



Australian Government

Defence Honours and Awards Appeals Tribunal

Rayner and the Department of Defence [2021] DHAAT 15 (14 October 2021)

File Number	2021/04
Re	Mr Martin Arthur Rayner Applicant
And	Department of Defence Respondent
Tribunal	Ms Anne Trengove (Presiding Member) Mr Graham Mowbray
Appearances	Mr Martin Rayner and Mr Bernard Rayner, for the applicant. Ms Jo Callaghan and Mr Wayne Parker, Directorate of Honours and Awards, Department of Defence, for the respondent.
Hearing Date	29 September 2021

DECISION

On 14 October 2021, the Tribunal affirmed the decisions of the Directorate of Honours and Awards of the Department of Defence that Mr Martin Arthur Rayner is not eligible for the award of the Australian Active Service Medal 1945-1975 with Clasp 'THAI-MALAY' nor for the General Service Medal 1918-1962 with Clasp 'MALAYA'.

CATCHWORDS

DEFENCE AWARD – AUSTRALIAN ACTIVE SERVICE MEDAL 1945-1975 – Clasp ‘THAI-MALAY’ - eligibility criteria – including whether member allotted and posted as a member of the Australian element assigned for duty to the prescribed operation in an area of operations, as defined.

IMPERIAL AWARD – GENERAL SERVICE MEDAL 1918-62 with Clasp ‘MALAYA’ - eligibility criteria – allotted and posted to the Australian element – whether assigned for duty during specified period.

LEGISLATION

Defence Act 1903 – ss 110T, 110V(1), 110VB(2)
Defence Regulation 2016 Section 36

Commonwealth of Australia Gazette No S18 Australian Active Service Medal 1945-1975 Letters Patent, dated 19 January 1998

Commonwealth of Australia Gazette No S64 Australian Active Service Medal 1945-1975, Clasp ‘THAI-MALAY’ dated 28 February 2002

Commonwealth of Australia Gazette No S274 Australian Service Medal 1945-1975, Clasp ‘THAI-MALAY’ dated 18 July 1996

The Naval General Service Medal, The General Service Medal (Army and Royal Air Force) Service in Malaya since 16 June 1948, United Kingdom Command Paper No. 7907, dated March 1950

REASONS FOR DECISION

Introduction

1. Mr Martin Arthur Rayner (the applicant) seeks review of two decisions of the Directorate of Honours and Awards of the Department of Defence (the Directorate).
2. Mr Rayner seeks review of the 12 May 2020 decision of Mr F Pulciani, Acting Assessments Manager of the Directorate, that Mr Rayner is not entitled to the General Service Medal 1918-62 with Clasp 'MALAYA' (the GSM 1918-62 with Clasp 'MALAYA').¹
3. Further, Mr Rayner seeks review of the decision of 16 June 2020 by Ms Petrina Cole, Director of the Directorate, that he is not entitled to the Australian Active Service Medal 1945-1975 with Clasp 'THAI-MALAY' (the AASM 1945-1975 with Clasp 'THAI-MALAY').²
4. These decisions were made as a result of respective applications, lodged on Mr Rayner's behalf by his brother Mr Bernard Rayner. In respect of the AASM 1945-1975 with Clasp 'THAI-MALAY', a number of earlier applications had been made by Mr Martin Rayner in 2008, 2017, 2019 and 2020. All applications had been rejected by the Directorate. The Directorate has consistently advised that Mr Rayner's service with the Australian Army in Malaya was non-warlike service and therefore does not attract the AASM 1945-1975 with Clasp 'THAI-MALAY'.
5. On 10 March 2021, Mr Martin Rayner applied to the Tribunal for review of the respective decisions to deny him the AASM 1945-1975 with Clasp 'THAI-MALAY' and the GSM 1918-62 with Clasp 'MALAYA'. Pursuant to section 110VB(2) of the *Defence Act 1903*, the Tribunal has jurisdiction to review the respective decisions in relation to these two awards.
6. The key issue for the Tribunal to consider is whether Mr Rayner meets the eligibility criteria for the above awards.
7. As well as the oral evidence submitted at hearing, the Tribunal had before it documentary material including written submissions and research, together with material received on the day of hearing from the applicant titled '*Documented report from Squadron Leader HHJ Browning RAF 1960*'. This document was labelled 'Exhibit 1'. Further written submissions were provided by the Rayner brothers via email subsequent to the hearing. The Tribunal (and Defence) also considered that material.

¹ The letter from Acting Assessments Manager Mr F Pulciani is addressed to Mr Bernard Rayner in response to the medal application dated 21 February 2020, on behalf of his brother Mr Martin Rayner.

² The letter from Ms Cole is addressed to the applicant's brother, Mr Bernard Rayner, and is in response to Mr Bernard Rayner's enquiry dated 31 May 2020.

Mr Martin Rayner's Service

8. Mr Rayner enlisted in the Australian Regular Army (ARA) on 9 March 1959 with an enlistment period of six years and was discharged on 8 March 1965. Mr Rayner also served with the Royal Australian Air Force (RAAF) from 21 April 1967 to 20 April 1973 and rendered subsequent service in the RAAF Reserve until 1996.

