



Australian Government

Defence Honours and Awards Appeals Tribunal

Taylor and the Department of Defence re: Hopkins [2021] DHAAT 12 (3 September 2021)

File Number 2020/030

Re **Mr Wayne Taylor obo**
Squadron Leader Alexander Hugh Hopkins (Retd)
Applicant

And **The Department of Defence**
Respondent

Tribunal Mr Graham Mowbray (Presiding Member)
Ms Anne Trengove

Appearances Mr Wayne Taylor (by Skype)

Ms Jo Callaghan, Directorate of Honours and Awards,
Department of Defence
Mr Wayne Parker, Directorate of Honours and Awards,
Department of Defence
Mr Martin James, RAAF Historian, Department of Defence

Hearing Date 1 July 2021

DECISION

On 3 September 2021 the Tribunal affirmed the decision of the Department of Defence of 18 August 2020 that Squadron Leader Alexander Hugh Hopkins (Retd) is not eligible for the award of the Australian Active Service Medal 1945–1975 with Clasp ‘MALAYSIA’.

CATCHWORDS

DEFENCE AWARD – Australian Active Service Medal 1945-1975 with Clasp ‘MALAYSIA’ – Canberra bomber – ferry flight to Butterworth – not allotted and posted to squadron – operational sortie – air dispatch of stores and equipment – no defined operational military objective – no operational sorties

LEGISLATION

Defence Act 1903 – s110T, s110V(1), s110VB(2).

Commonwealth of Australia Gazette No S18, Letters Patent and Regulations for Australian Active Service Medal 1945-1975, 19 January 1998.

Commonwealth of Australia Gazette No S141 Declaration and Determination under the Australian Active Service Medal 1945-1975 Regulations, 23 July 2010.

REASONS FOR DECISION

Introduction

1. Mr Wayne Taylor, on behalf of Squadron Leader Alexander Hugh Hopkins (Retd), seeks review of a decision of 18 August 2020 by Mr Wayne Parker, Manager Service and Campaign Award Assessments, Directorate of Honours and Awards, Department of Defence, refusing the award of the Australian Active Service Medal (AASM) 1945-1975 with Clasp 'MALAYSIA' to Squadron Leader Hopkins for service as a member of No. 6 Squadron Royal Australian Air Force in 1965.¹

2. Squadron Leader Hopkins enlisted in the RAAF for permanent service on 20 January 1958. He was discharged upon resignation on 14 January 1972. With effect from 15 January 1972 he was appointed to a position within the General Duties Branch of the RAAF Reserve. That appointment ceased upon him reaching compulsory retirement age on 13 March 1987.²

3. Squadron Leader Hopkins was posted to No. 6 Squadron based at RAAF Amberley, Queensland, on 9 December 1963 until 8 June 1966 when he was posted to 2(F) Operational Conversion Unit to attend a Sabre conversion course.³

4. For his service Squadron Leader Hopkins was awarded the Australian Defence Medal.⁴

5. While with No. 6 Squadron at Amberley, Squadron Leader Hopkins made three flights in 1964 and 1965 to and from Butterworth in Malaysia

- 26 June to 3 July 1964⁵
- 15 to 29 April 1965⁶
- 22 October to 3 November 1965.⁷

It is these three flights and this period of service with which this review is concerned.

¹ This review also encompasses a further unsuccessful assessment of SQNLDR Hopkins' eligibility for the AASM 1945-1975 with Clasp 'MALAYSIA' by Ms J Callaghan of Defence on 30 September 2020.

² Defence Submission to Tribunal, 12 October 2020, paragraph 10.

³ RAAF Personal File 0314593 A H Hopkins.

⁴ Defence Submission to Tribunal, op cit, paragraph 11.

⁵ RAAF Unit History Sheet No. 6 Squadron, June 1964.

⁶ RAAF Unit History Sheet No. 6 Squadron, April 1965. This puts the return date as 28 April. However, SQNLDR Hopkins' Flying Log Book puts return to Amberley at 29 April.

