



Australian Government

Defence Honours and Awards Appeals Tribunal

Ryan and the Department of Defence RE: Ryan [2023] DHAAT 11 (26 June 2023)

File Number(s)	2022/022
Re	Mr Geoffrey Ryan on behalf of Mr Esmond Ryan Applicant
And	The Department of Defence Respondent
Tribunal	Mr Stephen Skehill (Presiding Member) Air-Vice Marshal Tracy Smart AO (Retd) Brigadier Dianne Gallasch AM CSC (Retd)
Hearing Date	8 June 2023
Attendances	Mr Geoffrey Ryan, Applicant Mr Ian Heldon Director, Honours and Awards Department of Defence, for the Respondent Mr Brett Mitchell Research Officer Directorate of Honours and Awards Department of Defence, for the Respondent

DECISION

On 26 June 2023, the Tribunal decided to affirm the decision that Mr Esmond Ryan not be recommended for the 1939-45 Star.

CATCHWORDS

DEFENCE AWARD – 1939-45 Star – eligibility criteria – Middle East service – Palestine and Syria – Northern Territory, Australia service – Provisional issue of medal ribbon

LEGISLATION

Defence Act 1903 – ss 110T, 110V(1), 110VA and 110VB(2)

Defence Force Regulation 2016 – Regulation 36

Commonwealth of Australia, Summary of Conditions of Award of the Campaign Stars, the Defence Medal and the War Medal (the Dedman Paper), of December 1948

United Kingdom Command Paper 6833 of June 1946

Commonwealth of Australia Gazette No. S374, Amendment of Conditions for Award of the 1939-45 Star 17 September 2001

Introduction

1. The Applicant, Mr Geoffrey Ryan (Mr Ryan), seeks review of a decision by Ms Jillian Bourke, Senior Assessor Veterans and Families, Directorate of Honours and Awards of the Department of Defence (the Directorate), dated 24 May 2022, to refuse to recommend his late father, Mr Esmond Ryan (Warrant Officer Ryan), for the 1939-45 Star.¹

Decision under review

2. On 27 April 2022, Mr Ryan applied to the Directorate for an assessment of the eligibility of Warrant Officer Ryan for the 1939-45 Star and the Australian Defence Medal (ADM). On 24 May 2022, Ms Bourke wrote to Mr Ryan stating that Warrant Officer Ryan could not be recommended for the awards. Of particular relevance to this application, Ms Bourke's letter stated:

*'...The Army qualification for the 1939-45 Star is six months in an operational command during the period of 3 September 1939 to 3 September 1945. The examination of your father's service record confirms from 31 July 1941 he was serving in Palestine (M.E.) and Syria until his return to Australia on 30 March 1942. Palestine does not qualify as an operational area for the 1939-45 Star and the dates your father served in Syria are outside the qualifying period. Accordingly, your father did not qualify for the 1939-45 Star.'*²

3. On 24 October 2022, Mr Ryan made application to the Tribunal seeking review of the Directorate's decision.

4. Following receipt of that application, Defence advised that, due to a reassessment confirming Warrant Officer Ryan's eligibility, the award of the ADM had since been gifted to Mr Ryan to recognise Warrant Officer Ryan's service. However, Defence stated that the decision made on 24 May 2022 to not recommend Warrant Officer Ryan for the 1939-45 Star should be affirmed.³

5. As eligibility for the ADM has been established, the Tribunal's review addressed only Warrant Officer Ryan's eligibility for the 1939-45 Star.

Tribunal jurisdiction

6. Pursuant to s110VB(2) of the *Defence Act 1903* the Tribunal has jurisdiction to review a reviewable decision if an application is properly made to the Tribunal. The term *reviewable decision* is defined in s110V(1) and includes a decision made by a person within the Department of Defence to refuse to recommend a person for a defence award in response to an application. Regulation 36 of the *Defence Regulation 2016* lists the defence awards that may be the subject of a reviewable decision. Included in the defence awards listed in Regulation 36 is the 1939-45 Star. Therefore, the Tribunal has jurisdiction to review decisions in relation to this award.