9. Mr Rayner's service record confirms his overseas service:

Embarked Sydney 12 October 1961
Disembarked Singapore 27 October 1961
Served with 103 Field Battery at Malacca, Malaya
Emplaned Singapore 10 May 1962
Deplaned Darwin 10 May 1962.³

10. For his service, Mr Rayner has been issued with the following medals:

Australian Service Medal 1945-1975 with Clasp 'SE ASIA'
Australian Defence Medal
Pingat Jasa Malaysia.⁴

Does Mr Rayner meet the eligibility criteria for the GSM 1918-62 with Clasp 'MALAYA'?

11. The GSM 1918-62 with Clasp 'MALAYA' recognises service in the Malayan Emergency between 1948 and 1960. The eligibility criteria for this award are provided in full at Annex A.

12. To qualify for the GSM 1918-62 with Clasp 'MALAYA', Mr Rayner must have completed a period of service of one day or more on the posted strength of a unit or formation stationed in the Federation of Malaya (or the Colony of Singapore), within a specified eligibility period. The cessation date for qualifying service for the GSM with Clasp 'MALAYA' aligns with the end of the Malayan Emergency, being 31 July 1960.⁵

13. Mr Rayner's service record shows that he did not commence service in Malaya until 27 October 1961 and therefore well after the end of the Malayan Emergency. He therefore did not have qualifying service.

14. At hearing, Mr Rayner did not dispute his service record nor that he had been posted to Malaya on 27 October 1961, some 15 months after the cut-off date. Mr Rayner at hearing properly conceded that he was not entitled to the award, adding that he never personally sought the medal.

³ Defence Report to Tribunal dated 5 May 2021 – Rayner, Martin Arthur, Service Record.

⁴ Defence Report to Tribunal dated 5 May 2021.

⁵ Defence Instruction Air Force (Personnel) 10-6 dated 11 August 1995.

TRIBUNAL DECISION - GSM 1918-62 with Clasp 'MALAYA'

15. As there is no record of Mr Rayner serving on the posted strength of a unit or formation stationed in the Federation of Malaya (or the Colony of Singapore) during the period specified for the award, we therefore affirm the decision under review concerning the GSM 1918-62 with Clasp 'MALAYA'.

Does Mr Rayner meet the eligibility criteria for the AASM 1945 – 1975 with Clasp 'THAI-MALAY'?

16. The AASM 1945-1975 was introduced into the Australian Honours and Awards system in December 1997 to recognise, retrospectively, the service of ADF members and certain other persons in prescribed warlike operations, such as the Korean War, the Malayan Emergency, the Indonesian Confrontation and the Vietnam War. The medal has six clasps: Korea, Malaya, Malaysia, Thai-Malay, Thailand and Vietnam.

17. To be eligible for the medal, applicants must have service in connection with a *prescribed operation*, as declared by the Governor-General. The eligibility criteria for the AASM 1945-1975 are set out in full at Annex A. The *Commonwealth of Australia Gazette No S64 Australian Active Service Medal 1945-1975, Clasp 'THAI-MALAY'* dated 28 February 2002, Declaration and Determination under the Australian Active Service Medal 1945-75 Regulations, governs the criteria. We will refer to this as the 'Declaration and Determination for the AASM'.

18. Relevant to Mr Rayner's contention, the AASM 1945-1975 with Clasp 'THAI-MALAY' is awarded to members of the ADF who served in prescribed operations, defined as 'land and air anti-terrorist operations for the period 1 August 1960 to 31 December 1964' in the area of operations near the Thai-Malay border, as further defined.

Mr Rayner's claim

19. Mr Rayner claims eligibility for the AASM 1945-1975 with Clasp 'THAI-MALAY' on the basis that, during his service with the 103 Field Battery, Royal Australian Artillery (RAA), he was tasked to attend the Thai-Malay border area on three occasions. His contention in relation to these three asserted occasions is set out more fully in paragraphs 22 – 34 below. In short, Mr Rayner contends that he had likely participated in 'land and air anti-terrorist operations' as he served with men carrying live ammunition and he saw remnants of enemy occupation in various border areas. Mr Rayner says his involvement in the vicinity of the Thai-Malay border was likely 'warlike' and should be regarded as such, even if there now exists no formal records labelling his duties as being conducted during 'prescribed operations'. Mr Rayner and his brother contend that the evidence they have produced should suffice for medallic entitlement. This includes evidence from former Captain David Sinclair who served with Mr Rayner close to the Thai-Malay border at the relevant time.