⁷ RAAF Unit History Sheet No. 6 Squadron, October 1965.

Eligibility criteria for the AASM 1945-1975 with Clasp 'MALAYSIA'

6. The AASM 1945-1975 was instituted by Letters Patent issued on 11 December 1997 *for the purpose of according recognition to members of the Defence Force, ... , who rendered service in warlike operations.*⁸ Regulations 3 and 4 made under those Letters Patent relevantly provide

Prescribed operations

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

Conditions for award of the Medal

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

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

...

(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.*

...⁹

7. Pursuant to Regulations 3 and 4 on 13 July 2010 the Governor-General made a Declaration and Determination relevantly in the following terms

...

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

...

⁸ Commonwealth of Australia Gazette No S 18, Letters Patent and Regulations for Australian Active Service Medal 1945-1975, 19 January 1998.

⁹ Ibid.

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

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

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

...

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

...¹⁰

Agreed facts

8. At the hearing the Tribunal obtained the agreement of both Mr Taylor for Squadron Leader Hopkins and the representatives of Defence to the relevant eligibility criteria and a number of salient facts which are not contested

- the qualifying period (*prescribed* period) for Defence Force activities in the Malay Peninsula was 17 August 1964 to 11 August 1966
- Squadron Leader Hopkins was never *allotted and posted as a member of the Australian element* during the *prescribed* period or his time in the Malay Peninsula
- however, he rendered service with the RAAF at Butterworth in the Malay Peninsula during the *prescribed* period
- he flew to the Malay Peninsula twice during this period, namely 15 to 29 April 1965 and 22 October to 3 November 1965
- his earlier 26 June to 3 July 1964 flight was outside the *prescribed* period

¹⁰ Commonwealth of Australia Gazette No S141 Declaration and Determination under the Australian Active Service Medal 1945-1975 Regulations, 23 July 2010.

- Squadron Leader Hopkins' 22 October to 3 November 1965 flight was an overseas training flight and not an *operational sortie* under the Determination
- Squadron Leader Hopkins delivered Canberra Bomber A84-241 to No. 2 Squadron at Butterworth on 18 April 1965 returning with Canberra Bomber A84-235 to RAAF Amberley on 29 April 1965.

The issues

9. The issues are
- do either of the 26 June to 3 July 1964 or the 22 October to 3 November 1965 flights fall within the criteria for the AASM 1945-1975
 - what was the nature of the service rendered by Squadron Leader Hopkins during his 15 to 29 April 1965 flight to Butterworth
 - what activities are *operational sorties*
 - what was the RAAF's role at Butterworth in 1965
 - did Squadron Leader Hopkins undertake any *operational sorties* during the 15 to 29 April 1965 period.

The June - July 1964 and October - November 1965 flights

10. Squadron Leader Hopkins made return flights from Amberley to Butterworth on 26 June to 3 July 1964 and 22 October to 3 November 1965.

11. However, it is accepted by both parties that neither of these flights are qualifying activities for the AASM 1945-1975

- the 26 June to 3 July 1964 flight was outside the *prescribed* period
- the 22 October to 3 November 1965 flight was an overseas training flight and not an *operational sortie*.

The April 1965 flights

12. Daily details of Squadron Leader Hopkins' April 1965 flights are provided in his Flying Log Book.¹¹ The RAAF Historian, Mr Martin James, gave evidence explaining the abbreviations used in that Book.

13. The Canberra Bomber A84-241 flight left Amberley on 15 April, travelling via RAAF Pearce and Cocos Islands to Butterworth and arriving on 18 April. The flight was to deliver A84-241 to No. 2 Squadron at Butterworth. Mr James described this a 'ferry flight'. Squadron Leader Hopkins said of this flight 'spares and air photography unloaded and received. Canberra no241 delivered serviceable (sic)'.¹²

¹¹ Flying Log Book SQNLDR Hopkins 1 – 29 April 1965.

¹² Email SQNLDR Hopkins to W Taylor, 1 November 2020.

