinstate a cancelled award.

(2) If an award of the Medal is cancelled:

- (a) the name of the person to whom the award was made must be erased from the Register; and
- (b) the person must return the insignia of the award to the Register.

(3) If a cancelled award is reinstated, the Registrar must:

- (a) restore in the Register the entry that was erased; and
- (b) return the insignia of the award to the person to whom the award was made.



Government House
Canberra ACT 2600

7 June 1995

IT is notified for general information that the Governor-General has made the following Determination regarding the Australian Service Medal 1945-1975.

AUSTRALIAN SERVICE MEDAL 1945-1975

DETERMINATION

1. WILLIAM GEORGE HAYDEN, Governor-General of the Commonwealth of Australia, acting under the provisions of regulations 6 and 7 of the Australian Service Medal 1945-1975 Regulations, determine as follows:

Medal design

1. The Australian Service Medal 1945-1975 is a nickel-silver medal 38 millimetres in diameter ensigned with a Crown of Saint Edward in nickel-silver. The obverse bears a central device of the Australian Coat of Arms above a spray of wattle leaves and blossom, surrounded by the inscription "THE AUSTRALIAN SERVICE MEDAL 1945-1975". The reverse bears a central horizontal panel 25 millimetres across and 8 millimetres high superimposed on a Federation Star with the same spray of wattle leaves and blossom used on the obverse between each of the seven points of the Star.

Medal ribbon

2. The Australian Service Medal 1945-1975 is suspended from a ribbon, 32 millimetres wide, having a central gold stripe 2 millimetres wide flanked by two green stripes 3 millimetres wide, which are in turn flanked by two silver-grey stripes 4 millimetres wide, then on the extreme left as seen by an observer there is a dark blue stripe 8 millimetres wide while on the extreme right there is a light blue stripe 8 millimetres wide.

Medal dress

3. The Australian Service Medal 1945-1975 is worn on the left breast whenever full size orders, decorations and medals are worn.

Medal Miniature

4. The miniature of the Australian Service Medal 1945-1975 is a half-size replica of the Medal suspended from a miniature ribbon 16 millimetres wide. The miniature Medal is worn whenever miniatures of orders, decorations and medals are worn.

Clasp

5. Each Medal presented has a nickel-silver clasp 37 millimetres wide and 6 millimetres high attached to the ribbon bearing the name of the theatre where the recipient served.

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 of the Medal above the original clasp. Clasp sets consist of an attachment for both the full-size and miniature medals.

Order of Precedence

7. The Australian Service Medal 1945-1975 is worn in accordance with the Australian Order of Precedence of Honours and Awards as approved from time to time by The Sovereign.

Dated

7-6-

1995.

Governor-General.

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APPENDIX 5 – LETTERS PATENT – OPERATIONAL SERVICE MEDAL

 Commonwealth of Australia	Gazette
No. S 67, Wednesday, 6 June 2012 Published by the Commonwealth of Australia	SPECIAL



ELIZABETH THE SECOND, by the Grace of God Queen of Australia and
Her other Realms and Territories, Head of the Commonwealth:

TO ALL to whom these Presents shall come,

GREETING:

WHEREAS it is desirable that there be instituted an Australian Operational
Service Medal for the purpose of according recognition to members of the
Australian Defence Force and certain Australian civilians who render service
in certain military operations:

KNOW YOU that We do, by these Presents, institute a medal to be
designated and styled the Australian Operational Service Medal:

AND WE DO ordain that the award of the Australian Operational Service
Medal shall be governed by the Regulations set out in the Schedule.

IN WITNESS whereof We have caused these Our Letters to be made Patent.



GIVEN under the Great Seal of
Australia at Our Court at
St James's on 22 May 2012.

By Her Majesty's Command


Prime Minister

Schedule

Australian Operational Service Medal Regulation 2012

Part 1 Preliminary

1 Name of regulation

This regulation is the *Australian Operational Service Medal Regulation 2012*.

2 Definitions

In this regulation:

accumulated service device means a device awarded to an ADF member under section 6 that denotes the completion of an additional period of eligible service by an ADF member on a subsequent declared operation.

ADF member means a member of the Defence Force.

Chief of the Defence Force means the Chief of the Defence Force appointed under section 9 of the *Defence Act 1903*.

civilian means a person who:

- (a) is not an ADF member; and
- (b) is employed or contracted to support, in a civilian capacity, the operations of a Defence Force deployed force; and
- (c) is subject to the *Defence Force Discipline Act 1982*.

clasp means a device awarded to a civilian under section 7 or 8 that denotes the declared operation for which the device is awarded.

declared operation means an operation declared under section 3.

Defence Force means the Defence Force constituted under Part III, Division I of the *Defence Act 1903*.

eligible service means service declared under section 4.

medal means the Australian Operational Service Medal.

Minister means the Minister for Defence.

3 Declared operation

- (1) The Governor-General may declare, in writing, on the recommendation of the Minister, that an operation is a declared operation.
- (2) In making a recommendation to the Governor-General, the Minister must have regard to the recommendation of the Chief of the Defence Force.