Facts not in dispute

20. With the assistance of Mr Rayner's service record and the 103 Field Battery, RAA historic records, the Directorate were able to confirm Mr Rayner's assertions as set out below:

20.1 Gunner Martin Rayner was posted to 103 Field Battery, RAA for the duration of his posting to Malaya.

20.2 103 Field Battery, RAA came under the command of the 26th Field Regiment, Royal Artillery (RA), in Malaya from 1961 – 1963.⁶ The 26th Field Regiment, RA provided support to the 1st Battalion, the King's Own Yorkshire Light Infantry (KOYLI) as part of the Far East Strategic Reserve effort. Members of 103 Field Battery were located at Terendak Camp, Malacca.⁷ The Camp, being near Malacca, was a long way south of the Cameron Highlands, which is the region south of the area of operations of the Thai-Malay border as defined in the Declaration and Determination for the AASM.⁸

20.3 Gunner Rayner was a member of 103 Field Battery and arrived in Singapore on 27 October 1961 and then was encamped at Terendak until he was medevaced on 10 May 1962 to Australia. He served in Malaya for nearly 7 months.

20.4 During its tenure in Malaya, 103 Field Battery formed part of the 26th Field Regiment, RA, and provided indirect fire support to the 1st Battalion, KOYLI.

20.5 Mr Rayner's role within 103 Field Battery was that of an Artillery Driver/Operator (Signaller); with responsibility for providing and maintaining radio communications when deployed in the field environment, normally between the location of the guns, the Forward Observers and other deployed sections of the Field Battery or other units.

21. The Directorate confirmed that the 1st Battalion, KOYLI was an infantry company supported by the 26th Field Regiment, RA.

Mr Rayner's evidence concerning his role, 103 Field Battery, RAA and that of the King's Own Yorkshire Light Infantry

22. In giving evidence in hearing, the Tribunal observed that Mr Rayner was drawing on his memory of events some 60 years ago.

⁶ This was for the purpose of command and control within the hierarchal chain of the in-country functional command (the 28th Commonwealth Infantry Brigade Group).

⁷ Also known as Melaka.

⁸ See map – showing area of operations as defined by *Commonwealth of Australia Gazette No S274 Australian Service Medal 1945-1975, Clasp 'THAI-MALAY'* dated 18 July 1996.

23. There are no records of his actions in his service record or other records to refresh his memory as to the seven months he spent in Malaya. Mr Rayner acknowledged that, as a result, he was somewhat at a disadvantage in recalling events. Mr Rayner said that he and his brother had done all they could to try to find records to document his role, including amongst those of 103 Field Battery, RAA and the KOYLI, but to no avail. Mr Bernard Rayner was particularly critical that the Directorate had not been able to locate the Commander's Diaries of 103 Field Battery, RAA for the relevant period.

24. Mr Rayner submitted that, as a radio operator, he assisted with the coordination of artillery support to the KOYLI on exercises and warlike operations near the Thai-Malay border. Mr Rayner said that there were at least three occasions which he could now recall when he went to the Thai-Malay border region. He said *'operations were normally sent in a party of 3, with infantry/ Aircraft spotting/ observation positions on high ground'*.

The three occasions

25. There were three occasions when Mr Rayner believes he went to the Thai-Malay border region:

25.1 **First occasion.** Mr Rayner said that, in early 1962, he was serving under the command of Captain Peter Badcoe of 103 Field Battery, RAA. Mr Rayner reported for duty at Headquarters, Camp Terendak and was tasked to leave via air to the border region. Mr Rayner explained that he went via light aircraft, namely Pioneer aircraft, from 209 Squadron, Royal Air Force (RAF). He said invariably he would take off and land at the one location, which was a small cleared area of jungle. He said that Captain Badcoe then went on to serve in Vietnam and he was not sure what happened to him after that.⁹

25.2 **Second occasion.** Similarly, Mr Rayner recalled taking off and landing from a location called Camp Tampong via Pioneer aircraft. He believed the Camp was about 7 kms from the border, with a jungle cut opening as the landing and take-off strip. He recalled going on some kind of reconnaissance mission with an officer and a Sergeant, names now unknown.¹⁰

25.3 **Third occasion.** This is the occasion Mr Rayner stated that he recalled best as it was just prior to him being medevaced back to Australia on 10 May 1962. He states that, sometime on or between 6-8 May 1962, he left Camp Terendak oval by helicopter to the border region. It was said to be a short flight during a one-day sortie. At the border he met and came under the command of Captain David Sinclair of 103 Field Battery, RAA. Travelling with him was Lance Bombardier Cyril (Oscar) Glover of 103 Field Battery. Mr Rayner recalled carrying heavy battery and radio equipment. They were part of a three man party, patrolling with KOYLI. He said that this was part of a KOYLI Operation as opposed to an exercise.¹¹

⁹ The Tribunal notes that Major Peter Badcoe VC was killed in action in Vietnam in 1967.

¹⁰ Email from Mr Martin Rayner to the Tribunal Secretariat dated 4 April 2021.

¹¹ Email of Mr Bernard Rayner forwarded to the Tribunal Secretariat dated 6 October 2021.