14. On 22 April Squadron Leader Hopkins conducted a low-level navigation training exercise to Song Song Island, only about 80 kilometres north of Butterworth, with a number of other waypoints during the flight, flying Canberra Bomber 242. A similar trip took place the following day, 23 April, in Canberra Bomber 240. That was classified as a low level reconnaissance flight to the Song Song training range.

15. In an email to Mr Taylor, Squadron Leader Hopkins said that he had been requested by No. 2 Squadron on 22 April to air test Canberra Bomber 242 and to use the bombing range at Song Song to check its serviceability. A similar request for Canberra Bomber 240 was acted upon on 23 April, but with an emphasis on bombing behaviour.¹³

16. On 26 April Squadron Leader Hopkins flew a trainer Canberra Bomber 307 to Changi and return. As he was accompanied only by his navigator the trip was not for training any 2 Squadron pilots or part of a routine training activity. Canberra Bomber 307 was configured as a 'trainer' and was not equipped for photo reconnaissance nor bombing. It had no operational capacity other than for training pilots. Mr James speculated that this trip may have been for shopping. Squadron Leader Hopkins described this as 'Liason (sic) ... made to Changi'.

17. On 27 April Squadron Leader Hopkins conducted an air test on Canberra Bomber A84-235 prior to departing Butterworth. This was probably a routine air test following installation of additional wing tip fuel tanks and an oil tank in the bomb bay for the long flight to Australia. It could also have involved a number of air tests on the aircraft to ensure it was serviceable to return to Australia.

18. On the same day Squadron Leader Hopkins commenced the flight to Australia via Cocos Islands and RAAF Pearce in Canberra Bomber A84-235, arriving at Amberley on 29 April.

19. Squadron Leader Hopkins said of 27 April 'return aircraft available, test flown accepted, loaded unserviceable spares and fresh photos and departed Butterworth for Cocos (sic)'.

Operational sorties

20. The April flights fell within the *prescribed* period of 17 August 1964 to 11 August 1966 set out in the Governor-General's Declaration and Determination for the AASM 1945-1975. The critical question then is whether during the April flights Squadron Leader Hopkins undertook any *operational sorties*.

21. The words *operational sortie* are not defined in either the Regulations for the AASM 1945-1975 or the Governor-General's Declaration and Determination. However, a Defence Personnel Executive Minute of 30 October 1998 headed 'Definitions for Medal Purposes' says

¹³ Ibid.

Operational Sortie – An operational sortie for the purpose of recognition by a medal is defined as any flight undertaken in a prescribed area of operations in support of a defined operational military objective.

Such examples include bombing flights, enforcing no-fly zones, air dispatch of stores and equipment, reconnaissance flights, ship spotting missions and combat flights against enemy aircraft, ground forces or shipping.¹⁴

22. It was accepted by both parties that although this Minute provides Defence policy the definition does not have legislative force. It is thus not binding on us, but we should be guided by it unless there are persuasive reasons not to do so.

23. Mr James said that we should be ‘informed, enlightened by that guidance minute’. An *operational sortie* was in relation to a ‘specific objective of – or particular objective of a mission’. It could be a sortie that was commenced outside the area of operations if ‘the effects (of the sortie) within the area of operations (are) directly linked to the operation themselves’.¹⁵

24. According to Mr James the term *air dispatch* is not a general term but a ‘defined term’ or term of art. A United Kingdom joint doctrine publication says air dispatch ‘is described as the specialist airborne delivery method for dropping equipment and supplies from fixed and rotary wing aircraft to the land and maritime environments’.

25. In the Australian context Mr James said that the Air Movements Training Development Unit based out of RAAF Richmond defines an Air Dispatcher as

*A person who is trained in the role of packing stores and rigging stores with parachutes, or helicopter sling loads, and stores and equipment who manually dispatch cargo from aircraft whilst in flight.*¹⁶

26. Mr James said that the term *air dispatcher* and its role in Australian service dates back to World War II and they have not really changed. It is sometimes referred to ‘as an air drop’.