¹ Application for review of decision, Mr Geoffrey Wayne Ryan

² Letter, BN47050897, Ms Bourke to Mr Ryan, dated 24 May 2022

³ Defence report, Review of Recognition for NX/72331/NX503451/2i224 Esmond Leo Ryan, dated 7 December 2022

Warrant Officer Ryan's service

7. Warrant Officer Ryan's service records indicate that he enlisted in the Australian Imperial Forces (AIF) on 31 March 1941, with service number NX72331, and served until his discharge at the rank of Sergeant on 25 August 1944. The reason for discharge was that he was required for employment in an essential occupation.

8. The records for this period indicate that he served on continuous full time war service with the AIF from 31 March 1941 until 31 July 1944, which included 879 active service days in Australia and 277 days outside Australia. The then Lance Corporal Ryan embarked for service in the Middle East on 27 June 1941 and disembarked on 30 March 1942.⁴

9. Of relevance to this application, Warrant Officer Ryan's service records, as detailed in the Defence report, indicate that:

- a. On 27 June 1941, he embarked in Sydney with 2 Boring Section for service in the Middle East, disembarking in the Middle East on 31 July 1941.
- b. From 1 August 1941, the 2 Boring Section was in Palestine, before moving to Syria on 2 November 1941.
- c. On 23 December 1941, Warrant Officer Ryan was detached for duty to the 23 Australian Corps Field Park Company (Fd Pk Coy) in Syria. The unit remained in Syria until returning to Palestine on 19 January 1942.
- d. On 20 January 1942 Warrant Office Ryan re-joined 2 Boring Section. The unit moved from Syria to Palestine on 12 February 1942. He embarked in the Middle East on 12 March 1942 for return to Australia, disembarking in Adelaide on 30 March 1942.⁵

10. Additionally, following his return to Australia, Warrant Officer Ryan served in the Northern Territory from 1 January 1944 until 22 June 1944.⁶

11. Warrant Officer Ryan re-enlisted in the AIF, with a different service number (NX503451), on 3 June 1946 for a period of two years. Warrant Officer Ryan discharged on 21 August 1947 and enlisted in the Permanent Military Forces (Australian Regular Army) on 22 August 1947 and was allocated army number NP30311. He served until 21 September 1953 when he was medically discharged at the rank of Warrant Officer Class 2. Of some relevance to this application, during this latter period of service, Warrant Officer Ryan undertook training at the UK School of Military Engineering in Chatham, England, between 1949 and 1950.⁷

12. Warrant Officer Ryan has been awarded the following medals for his service:

- the Defence Medal

⁴ NX72331, Mr Esmond Leo Ryan, service records

⁵ Defence report

⁶ Defence report

⁷ Service Record, NP30311, Esmond Leo Ryan

- the War Medal 1939-45
- the Australia Service Medal 1939-45; and, most recently
- the Australian Defence Medal

Mr Ryan's application to the Tribunal

13. In his application to the Tribunal, Mr Ryan stated:

*'I am confused as to why my father is not entitled to the 1939-45 Star. A search of his records show that he served in the Middle East from 31 July 1941 - 30 March 1942, a total of 242 days. This service is shown as Active Service Outside Australia 277 days and Active Service in Australia as 879 days.'*⁸

The Defence Report

14. In its report to the Tribunal, Defence stated that the decision to not recommend Warrant Officer Ryan for the 1939-45 Star should be affirmed.

15. Defence confirmed its position on the operational areas relevant to Warrant Officer Ryan's service in the Middle East and the Northern Territory, which were required to qualify for the 1939-45 Star:

'In accordance with the Dedman Papers, for Army service the 1939-45 Star may be granted for six months service in an operational command during the period 03 September 1939 to 02 September 1945. The six-month qualification may vary depending on the location, circumstances and dates of particular operational service. Relevant to Mr Ryan's service in the Middle East, operational areas that qualify for the 1939-45 Star areas are set out in the Dedman Papers in paragraphs 124 – 126 as follows:

a. Entry into operational service in Syria from 08 June 1941 to 11 July 1941 is qualifying service for the 1939-45 Star.