25.4 He said the KOYLI were carrying rocket launchers and were suffering in the hot mountainous terrain in their winter weight uniforms. He recalled that live ammunition was being carried on patrol because Lance Bombardier Glover dropped his Owen gun magazine and he and Mr Rayner had to backtrack along the railway line at night to retrieve it.¹²

25.5 Mr Rayner said that on one of the occasions there was some kind of shooting incident in a village where a Bombardier may have been charged and compensation paid to locals.¹³

Evidence in support of the third occasion

26. Captain Sinclair provided some support for the third occasion as asserted by Mr Rayner. He stated that Mr Rayner had accompanied him on ‘exercises’ in North Malaya during 1962. In particular, he submitted that Mr Rayner was part of a detachment under his command that carried out a helicopter-borne 4.2 inch mortar deployment, involving live firing directed by air observation aircraft from RAF Butterworth. This was said to be close to the Thai-Malay border. Initially Captain Sinclair thought this exercise may have been in late 1962, but by this time Mr Rayner was back in Australia. When pressed by Mr Bernard Rayner, Captain Sinclair stated that Martin Rayner and Cyril Glover were with him on the Malay-Thai border in May 1962.¹⁴

27. Mr Rayner disputed Captain Sinclair’s version of events, that he had accompanied Captain Sinclair to Alor Star,¹⁵ a village close to the border as set out in Captain Sinclair’s email of 8 March 2021.¹⁶ Mr Rayner says that Captain Sinclair is confused in that respect. The Tribunal observes that Captain Sinclair was also trying to remember events from 60 years ago.

Whether Mr Rayner was engaging in exercises or with the enemy?

28. When asked by the Tribunal if he saw or engaged with the enemy on those three occasions, Mr Rayner said that he did not, and neither did those around him. Mr Rayner said that he saw remnants of where the enemy had been at the border regions. He was also alert to the fact that the enemy could be around at any time. This was why he believed live ammunition was being carried on patrols.

29. When asked by the Tribunal whether he could have been participating in training exercises at the border on any of these occasions, he said that he did not think so. This was because the border was inherently dangerous and they were carrying live ammunition.

¹² Email from Bernard Rayner to Captain Sinclair of 27 May 2021.

¹³ Email of Mr Martin Rayner forwarded to the Tribunal Secretariat dated 6 October 2021.

¹⁴ Email of Captain Sinclair to Bernard Rayner of 27 May 2021.

¹⁵ Now known as Alor Setar – Defence Report.

¹⁶ Email of Captain Sinclair to Martin Rayner of 8 March 2021.

Applicant's submission

30. Mr Bernard Rayner submitted that the lack of records of the 103 Field Battery, RAA and/or the KOYLI documenting these patrols around the border region as described by his brother could have been due to the fact they were secret border operations and therefore not documented for political reasons.

31. It was submitted that Mr Rayner should not be penalised due to either poor or deliberately obtuse record keeping which failed to evidence his actions. After all, Gunner Rayner was a soldier 'who was told where to go and what to do'. He was not given a mission statement or label to his duties, such as a being on a 'prescribed operation' to later rely upon for medallic recognition.

Research conducted by the Applicant, the Directorate and the Tribunal

Applicant's research

32. Mr Bernard Rayner located on the internet a 'Documented report from Squadron Leader HHJ Browning RAF 1960' (Exhibit 1). This document purported to be an account of a talk that SQNLDR Browning gave of his service with 209 SQN RAF in Malaya during 1961 and 1962.

33. Mr Bernard Rayner submitted that this account lent support to the account of his brother. This was because the account referenced Pioneer aircraft and helicopters 'lifting troops and freight from an assembly area to a jungle clearing and/or bringing troops out'. Further, the account documented there were 'rare instances of terrorists being seen in clearings as a helicopter was landing or overflying.' SQNLDR Browning, however, knew of 'no occasion when a landing was opposed, let alone actually fired upon.'

34. The Tribunal observes that SQNLDR Browning's account is not an official record and its provenance is unclear. The use of Pioneer aircraft and helicopters utilising jungle cleared landings is consistent with official records. Of note is that SQNLDR Browning's account does not refer to any particular operation involving 'land and air anti-terrorist operations' or engagement with the enemy in the area of operations at the border.

Directorate's Research

35. Whilst Directorate staff were able to locate relevant extracts from the History of 103 Battery, RAA which provided details of the activities of the Battery, they were unable to provide any other records.

36. The Directorate was unable to locate any Commander's Diaries for 103 Field Battery, RAA for the period October 1961 to June 1966, or records of operational service for either 26th Field Regiment RA or KOYLI for the period between the cessation of the Malayan Emergency and the Indonesian Confrontation.

37. While not directly linked to medallic entitlements, the Directorate referred to the Department of Veterans' Affairs *Advice Notice 02 Malay-Thai Border*. It does not list 103 Field Battery as a "*Unit Allotted for Duty on the Malay-Thai Border*."¹⁷ This document refers to the 103 Field Battery during the relevant period and states that the closest the Battery served to the Thai-Malay border was at the Cameron Highlands. The document refers to the 103 Field Battery supporting the KOYLI during excursions from Terendak Camp. The Directorate stated that it would be exceptional for the Battery to have served on the border region and for these operations not to have been recorded in the Commander's Diary.

Tribunal's research

38. Noting the contentions asserted by Mr Rayner and his brother, the Tribunal caused further research to be conducted to ascertain whether there were any relevant records here in Australia or in the United Kingdom that might support Mr Rayner's claim.