27. Mr Taylor for Squadron Leader Hopkins said that air dispatch is not restricted to air drops during flights as suggested by Mr James, but covers ‘the delivery of stores more broadly, using aircraft, which includes airdrops’.¹⁷ Mr Taylor supported this with reference to an employment description for an Air Dispatcher in a Royal Australian Corps of Transport publication

An AD is an Australian Army, Royal Australian Corps of Transport (RACT) soldier who packs, loads/unloads and dispatches stores and equipment for air movement (including airdrop, airland and helicopter

¹⁴ Minute Defence Personnel Executive *Definitions for Medal Purposes*, WGCDR G G MacDonald, 30 October 1998.

¹⁵ Oral submission, Mr Martin James, hearing transcript page 22.

¹⁶ Ibid.

¹⁷ Submission – Supplementary Facts and Contentions, Mr W Taylor, August 2021, page 6.

*external lift) and who manually dispatches cargo from aircraft while in flight, for an air mobility effect.*¹⁸

28. Mr Taylor argued that this, with a further RACT document containing a job overview for an Air Dispatcher referring to ‘all modes of air movement’,¹⁹ shows that air dispatch is not restricted to just airdrops during flights, but the delivery of stores and equipment more broadly using aircraft. Thus a ferry flight delivering an aircraft, a piece of equipment, could be regarded as a form of air dispatch.

29. We are not persuaded that this is necessarily so. In our view a proper reading of the RACT and Defence publications is consistent with Mr James’ contention that a ferry flight of an aircraft such as we are considering here is not an example of an *air dispatch of stores and equipment*.

RAAF at Butterworth in 1965

30. Mr James gave evidence that the presence of the RAAF at Butterworth in 1965 was multifaceted as part of the Australian Government’s security and foreign policy. This policy was expressed by the RAAF through its commitment to elements of the Commonwealth Strategic Reserve (CSR), the Anglo-Malaysian Defence Agreement (AMDA) which later became the Five Power Defence Arrangements (FPDA) and the Southeast Asia Treaty Organisation (SEATO). The RAAF contribution to the CSR, SEATO and the AMDA was RAAF squadrons based at Butterworth. No. 2 Squadron was part of that deployment under the operational control of the Royal Air Force’s No. 224 Group.²⁰ This was in addition to the RAAF’s role in operational requirements in response to the Indonesian Confrontation.

... it’s one of the important things to appreciate, the nature of operations during the period of Indonesian Confrontation, just that period of 1965 that we’re talking about, that the Australian forces in the region were in location for a number of reasons, one of which was in response to the operational requirements as part of the response to the Indonesian Confrontation.

... So 2 Squadron had a number of roles in the area at the time. And in order to say that for the purposes of a AASM an operation has to occur as part of, and contributing to Australia’s response to Confrontation with Indonesia, not as part of other activities at the time.

*So there was some peacetime activities going on in and out of Butterworth and there was some warlike activity going on at Butterworth. And it needs to be differentiated.*²¹

31. Mr Taylor did not contest that the RAAF at Butterworth, specifically No. 2 Squadron, was filling a number of roles at this time.

¹⁸ Army Manual – Employment Specifications Royal Australian Corps of Transport ECN 099 Air Dispatcher, 17 June 2019.

¹⁹ Defence Jobs Australia – Air Dispatcher, 7 May 2021.

²⁰ Defence Additional Documents to Tribunal, 9 August 2021.

²¹ Oral submission, Mr Martin James, hearing transcript pages 22-23.

Whether the April 1965 flights were *operational sorties*

32. It falls then to determine whether any of the flights undertaken during his service rendered to Butterworth in April 1965 were *operational sorties* within the understanding of the Declaration and Determination for the AASM 1945-1975.

33. As mentioned in paragraph 30, No. 2 Squadron was fulfilling a number of roles at the time. For a sortie to meet the requirements for the medal, the sortie in question must have been part of the response to the Indonesian Confrontation, not part of other activities. It must be able to be associated with and in support of a defined operational military objective.

