

From: [Ken Marsh](#)
To: [DHA Tribunal](#)
Subject: Response to Submission 096b - Dept of Defence
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Attachments: [20230227 Nexus.pdf](#)

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Hi

Attached is a brief response to the above, specifically Defence's claim regarding the nexus between medals and entitlements.

Defence claims there is no nexus, relying on a 2000 Cabinet minute.

The evidence I believe shows a clear nexus between the ASM/AASM and repatriation entitlement that was not broken until the introduction of the Operational Service Medal in 2012.

Yours sincerely,

Kenneth Neville Marsh

Nexus Medals and Repatriation Entitlements

Preamble: Defence, at Enclosure 5 to EC23-000372, para. 2(a) state:

In support of its position, Defence relies on the later Cabinet Minute JH00/0088 of 21 March 2000 which included the statement that Cabinet agreed 'the awarding of medals is not a suitable test for repatriation entitlements and, where appropriate, any such nexus be removed from the Act;

The Cabinet Submission JH00/0088 included the following relevant paragraph:

A constant theme in the Mohr Report is the inappropriateness of maintaining any connection between the award of medals and entitlements to repatriation benefits. This is consistent with the theme of CIDA which considered that matters relating to honours and awards should be considered on their merits and should not be influenced by the possible impact, real or perceived, on veterans' entitlements. I believe this policy should be adopted formally and the existing nexus should be removed as part of the legislative amendments required.'

Context

As explained by the VCDF in 2010, the warlike and non-warlike nature of service classification system was adopted in 1993. Under this framework:

the framework a nature of service declaration becomes an enabling driver for the associated conditions of service package. This includes non-financial conditions of service such as medals. The current nature of service policy continues to provide a level of consistency when Defence establishes the conditions of service for deployed personnel.¹

The framework was designed to provide a level of consistency in terms of medallic recognition and repatriation benefits for deployed personnel. (See also Clarke 14.6, 14.7.)

By design, the 1993 framework tied the nature of service determination to both medal and repatriation benefits.

In 1994 CIDA recommended the introduction of the ASM 1947/75 to recognise service equivalent to that recognised by the ASM, i.e., peacekeeping and non-warlike service. CIDA also recommended certain operations prior to 1975 be recognised with this award. CIDA Principle 10 states:

¹ VCDF Submission to DHAAT *Inquiry into the Recognition of Rifle Company Service in Malaysia between 1971 to 1989*, 23 June 2010. See Para. 31 and following.

10. Matters relating to honours and awards should be considered on their merits in accordance with these principles, and these considerations should not be influenced by the possible impact, real or perceived, on veterans' entitlements.

Even though the terms of reference for the Committee preclude it from considering issues relating to the Veterans' Entitlements Act, the Committee remains conscious of the nexus between medals and entitlements in some cases. The Committee considers, however, that entitlement issues are a separate matter for consideration by Australian Government and its agencies.

CIDA clearly understood the nexus between the award of the ASM and repatriation benefit. For what other reason would they include this statement?

Justice Mohr, in 2000, included the following observations in Chapter 3 of his review, addressing Service with the FESR during the Malayan Emergency. They were made within the context of ABB:

It is clear that members of the ADF who were involved in anti-terrorist operations on the Thai-Malay border were involved in combat operations against an armed adversary where the application of force was authorised to pursue specific military objectives, namely the destruction of Communist terrorists in the region. The type of activities they engaged in, such as the ambush operation given as an example above, indicates that they did incur danger from hostile forces of the enemy. It is my opinion therefore, that their operations should be considered to be 'warlike' in nature.

Ineligibility for the GSM with Clasp 'Malaya', the award of which is a prerequisite in repatriation legislation, currently precludes members of the ADF serving on operations on the Thai/Malay border from 1 Aug 60 to 27 May 63 from benefits for 'warlike' service. A further factor is their current eligibility for the ASM with Clasp 'Thai/Malay' as recommended by the CIDA. The ASM is awarded for 'non-war-like' service and not for 'warlike' service. As the eligibility requirements for repatriation benefits are in this instance tied to medals eligibility (almost an anomaly in itself), a recommendation that service on the Thai/Malay border operations was 'warlike' service is also likely to have implications in its implementation in regard to their eligibility for medals. (Mohr 34) (Chapter 3, FESR)

In his review Mohr recognised the nexus between the General Service medal and the ASM and repatriation entitlements.

Defence's reference to Cabinet Minute JH00/0088 of 21 March 2000 re. the nexus between medals and repatriation benefits was made following Mohr's review and was an acceptance of his recommendation. This nexus was not broken until the introduction of the Operational Service Medal in 2012:

The Australian Operational Service Medal does not differentiate between nature of service classification. This removes any nexus between the nature of service classification and the type of medal awarded, which characterised awards of the Australian Active Service Medal and the Australian Service Medal. Australian Defence Force personnel deployed into Afghanistan also received a North Atlantic Treaty Organization medal which in part acknowledges the additional risks of serving in that country. (Robards p.7, (file) Submission 096a

While Cabinet agreed to the removal of the nexus between medals and repatriation benefits in 2000 the evidence provided here shows it was not broken until the introduction of the Operational Service Medal in 2012.

The use of one quote out of context by Defence to support its case without further evidence is less than professional.