39. This research included checking the Official Histories of the Australian War Memorial and searching through the Memorial's collection of historical records. The only records of 103 Field Battery's service in Malaya in the Commander's Diaries are from July 1962 to October 1963, after Mr Rayner had returned to Australia.¹⁸

40. Tribunal research also included The National Archives (TNA), UK, where British Army records are retained. This research confirmed there were no records of 103 Field Battery, RAA held at the TNA.

41. The Annual Historical reports of the 26th Field Regiment RA were located for the relevant time period. The Tribunal carefully reviewed these records. 103 Field Battery, RAA is clearly mentioned as being under the command of 26th Field Regiment, as well as other Batteries from the UK for the relevant period. Captain David Sinclair's posting out date of 19 December 1962 is documented.¹⁹

42. However, there was no relevant mention of the KOYLI within the Annual Historical reports for the Regiment.

43. Further, there is no mention of any action or interaction with the enemy which could be described as 'land and air anti-terrorist operations' during the relevant period. Rather, the Annual Historical Reports set out training and exercises, including live-fire exercises and a large number of sporting and recreational events.

44. An entry for November 1961 documents that 103 Field Battery, RAA became operational on 18 November 1961 and carried out firing at Asahan on 30 November 1961. Mr Parker for the Directorate submitted that Asahan was a Field Firing Range close to Camp Terendak.

¹⁷ Department of Veterans' Affairs *Advice Notice 02-Malay-Thai Border Attachment B-12*.

¹⁸ This period is when 103 Field Battery were "Allotted for Duty" in the Operational Area – DVA Compensation and Support Reference Library AN02, *Malay-Thai Border*.

¹⁹ Annual Historical Report of 26 Regiment, RA, 1 April 1962 – 31 March 1963, TNA WO305/1905

45. Exercise “BLOODY LANCET” for May 1962 relevantly records:

During the period 7-17 May “the regt exercise “BLOODY LANCET” took place extending to Mersing, Kluang, Segamat, Gemas and Asahan areas. The scope and activities of the exercise were most comprehensive covering air movement by pioneer aircraft and helicopters, long road moves with the inherent march discipline, cross country mobility, man handling of guns, a twenty five mile march through jungle and rubber estates finally winding up with a simulated air drop of guns and ammunition. It was at this stage that a party from the regt Wives Club arrived to witness the guns being brought into action and the firing of several “Miko tgs”

After a few days in camp 2Lt BL Campton and a small party from 103 Fd Bty RAA set off for the Pahang river and paddled from Kuala Lipis to Pekan on the east coast of Malaya in light weight canoes.²⁰

46. The Operation Records concerning 209 SQN RAF for 1961 to May 1963 reveal there were no flights near the Thai-Malay border or any flights which contained Australian personnel. 209 SQN flights mainly concerned training and exercises, communication flights and flights for meetings at Butterworth and to Changi. There were flights in May 1962, but these were not flights to the border region nor sorties on prescribed operations.²¹ 209 SQN records²² from 5 May 1962 to 12 May 1962 show Pioneer aircraft involvement in the Exercise BLOODY LANCET, as confirmed in the Regiment’s Annual Historical Reports.

Directorate’s submissions

47. Mr Parker from the Directorate addressed Mr Rayner’s version of events and in particular the three contended occasions to the border region.

48. Mr Parker was unsure of the location “Camp Tampong” or “Fort Tampong”, said to be 7 kms from the border as described by the Mr Rayner as being the second occasion he went to the border. Mr Parker was unable to find it on maps or historical records.

49. Despite Camp Tampong being unknown and unclear evidence from Mr Rayner as to exactly where he went and when, the Directorate was willing to concede that Mr Rayner could have travelled by air to the Thai-Malay border and entered the general area of operations, as defined. The three occasions asserted by Mr Rayner were not contested and nor was the evidence provided by Captain Sinclair.

²⁰ Annual Historical Report of 26 Regiment, RA, 1 April 1962 – 31 March 1963.

²¹ In any event, Mr Rayner and Captain Sinclair state that they went via helicopter in May 1962.

²² Operation Records Book, 209 SQN RAF, January 1961 to December 1963, TNA AIR 27-2992.

Submission - Mr Rayner was not allotted and posted as a member of the Australian element assigned for duty to the prescribed operation.

50. Defence submitted that the nature of Mr Rayner's duties was likely 'exercise' related and not 'land or air anti-terrorist operations' as required for the award. This was because Mr Rayner's Service Record does not state that he was *allotted and posted as a member of the Australian element assigned for duty to the prescribed operation*. Mr Parker submitted that, if Mr Rayner had been assigned, it would be expected to be recorded on his Service Record and in the records of 103 Field Battery, RAA. Records would have clearly shown that he and the unit had been allotted by senior Defence officials.

51. Further, DVA does not list 103 Field Battery, RAA as a *"Unit Allotted for Duty on the Malay-Thai Border"*.²³ Mr Parker suggested this is consistent with advice from DVA that no member of the 103 Field Battery was allotted for duty on the Malay-Thai Border during the relevant time.