*b. Service of six months in North Africa (troops under Allied Force Headquarters, and Middle East Command excluding formations not west of the Suez Canal and Red Sea) from 10 June 1940 to 12 May 1943 is qualifying service for the 1939-45 Star.'*⁹

[...]

*'In accordance with paragraph 2(b) of the Amendment, the 1939-45 Star may be awarded to a person who served in the area of the Northern Territory of Australia north of latitude 14 degrees 30 minutes south during the period that commenced on 19 February 1942 and ended on 12 November 1943, if the service rendered is: Operational service as a member of the Australian Defence Force, other than as a member of aircrew, for a period of six months, or periods amounting in the aggregate to, six months or more.'*¹⁰

⁸ Mr Ryan's application to the Tribunal, dated 20 October 2022

⁹ Defence report

¹⁰ Ibid

16. Defence stated that Warrant Officer Ryan had not served in the operational areas in the Middle East or in the Northern Territory during the qualifying periods and therefore did not qualify for the 1939-45 Star. Defence stated:

'The review confirmed that Esmond Ryan's service in the Middle East from 31 July 1941 to 12 March 1942 was rendered in Palestine and Syria.

'Palestine is not west of the Suez Canal and therefore, in accordance with the Dedman Papers, not a qualifying location for the 1939-45 Star.

'In accordance with the Dedman Papers, Syria ceased being a qualifying location for the 1939-45 Star on 11 July 1941. Esmond Ryan commenced service in Syria on 02 November 1941, therefore his service in Syria does not qualify for the 1939-45 Star.

'Further, in accordance with the Amendment, the Northern Territory (north of latitude 14°30'S) ceased being a qualifying location for the 1939-45 Star on 12 November 1943. The review confirmed that Esmond Ryan was taken on strength of a Northern Territory-based (sic) on 01 January 1944, therefore his service in the Northern Territory does not qualify for the 1939-45 Star.

'The review could not identify any evidence that Esmond Ryan rendered any qualifying service for the 1939-45 Star.

Mr Ryan's comments on the Defence report

17. On 16 December 2022, Mr Ryan was provided with a copy of the Defence Report and asked to provide his comments. On 20 December 2022, Mr Ryan emailed the Tribunal providing comments on the Defence Report.

18. In his comments, Mr Ryan stated that he still believed his father was eligible for the Defence Star and quoted what he believed to be the requirements for the award of 1939-45 Star, making reference to information on Defence's internet site.¹¹

'I am confused as to why my late father is not eligible to the 1939 -1945 Star.

Requirements for award of the 1939 -45 Star.

The 1939-45 Star is awarded for service between 3 September 1939 and 2 September 1945 for:

- a period of six months (180 days) operational service for RAN and Army personnel and RAAF non-air crew personnel*
- a period of two months operational service for air crew personnel*
- a period of six months service at sea for Merchant Navy provided at least one voyage was made through one of the specified areas of active operations.*

The 1939-45 Star is awarded to Australian Civilian Personnel who served afloat with the United States Army Small Ships Section between 8 December 1941 and 2 September 1945. Eligibility is the same as that for Merchant Navy personnel.

¹¹ Information as provided on the Department of Defence website: [1939-1945 Star](#) | [ADF Members & Families](#) | [Defence](#)

His records clearly states he was deployed/served in the Middle East from 31st July 1941 to 16th April 1942. A period of 8 month(s) and 16 day(s), which is 2 months 16 days over the required 6 month period. The particulars of discharge proceedings show that my father had a total effective period of 1244 days including active service in Australia of 879 days, and outside Australia, 277 days which equals 9.1 months.

*'Am I just not reading my late fathers records correctly. Please advise'*¹²

19. Mr Ryan then supplied further comment on the Defence Report on 22 December 2022, with photographic evidence, as follows:

'Further to my last I have in my possession a photo of my father in the Royal Engineers Sergeants Mess The Royal School of Military Engineering Chatham and the photo clearly shows the ribbon bar with the 1939-45 Star, The Defence Medal, The War Medal 1939-45 and The Australian Service Medal 1939-45.