34. **Applicant's contentions.** Mr Taylor contends that Squadron Leader Hopkins piloted a Canberra Bomber on a ferry flight leaving Amberley on 15 April 1965 'into the prescribed Area of Operation (the delivery of a piece of equipment Canberra Bomber A84-241).' In his opinion this was an air dispatch of 'stores and equipment' using aircraft as a mode of delivery. He says the delivery of the bomber met the required definition of an *operational sortie*.²²

35. Mr Taylor also points out that Canberra Bomber A84-241 was engaged in Exercise *Osteopath* with two other Canberra Bombers on 28 May 1965,²³ implying that it had been delivered in April for engagement in later operational warlike activities.

36. Another suggestion raised by Mr Taylor and by Squadron Leader Hopkins' email to Mr Taylor of 1 November 2020 was that Canberra Bomber A84-241 was used for reconnaissance photography on the flight to Butterworth. The email mentions '- 18th arrived Butterworth-spares and air photography unloaded and received'.²⁴ However, unfortunately the email does not elaborate on the context or the purpose for which the air photography was said to be unloaded or received.

37. **Defence's contentions.** Defence submitted that the April flight to Butterworth was a logistical ferry flight. In Mr James' words '... they were flying in a piece of equipment that Australia had agreed to provide a level of capability, Australia had agreed to provide as a part of the Southeast Asia Treaty Organisation obligation. ... I would not call it an operation as such.'²⁵

38. Mr James also investigated the later Exercise *Osteopath* involvement of Canberra Bomber A84-241 referred to by Mr Taylor. He found that this operation was in fact an 'air mobility exercise' and not an *operational sortie*.²⁶

39. Mr James rebutted the suggestion that operational reconnaissance photography could have been taken during the flight from Amberley by pointing out the photographic equipment would have been adversely affected by vibrations on the long flight from Australia. While photographs may have been taken on the flight 'they were not operational in nature'.... 'they would or could not have been tasked as an

²² Submission – Supplementary Facts and Contentions, Mr W Taylor, August 2021, page 7.

²³ Ibid, page 5.

²⁴ Supplementary Submissions 'Points of Disput (sic)', Mr W Taylor, 22 June 2021, page 4; Email SQLDR Hopkins to W Taylor, op cit.

²⁵ Oral submission, Mr Martin James, hearing transcript page 23.

²⁶ Ibid, page 24.

operational requirement for in-theatre'. No. 3 Squadron was the only RAAF unit at Butterworth tasked with tactical reconnaissance operations at that time.²⁷

40. **Tribunal consideration.** We do not find on the evidence that the flight to Butterworth, any flights conducted by Squadron Leader Hopkins whilst at Butterworth or the return flight from Butterworth could be described as *operational sorties*.

41. We accept Mr James' evidence and Defence's submissions that the ferry flight from Amberley to Butterworth was not an *operational sortie*.

42. This finds some support in the Unit History Sheet and Commanding Officer's Comments for this time.²⁸ Merely flying the aircraft into 'the prescribed Area of Operation' does not amount to an *operational sortie*. As stated in paragraph 29 above we do not agree with Mr Taylor that the flight was an *air dispatch of stores or equipment*.

43. We also considered Mr Taylor's contention that it could be inferred from Squadron Leader Hopkins' email that he or crew members were tasked in photo reconnaissance duties on the flight to Butterworth. However, the email reference to unloading and receiving air photography was insufficient to support a finding that this flight was an *operational sortie* for reconnaissance purposes. This was particularly so in light of the evidence of Mr James concerning degradation of film and that reconnaissance was the role of 3 Squadron. We also think that any such flight would be recorded as an 'operational sortie for reconnaissance purposes' as opposed to a 'ferry flight' as clearly recorded.