52. Mr Parker also submitted that if 103 Field Battery, under the command of the 26th Regiment RA, had been on prescribed operations or engaged in 'land and air-terrorist operations', it would be expected that this would have been recorded in the Annual Historical Reports.

53. Defence also submitted that if the KOYLI, which was supported by the 26th Regiment, RA, had been on a prescribed operation or engaged in 'land and air-terrorist operations', it would be expected that this would have been recorded in the Annual Historical Reports. In short, Defence could find no evidence that KOYLI or any other locally-based British units participated in operational service within the stipulated area of operations of the Thai-Malay border during the period of Mr Rayner's service in Malaya.²⁴

54. Mr Parker was asked by the Tribunal whether it would be expected that all border patrols would to be officially recorded, noting that border operations are notoriously politically sensitive. Mr Parker responded that he would have expected there would be records.

Submission - Mr Rayner's duties at the border were exercise related

55. Mr Parker submitted that the three occasions to which Mr Rayner was referring were likely to have been exercises close to the border, including potentially live-fire exercises. It was submitted that this was consistent with Captain Sinclair referring to 'exercises' with the KOYLI on the border.²⁵ Mr Rayner also referred to 'exercises' with the KOYLI, as well as 'live-fire exercises'.²⁶ It was submitted that the fact that Mr Rayner was on patrol with those who may have carried live ammunition or in the border region was consistent with him being on live-fire exercises.

²³ Department of Veterans' Affairs *Advice Notice 02 Malay-Thai Border* does not list 103 Field Battery as a *"Unit Allotted/or Duty on the Malay-Thai Border"*.

²⁴ Defence Report to Tribunal dated 5 May 2021 para 33-36.

²⁵ Email of Captain David Sinclair to Mr Barry Campton of 17 July 2019.

²⁶ Statutory declaration of Mr Marin Rayner, sworn 25 July 2021.

56. Mr Parker's attention was drawn to Exercise "BLOODY LANCET" as documented in the 26th Regiment RA records of 7 – 17 May 1962. This time period coincided with the third occasion that Mr Rayner was said to have been helicoptered via a short flight to the border region. Mr Parker submitted that, being a 'Regimental exercise', it likely involved all Battery units in the command of the Regiment, including 103 Field Battery. The areas mentioned in that exercise were not border locations, but closer to Camp Terendak. Likewise, the small party of 103 Field Battery set off on the Pahang river, which was far from the border region.

57. Apart from the non-border locations, Exercise "BLOODY LANCET" bore some similarities to Mr Rayner's account of the third occasion of 6-8 May 1962, as supported by Captain Sinclair. For instance, helicopter use, jungle terrain and the potential for live-fire were part of the exercise. Mr Parker, Mr Rayner and Captain Sinclair may have been confusing the locations on exercises they had conducted a long time ago.

Submission – Mr Rayner was not conducting operational sorties

58. Mr Parker's attention was drawn to the eligibility criteria for the AASM 1945-1975 with Clasp 'THAI-MALAY', in particular paragraph d(iii) of the AASM Declaration and Determination²⁷ which states that

*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;*

59. Mr Parker acknowledged that "operational sortie" is not defined with the Declaration and Determination, but stated that "operational sorties" are referable to RAF and RAAF operational sorties into the area of operations, as opposed to administrative flights into the geographical area of operations, without an operational purpose. For example, ferry flights for aircraft delivery or cargo. In his submission this criterion is for RAF and RAAF crew to rely upon and not Army members, such as Mr Rayner. In any event, for Mr Rayner to rely upon this criterion, he would still need to be involved in a 'prescribed operation', for which there was no evidence.

60. In conclusion, Defence submitted that it could not point to any evidence that Mr Rayner's service in Malaya met the eligibility criteria of the AASM as set out in the AASM Declaration and Determination.

²⁷ *Commonwealth of Australia Gazette No S64 Australian Active Service Medal 1945-1975, Clasp 'THAI-MALAY' dated 28 February 2002.*

TRIBUNAL CONSIDERATION - 'AASM 1945 -1975 with Clasp 'THAI-MALAY'

Assessing the evidence and the records

61. The Tribunal carefully considered the evidence provided by Mr Rayner and Captain Sinclair and all of the submissions of Mr Bernard Rayner. The Tribunal was willing to accept that Mr Rayner may have on occasions gone to regions near the border. However, the Tribunal was unclear exactly where he went, how he got there and more importantly whether Mr Rayner entered the 'area of operations' as defined by the AASM Declaration and Determination. Captain Sinclair's evidence did not assist with exact locations within the area of operations. Further, the 209 SQN records did not provide any support to Mr Rayner's nor Captain Sinclair's contention that they had flown via 209 SQN Pioneer aircraft to the border region. In short, the Tribunal could not be reasonably satisfied that Mr Rayner entered the 'area of operations', as defined, noting that he was giving evidence of events some 60 years ago.