As you can see why I am confused about my late fathers Australian Military Awards.

'I find it hard to be believe that he is incorrectly wearing an un-entitled award.'

Defence position at Tribunal Hearing

20. At the hearing before the Tribunal on 8 June 2023, Defence very helpfully expanded upon its reasons for considering that Warrant Officer Ryan did not qualify for the 1939-45 Star. In so doing, Defence referred to source documents other than the Dedman Papers to which it earlier referred. Mr Heldon said:

'In assessing Mr Ryan's application, Defence has relied upon the December 1948 Summary of the conditions of the award of Campaign Stars, the Defence Medal and the War Medal issued under the authority of the Minister of State for Defence (the Dedman papers). The Dedman Papers include the conditions for the award of the 1939-45 star as detailed in the Command Paper 6833 of June 1946.

'In relation to Mr Ryan's service in the Northern Territory, Defence has also relied upon Commonwealth of Australia Gazette S374, Amendment of Conditions for Award of the 1939-45 Star, dated 17 September 2001 which amended the conditions in the Command Paper 6833 of June 1946.

'As outlined in the Defence report, our position is that the service rendered by Mr Ryan in the Middle East and Northern Territory was either not in an operation identified as qualifying for the 1939-45 Star or was not during the prescribed timeframe for a qualifying operation.

'Mr Ryan's service in Palestine and Syria (for the period he was there) is qualifying service for the Defence Medal (folio page 51), which he has been awarded.

¹² Mr Ryan's comments on Defence Report, dated 20 December 2022

'In his application to the Tribunal and his response to the Defence Report, Mr Ryan has expressed confusion about why his late father is not eligible for the 1939-45 star.'

'Mr Ryan has asked if he is 'just not reading his father's service record correctly'. He also provided a photo of his father wearing the ribbon of the 1939-45 star and has stated his belief that his father would not be incorrectly wearing an un-entitled award.'

'In response, I provide the following:

'Mr Ryan has described the Requirements of the 1939-45 Star as:

'The 1939-45 Star is awarded for service between 3 September 1939 and 2 September 1945 for: a period of six months (180 days) operational service for RAN and Army personnel and RAAF non-air crew personnel'

'Quoting from the Dedman Papers (folio page 26) and the Command Paper 6833 (folio page 145):

'The Army qualification is six months in an operational command during the period the 3rd September 1939 to the 2nd September 1945.'

'The phrase 'in an operational command' is key to Mr Ryan's eligibility for the award of the 1939-45 Star. The Dedman Papers (folio page 59) and the Command Papers 6833 (folio page 163) and the Commonwealth Gazette (folio pages 72-73) detail the operations, and time periods, which qualify for the 1939-45 Star.'

'The overall duration of Mr Ryan's service in the Middle East and/or the Northern Territory is not relevant to the award of the 1939-45 Star as the service was not provided in an operation identified as qualifying for the medal or was not during the prescribed timeframe for a qualifying operation.'

'It is not a matter of Mr Ryan incorrectly reading his father's service record, which Defence considers correctly details his service. Instead as described above it is whether that service provided by his father was qualifying service for the medal.'

'In relation to the photo of his father, soldiers may have been given provisional approval to wear the ribbon subject to later verification (folio page 191). This practice of provisional approval to wear, which continued to service in Vietnam, is explained by two main reasons.'

'The first reason is that the final conditions for Second World War awards were not finalised until well after the end of the war. As the documents included after attachment 6 of the Tribunal Pack demonstrate the development of the final conditions for the award was an iterative process with instructions issued with the qualifying statement that they were preliminary or not definitely decided (folio page 169). During the period 1943 to 1946 there were many changes. For example, the name of the medal changed from the 1939-43 Star to the 1939-45 Star and the new award of the Defence Medal was instituted.'

'Relevant to Mr Ryan's service is the provisional order for the issue of the ribbon of the 1939/43 Star – where six months service in Palestine was listed in Schedule B (folio

page 192). As late as September 1945 (folio page 202), Australian instructions listed Palestine as a qualifying 'command'.