-
- (3) The Governor-General must not make a declaration about an operation unless:
 - (a) the operation is, or was, carried out in conditions that are hazardous; and
 - (b) the operation is not an operation for which recognition for an award (other than an award under this regulation) already exists; and
 - (c) the operation meets the conditions (if any) determined, in writing, by the Governor-General.
 - (4) For an operation other than a special operation, the declaration must include the following matters:
 - (a) the name by which the operation is known or a description of the operation; and
 - (b) the area in which the operation occurs or occurred; and
 - (c) either:
 - (i) the dates or period during which the operation occurred; or
 - (ii) if the operation is continuing — the date on which the operation commenced.

4 Eligible service

- (1) The Governor-General may declare, in writing, on the recommendation of the Minister, that a service is:
 - (a) an eligible service; or
 - (b) an eligible service that is an additional period of qualifying service for the purposes of paragraph 6 (2) (c).
- (2) In making a recommendation to the Governor-General, the Minister must have regard to the recommendation of the Chief of the Defence Force.
- (3) The Governor-General must not make a declaration about a service unless:
 - (a) the service is given in the operational area, and within the period, of a declared operation; and
 - (b) the service meets the conditions (if any) determined, in writing, by the Governor-General.

Part 2 Awards

5 ADF members — award of medal and ribbon

The Governor-General may, on the recommendation of the Chief of the Defence Force, award to an ADF member who has given eligible service during a declared operation:

- (a) the medal; and
- (b) a ribbon denoting the declared operation.

6 ADF members — award of subsequent medals, ribbons and accumulated service devices

- (1) This section applies:
- (a) to an ADF member who has been awarded the medal and ribbon under section 5; and
 - (b) in relation to eligible service given by the ADF member during a declared operation that is subsequent to the operation for which the medal and ribbon were awarded.
- (2) The Governor-General may, on the recommendation of the Chief of the Defence Force, award to the ADF member for the eligible service:
- (a) the medal; and
 - (b) a ribbon denoting the subsequent declared operation; and
 - (c) for each period of eligible service that is an additional period of qualifying service on a single declared operation — an accumulated service device.

7 Civilians — award of medal, standard civilian ribbon and clasp

The Governor-General may, on the recommendation of the Chief of the Defence Force, award to a civilian who has given eligible service during a declared operation:

- (a) the medal; and
- (b) a standard civilian ribbon; and
- (c) a clasp denoting the declared operation.

8 Civilians — award of subsequent clasps

- (1) This section applies:
- (a) to a civilian who has been awarded the medal, standard civilian ribbon and clasp under section 7; and
 - (b) in relation to eligible service given by the civilian during a declared operation that is subsequent to the operation for which the medal, ribbon and clasp was awarded.
- (2) The Governor-General may, on the recommendation of the Chief of the Defence Force, award to the civilian a clasp denoting the subsequent declared operation.

9 Cancellation and reinstatement of awards

- (1) The Governor-General may, on the recommendation of the Chief of the Defence Force, cancel or reinstate an award of a medal, ribbon, accumulated service device or clasp.
- (2) If the Governor-General cancels or reinstates an award:
- (a) the Registrar must note the cancellation or reinstatement in the Register of Awards; and

- (b) for an award that is cancelled — the medal, ribbon, accumulated service device or clasp must be returned to the Registrar; and
- (c) for an award that is reinstated — the medal, ribbon, accumulated service device or clasp must be returned to the recipient of the award.

10 Chief of the Defence Force recommendation

The Chief of the Defence Force must make a recommendation under sections 5 to 9 if he or she is satisfied in all the circumstances that it is appropriate to do so.

11 Posthumous awarding of medals, ribbons, devices and clasps

Each award of a medal, ribbon, accumulated service device or clasp mentioned in this Part may be awarded posthumously.

Part 3 Design and wearing of medal, ribbons, devices and clasps

12 Design of medal, ribbons, devices and clasps

The design of the medal and each ribbon, accumulated service device and clasp is as determined by the Governor-General.

13 Wearing of medal, ribbons, devices and clasps

The manner of wearing the medal and each ribbon, accumulated service device and clasp is as determined by the Governor-General.

Part 4 Administration

14 Keeping of records

- (1) The Governor-General must appoint a Registrar of Awards.
- (2) The Registrar must:
 - (a) enter the names of each person to whom a medal, ribbon, accumulated service device or clasp has been awarded in a Register; and
 - (b) keep other records about the award of the medal, ribbon, accumulated service device or clasp as the Governor-General directs.
- (3) The Registrar may correct an error in the Register.
- (4) If an entry in the Register is:
 - (a) annotated in accordance with paragraph 9 (2) (a); or
 - (b) corrected in accordance with subclause (3);

the Registrar may correct or update another record kept under this section that relates to the entry.

15 Delegations

- (1) The Governor-General may, in writing, delegate his or her powers under sections 5, 6, 7, 8, 12 and 13 to:
 - (a) the Chief of the Defence Force; or
 - (b) a person from time to time holding or occupying an office in the Defence Force or the Department of Defence specified in the instrument of delegation.
- (2) The Governor-General may, in writing, revoke a delegation under subsection (1).
- (3) A delegate of the Governor-General must not:
 - (a) make a recommendation for an award if the person is also likely to consider the recommendation; or
 - (b) consider a recommendation for an award if the recommendation was also made by the person.
- (4) The Chief of the Defence Force may, in writing, delegate the power to make a recommendation for an award to a person from time to time holding or occupying a position in the Defence Force of the Department of Defence and mentioned in the instrument of delegation.
- (5) The Chief of the Defence Force may, in writing, revoke a delegation under subsection (4).