62. More importantly, there was no evidence to assist the Tribunal as to the purpose of Mr Rayner's duties and whether he was engaged in 'warlike operations' pursuant to the 'prescribed operation' as required. There was also no evidence to suggest that Mr Rayner's unit was part of 'the Australian element assigned for duty to the prescribed operation'. The Tribunal exhausted all potential avenues to locate relevant records both in Australia and the UK to assist with Mr Rayner's application. (Unfortunately no records of KOYLI that might support his contentions could be found). None of the records of the 103 Field Battery, 26th Field Regiment, 209 SQN nor the Official History were able to shed any light upon any activities as part of the 'prescribed operation' during the relevant timeframe by any of these units or the Regiment. It would seem from the Official History and the other records that the time which Mr Rayner served in Malaya was a relatively uneventful one. The focus was exercises, training, sporting and recreational events.

63. Mr Rayner and his brother were of the view that the absence of supporting evidence surrounding his claim entitled him to the benefit of the doubt and that he should be awarded the medal, there being no evidence to the contrary. However, the Tribunal was unable to subscribe to that view. The Tribunal is required to be reasonably satisfied that the eligibility criteria have been met. Further, the Tribunal has no discretion to not apply the eligibility criteria.

Applying the eligibility criteria

64. Importantly, Mr Rayner's Service Record did not show that he was *allotted and posted as a member of the Australian element assigned for duty to the prescribed operation* as required by criterion d(i). The Tribunal accepted Mr Parker's submission that, if Mr Rayner had been assigned, it would be recorded on his Service Record and within the records of 103 Field Battery, RAA. These records would have shown that he and 103 Field Battery had been allotted by senior Defence officials for an assigned duty to the prescribed operation. The evidence before the Tribunal was that Mr Rayner was not assigned for duty to the prescribed operation and neither did he render service on the prescribed operation.

65. As well as the fact that the Tribunal was not reasonably satisfied that Mr Rayner was 'assigned' to the 'prescribed operation' for criterion d(i), all the remaining criteria d(ii) to d(v) require 'rendered service' pursuant to the 'prescribed operation'. There was no evidence Mr Rayner rendered service pursuant to the 'prescribed operation' with either Australian or UK forces. As a result, the Tribunal could not be reasonably satisfied that Mr Rayner satisfied any of the criteria of the AASM 1945 -1975 with Clasp 'THAI-MALAY' as set out in the Declaration and Determination.

66. The Tribunal noted that Mr Rayner had been awarded the Australian Service Medal 1945-1975 with Clasp 'SE ASIA' for his non-warlike service in Malaya, as well as the Pingat Jasa Malaysia. To the Tribunal, it seemed like all three occasions that Mr Rayner referenced as being close to the border were likely pursuant to Regiment or Battery exercises, including live-fire exercises. Mr Rayner has already been appropriately awarded the Clasp 'SE ASIA' for non-warlike service in Malaya.

67. Lastly, the Tribunal acknowledges Mr Rayner's service to his country and his efforts during his time in Malaya. The Tribunal particularly notes the conditions he faced which were undoubtedly arduous noting that he was medevaced to Australia with glandular fever.

TRIBUNAL DECISION – AASM 1945-1975 with Clasp 'THAI-MALAY'

68. The Tribunal affirms the decision of the Directorate of Honours and Awards of the Department of Defence that Mr Martin Arthur Rayner is not eligible for the award of the Australian Active Service Medal 1945-1975 with Clasp 'THAI-MALAY'.

Annex A

The General Service Medal 1918-1962 with Clasp 'MALAYA': eligibility criteria

The GSM 1918-62 with Clasp 'MALAYA' was established within the Imperial Honours and Awards system. The criteria for the issuing of the award is detailed in the *United Kingdom Command Paper 7907 - The Naval General Service Medal, The General Service Medal (Army and Royal Air Force), Service in Malaya since 16th June, 1948*, of March 1950.²⁸

Paragraph 4(i) of the Command Paper details the eligibility criteria for the GSM 1918-62 with Clasp 'MALAYA' as follows:

The qualification in the [Australian] Army will be service of one day or more on the posted strength of a unit or formation in the Federation of Malaya or the Colony of Singapore, since 16th June, 1948, inclusive.

On 22 September 1960, the UK Committee on the Grant of Honours, Decorations and Medals advised that the Queen had approved the termination of awards for service in Malaya from 31 July 1960, with the possible exception of non-operational gallantry awards.

The cessation date for qualifying service for the GSM 1918-62 with Clasp 'MALAYA' aligns with the end of the Malayan Emergency, being 31 July 1960.²⁹

These qualifying dates, 16 June 1948 to 31 July 1960, are reflected in Annex A to the relevant Australian Defence Instruction.³⁰

The Australian Active Service Medal 1945-1975 with Clasp 'THAI-MALAY': eligibility criteria

The AASM 1945-1975 Regulations were established under Letters Patent, dated 11 December 1997 and were promulgated in *Commonwealth of Australia Gazette No S18 Regulations Governing the Award of the Australian Active Service Medal 1945-1975*, dated 19 January 1998.

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.*

²⁸ United Kingdom Command Paper 7907.

²⁹ *United Kingdom Committee on the Grant of Honours, Decorations and Medals Advice of Approval Cessation Date for GSM 1919-62 Clasp 'MALAYA'* of September 1960.