'At some point prior to the issue of the Command Paper 6833 of June 1946, a decision was made to separate operations by operational, which may qualify for the 1939-45 Star, and non-operational which may qualify for the Defence Medal. Service in Palestine and in Syria, for the time Mr Ryan served there, was determined as non-operational.'

'The second reason for provisional approval for the wear of ribbons relates to the practicalities of the significant amount of time it took to assess the eligibility for large numbers of members and also the availability and issuing of the medals.'

'The medal slip for Mr Ryan indicates that an assessment of his eligibility to medals for World War Two service did not occur until 1951. While the 27 January 1947 Military Board Instruction included advice that previous approval may be withdrawn (folio page 220), it is possible that Mr Ryan was wearing the ribbon of the 1939-45 Star up until the time his service was assessed and confirmed as not eligible in 1951.'

'While no evidence has been found that Mr Ryan's was granted provisional approval, there is no suggestion that Mr Ryan has done anything wrong by wearing the ribbon. It's very likely that he and other soldiers received provisional approval to do so, but were later determined to be not eligible for the award.'

21. At the hearing Defence made reference to Warrant Officer Ryan's 'Medal Slip' which was subsequently provided to both the Tribunal and Mr Ryan. It shows that Warrant Officer Ryan was awarded three medals (the Defence Medal, the War Medal 1939-45, and the Australia Service Medal 1939-45) on or around 16 November 1951 (after he had returned from training in England). It also indicates that, at that time, he was assessed as ineligible for a number of other listed awards, including the 1939-45 Star.

Tribunal analysis

22. It is perfectly understandable that Mr Ryan would have understood that six months' service in the Middle East was all that was required to qualify for the 1939-45 Star, no matter which of the many documents he may have researched in seeking to ascertain the eligibility criteria governing the award of that medal. By today's standards, all of those documents are very "densely" written, do not clearly define terms used in them and contain qualifications which become apparent only on detailed and inferential examination of passages far removed from initial statements that do indicate that six months' service in the Middle East was all that was required to qualify for the 1939-45 Star. It is important to recognise, however, that many of those documents were written in time of war when there would have been little opportunity for detailed refinement of the drafting of documentation on what were necessarily complex issues.

23. Defence in its 24 May 2022 letter conveying the decision under review did not say which documents were relied upon for the position it took.

24. The Defence report to the Tribunal did address this issue to some extent, as it referred to the 1948 Dedman Paper and, so far as Warrant Officer Ryan's service in the Northern Territory was concerned, the 17 September 2001 Commonwealth of Australia

25. As noted above, Mr Heldon's statements at the 8 June 2023 hearing additionally referred to the Command Paper 6833, published by His Majesty's Stationery Office in June 1946.

26. The 1939-45 Star is of course an Imperial award. As such, it is British documents that are determinative of its eligibility criteria. The Australian Government, its Ministers and Australian entities such as the AIF did not have any legal capacity to vary those eligibility criteria (although, on 10 February 1995, Queen Elizabeth II did provide a delegation to do so to the Governor-General of the Commonwealth of Australia).

27. Accordingly, the Dedman Paper to which Defence referred cannot be determinative of the issue raised by Mr Ryan's application. It was, as it clearly purported to be, only a "*Summary of the Conditions of Award of the Campaign Stars, the Defence Medal and the War Medal*".

28. To guard against the possibility that such a summary document may have contained an error, the Tribunal conducted further detailed research. This disclosed a number of British documents preceding Command Paper 6833 to which Mr Heldon referred at the hearing, and also a number of other Australian documents of relevance.