44. Furthermore, the evidence is not clear about the activities Canberra Bomber A84-241 undertook after its arrival at Butterworth. Mr James testified that he could not identify

*any Canberras conducting what would be considered an operational sortie as part of Confrontation with Indonesia, ... Number C Flight of 2 Squadron operated Dakota aircraft ... they were conducting air drops as part of that operation. But not the Canberras. ... from the records available to us for that period of time no Canberra aircraft was used for an operational purpose as part of the Indonesian Confrontation.*²⁹

45. The flights undertaken by Squadron Leader Hopkins during his service at Butterworth were also not *operational sorties*. On 22 and 23 April 1965 he conducted low level navigation exercises, reconnaissance and air testing on a flight to Song Song training range. On 26 April 1965 he flew a trainer Canberra aircraft to Changi accompanied by his navigator but no training pilots. The purpose of the flight is unknown. There is nothing in No. 2 Squadron Unit History Sheets for this period showing Squadron Leader Hopkins undertaking operational tasks for it. These flights could not be said to have been associated with and in support of a defined operational military objective.

²⁷ Oral submission, Mr Martin James, hearing transcript pages 27-28.

²⁸ Unit History Sheet No. 6 Squadron, April 1965, op cit; Commanding Officer's Comments, No. 6 Squadron, April 1965.

²⁹ Oral submission, Mr Martin James, hearing transcript pages 23-24, 26.

46. On 27 April 1965 after air testing Canberra Bomber A84-235, Squadron Leader Hopkins departed Butterworth for the return trip to Australia. This too cannot be classified as an *operational sortie*.

Findings – Squadron Leader Hopkins is not entitled to the AASM 1945-1975 with Clasp ‘MALAYSIA’

47. On the evidence and for the reasons given above we find

- Squadron Leader Hopkins as a member of No. 6 Squadron RAAF made three flights to the Malay Peninsula and rendered service there in 1964 and 1965
- he was never *allotted and posted as a member of the Australian element* during this period in the Malay Peninsula, specifically to No. 2 Squadron
- his first flight from 26 June to 3 July 1964 was before the *prescribed period* under the Declaration for the AASM 1945-1975 with Clasp ‘MALAYSIA’
- his second flight from 15 to 29 April 1964 involved delivering Canberra Bomber A84-241 to No. 2 Squadron at Butterworth and returning with Canberra Bomber A84-235 to Amberley
- this flight fell within the *prescribed period* under the Declaration for the AASM 1945-1975 with Clasp ‘MALAYSIA’
- the flight did not involve *air dispatch of stores and equipment* nor engage in *reconnaissance* as understood by the Defence Personnel Executive Minute ‘Definitions for Medal Purposes’
- there is no evidence that Canberra Bomber A84-241 was engaged for operational purposes during the Indonesian Confrontation, either on the ferry flight from Australia or then with No. 2 Squadron on the Malay Peninsula
- the evidence does not support a conclusion that Squadron Leader Hopkins completed an *operational sortie* during the 15 to 29 April 1964 trip as required by the Determination for the AASM 1945-1975 with Clasp ‘MALAYSIA’
- Squadron Leader Hopkins’ third flight from 23 October to 3 November 1965 whilst within the *prescribed period* was an overseas training flight and not an *operational sortie* under the Determination for the AASM 1945-1975
- Squadron Leader Hopkins did not complete an *operational sortie* during any of the three flights as required by the Determination for the AASM 1945-1975 with Clasp ‘MALAYSIA’.

48. Consequently we find that Squadron Leader Hopkins is not entitled to the award of the AASM 1945-1975 with Clasp ‘MALAYSIA’.

49. This result does not detract in any way from the valued and respected service given by Squadron Leader Hopkins to the RAAF over almost thirty years.

50. We wish to particularly thank Mr Wayne Taylor and the Defence representatives and especially historian Mr Martin James, for their very significant assistance in this case which has proved to contain unexpected complexity and difficulties.

TRIBUNAL DECISION

51. The Tribunal affirms the decision of the Department of Defence of 18 August 2020 that Squadron Leader Hopkins (Retd) is not entitled to the Australia Active Service Medal 1945-1975 with Clasp 'MALAYSIA' for his service from June 1964 until November 1965.