³⁰ Defence Instruction (Air Force) Personnel 10-6, 18 August 1995.

Conditions for award of the AASM 1945-1975-

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

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

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

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

4(4) An initial award of the Medal to a person is made in the form of the Medal with a clasp.

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

The eligibility criteria for awarding the AASM 1945-1975 with Clasp 'THAI-MALAY', contained in paragraphs (b) to (d)(v) of the Declaration and Determination of the Governor-General promulgated in the *Commonwealth of Australia Gazette No S64 Australian Active Service Medal 1945-75 Regulations*, dated 28 February 2002, state:

(b) ***declare** under regulation 3 of the Regulations that the following **warlike operations**³¹ in which members of the Australian Defence Force were engaged on the Thailand- Malaysia border and within the area described in paragraph (c) to be a prescribed operation for the purposes of the Regulations:*

- (i) ***land and air anti-terrorist operations during the period that commenced on 1 August 1960 and ended on 31 December 1964;***
- (ii) ***Royal Australian Air Force air operations during the period that commenced on 17 August 1964 and ended on 30 March 1966;***

³¹ Qualifying service rendered on the Thailand-Malaysia Border was originally categorised as 'non-warlike' and attracted the Australian Service Medal 1945-1975 (ASM 1945-1975) with Clasp 'THAI-MALAY' (30 days qualifying service). In February 2000, Chapter 5 of the *Review of Service Entitlement Anomalies in Respect of South-East Asian Service* (the Mohr Review) recommended that such service should be "considered equivalent to 'warlike' service and that personnel concerned be eligible for the appropriate medals and repatriation benefits.". This recommendation was accepted, and led to the introduction of the Clasp 'THAI-MALAY' to the AASM 1945-1975 and the revocation/cancellation of that Clasp for the ASM 1945-1975.

- (c) *the area of operations for eligibility for the Australian Active Service Medal 1945-1975 is all that part of the Federation of Malaya contained within the area bounded by a line commencing at the intersection of the western shore of the Federation of Malaya at high-water mark and the boundary between the States of Peris and Kedah; thence proceeding generally north-easterly along that boundary to its intersection with the railway line from Arau to Penang Tunggal; thence following that railway line generally southerly to its intersection with the northern boundary between the States of Penang and Kedah; thence proceeding along the boundary between those States generally easterly, southerly and westerly to the intersection of the boundaries of the States of Penang, Kedah and Perak to its intersection with the railway line from Penang Tunggal to Taiping, thence following that railway line generally southerly, easterly and southerly to its intersection with the parallel 4 degrees 51 minutes north latitude; thence proceeding due south in a straight line to the intersection of that line with the parallel 4 degrees 30 minutes north latitude; thence proceeding along that parallel to its intersection with the eastern bank of the Perak River; thence following that bank of that river to its intersection with the parallel 4 degrees 47 minutes north latitude; thence proceeding in a straight line to the intersection of the boundaries of the States of Perak, Kelantan and Pahang; thence proceeding along the boundary between the States of Kelantan and Pahang to its intersection with the meridian 101 degrees 48 minutes east longitude; thence proceeding in a straight line to the intersection of the eastern bank of the Raya River with the eastern bank of the Nenggiri River, thence following that bank of that river to its intersection with the western bank of the Galas River; thence proceeding in a straight line due east to the eastern bank of that river, thence following that bank of that river and the eastern bank of the Kelantan River to its intersection with the eastern shore of the Federation of Malaya at high-water mark, thence following that-shore at high-water mark to its intersection with the boundary between the Federation of Malaya and Thailand; thence proceeding along that boundary to the western shore of the Federation of Malaya and Thailand at high-water mark; thence following that shore of the Federation of Malaya at high-water mark to the point of commencement;*³² and
- (d) **determine**, under subregulation 4(2) of the Regulations, that the conditions for award of the Australian Active Service Medal 1945-1975. Clasp 'THAI-MALAY' ('the Medal') for the prescribed operation are:

³² Commonwealth of Australia Gazette No S64 Australian Active Service Medal 1945-75 Regulations, dated 28 February 2002.

- 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 assigned for duty to the **prescribed operation**;*
- ii. *the Medal may be awarded to a member of the Australian Defence Force who rendered service as such a member as part of the contribution of a foreign Defence Force to the prescribed operation while on secondment or exchange with the foreign Defence Force;*
- iii. *the Medal may be awarded to a member of the Australian Defence Force who rendered service as such a member and who completed **one operational sortie** within the duration of the prescribed operation;*
- iv. *the Medal may be awarded to a member of the Australian Defence Force who rendered service as such a member for a period of **30 days**, or for periods amounting in the aggregate to 30 days, for official visits, inspections or other occurrences of a temporary nature in connection with the military contribution in the prescribed operation;*
- v. *the Medal may be awarded to a person who rendered service as part of the Australian element of the prescribed operation and who, in accordance with a determination made by the Minister under paragraph 4(1)(b) of the Regulations, is in a class of persons who may be awarded the Medal.*