29. In the following passages the Tribunal details the outcome of that research.

30. The 1939-45 is one of several campaign awards struck to recognise service in the Second World War. It was first established on 3 August 1943, together with the Africa Star, to recognise service rendered in operations during the first four years of the war. Over the next six years, more stars and medals would be struck to recognise Second World War service. The qualifying conditions for the 1939-45 Star were set out or referred to in several British and Australian instruments including:

- a. British Command Papers, which are prerogative instruments presented to Parliament by Command of the late King George VI;
- b. The Australian document called the *Summary of the conditions of award of the campaign stars, the Defence Medal and the War Medal*, issued by authority of the Minister of State for Defence, the Hon John Dedman MP (the Dedman Paper/Papers);
- c. British Army Council Instructions, issued by the Army Council within the British War Office;
- d. Australian Army General Routine Orders, issued by the Commander in Chief of the Australian Military Forces;
- e. Australian Military Board Instructions, issued by the Australian Military Board; and
- f. Instruments signed by the Governor-General and published in the Commonwealth of Australia Gazette.

31. The relevant instruments were amended in numerous, and at times, mutually contradictory, ways between 1943 and 1948, as discussed below.

Command Papers

32. The 1939-45 Star was established by way of **Command Paper 6463**.¹³ This paper set out relevant eligibility criteria as follows:

*'1. In commemoration of the expulsion of the enemy from North Africa and to recognise services rendered in operations during the first four years of the war, The King has approved the institution of two awards for the Armed Forces and the Merchant Navy, to be known as the Africa Star and the 1939-43 Star. No individual will qualify for both.¹⁴ Consideration of the manufacture and issue of the Stars themselves will be postponed until after the war. **The ribbons are to be made now, and will be issued when supplies are ready...(emphasis added)***

The 1939-43 Star

4. The 1939-43 Star will be granted for service in operations during the period from the 3rd September 1939, to the 31st December 1943...

(b) Army. The Army qualification will be six months in an operational command during the period the 3rd September 1939 to the 31st December 1943. As, however, there have been campaigns that have not covered six months, certain exceptions will be made...

...

7. The above arrangements will also apply to the Forces and Merchant Navies of Canada, Australia, New Zealand, South Africa, India, Burma and the Colonial Empire.'¹⁵

33. It is important to note that this document did not define the term “operational command” which was clearly key to the issue of eligibility. Instead, it foreshadowed by its repeated use of the word “will” that such matters would be detailed in future documents.

34. In May 1945, at the end of the war in Europe but prior to the defeat of Japan, a further **Command Paper (6633)** was promulgated which provided for the institution of further Campaign Stars, the Defence Medal and amendments to the Africa Star and the 1939-45 Star.¹⁶ This paper stated, relevantly:

'1. (i) The Committee on the grant of Honours, Decorations and Medals in time of war have had under consideration directions by the Prime Minister, First Lord of the Treasury and Minister of Defence relating to recommendations for the institution of further Campaign Stars and a Defence Medal for service in the war, and for varying the qualifications for the award of the Stars instituted in 1943.

¹³ Command Paper 6463, *The Africa Star and the 1939-43 Star the Clasps to the two Stars*, Committee on the Grant of Honours Decorations and Medals in Time of War, HMSO, London 1943

¹⁴ This rule was later changed.

¹⁵ Command Paper 6463

¹⁶ Command Paper 6633, *Campaign Stars and the Defence Medal...*, Committee on the Grant of Honours Decorations and Medals in Time of War, HMSO, London 1945

‘(ii) Recommendations for the institution of the changes and extensions set out below have been the special subject of His Majesty's attention over a long period during which The King has been advised by the Prime Minister on all matters likely to give rise to difference of opinion. The recommendations have now been duly submitted to The King, and His Majesty has graciously approved them. Consideration of the manufacture and issue of the new Stars themselves and the Defence Medal will be postponed. The ribbons, which have been devised by His Majesty, are being made now on the highest priority, and will be issued as soon as supplies are ready.

‘(iii) The following paragraphs should be read in conjunction with paragraph 11 which indicates the operational service required before individuals can qualify or begin to qualify for one of the new Stars and the manner in which service is to be reckoned...’

The 1939-45 Star

‘2. (i) Approval has been granted for the prolongation of the currency of the 1939-43 Star to the 8th May, 1945, the date of the end of active hostilities in Europe. The question of the possible prolongation of the currency of the 1939-45 Star to the end of active hostilities in the Pacific will be a matter for consideration. Meanwhile the temporary use for this distinction of the description 1939-45 Star has been authorised...’

The Defence Medal

‘12. (i) The institution of a Defence Medal has been approved. This is to be granted (a) for service with Forces in non-operational areas subjected to air attack, or closely threatened, (b) for non-operational service with the Forces overseas from, or outside, the country of residence...

‘(b) It is the intention, for example, that service by United Kingdom Forces in West Africa, Palestine or India, as well as service by Dominion Forces in non-operational areas outside their own countries, should also be a qualification.’¹⁷

35. This document similarly inferred that further detail was yet to be determined. While confirming the length of service required for award of the 1939-45 Star, the table at paragraph 15 stated that this was to be service “in specified campaigns” which were not specified elsewhere in the paper.

36. In June 1946, **Command Paper 6833** was promulgated. This Command Paper provided for the institution of the War Medal 1939-45 and an Indian Service Medal and the amendment of time qualifications for the Campaign Stars and the Defence Medal. Relevant to the 1939-45 Star, it stated:

‘1 (i). The Committee on the grant of Honours, Decorations and Medals have had under consideration the proposed institution of a War Medal and an India Service Medal, the amendment of the time qualifications for the Campaign Stars and the

¹⁷ Ibid

Defence Medal, and questions relating to Emblems denoting Mentions in Despatches and King's Commendations.

'(ii) Their recommendations have been duly submitted to The King, who has given the matter special attention, and has been advised by the Prime Minister on all matters likely to give rise to difference of opinion. His Majesty has now graciously approved the recommendations set out below.

'The manufacture and issue of the new Medals themselves will be under-taken when circumstances permit. The ribbons will be issued as soon as supplies are ready.

'1. (i) The 1939-45 Star is granted for service in operations during the period from the 3rd September, 1939, to the 2nd September 1945...

'(iii) Army – (a) The Army qualification is six months in an operational command during the period the 3rd September, 1939 to the 2nd September, 1945. As, however, there have been campaigns that have not covered six months, certain exceptions will be made...

'(c) The Commonwealth of Australia, the Dominion of New Zealand and India (except parts of Assam and Bengal, for the purpose of the Burma operations) are not regarded as having been in the area of operational commands, and among the other territories in which service was not a qualification there may be mentioned Ceylon, Norfolk Island, New Caledonia, New Hebrides, Fiji Islands, Tonga Island, Phoenix Island and Fanning Island.¹⁸

Operational Service

'13(ii) The areas of qualifying operational service for the Campaign Stars on land are set out as shortly as possible below...For the 1939-45 Star the qualification is six months operational service...Service may be aggregated. In certain operations the qualification for the 1939-45 Star for service on land is reduced to entry into operational service...

'(iv) in the following operations, entry into operational service qualifies for the award of the 1939-45 Star.

...

<i>Syria</i>	<i>8.6.41</i>	<i>11.7.41</i>
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...¹⁹

37. It was only at this stage that specificity was provided as to the places and dates of service that would qualify for the 1939-45 Star. Of present relevance any service in Syria between 8 June 1941 and 11 June 1941 would qualify but, as Warrant Officer Ryan's service in Syria was not within those dates, that service did not make him eligible for award

¹⁸ Command Paper 6833, *The War Medal 1939-45...Changes in the Time Qualification for the Campaign Stars and Defence Medal...*, HMSO London, 1946

¹⁹ Ibid

of the 1939-45 Star. So far as his other Middle East service was concerned, Palestine was not listed.²⁰ While six months service in North Africa was a qualifying condition, that excluded “formations not West of the Suez Canal and the Red Sea”. Palestine being east of the Suez Canal and the Red Sea meant that service there did not qualify. Accordingly, this Command Paper meant that Warrant Officer Ryan was not eligible for the 1939-45 Star. [Palestine was however listed as a qualifying area for the Defence Medal, which has been awarded to him].²¹

The Dedman Paper

38. Relevant to Warrant Officer Ryan’s service, the conditions for the award of the 1939-45 Star for Army personnel as set out in the Dedman Paper are as follows:

‘PART I - CAMPAIGN STARS THE 1939-45 STAR

‘1. The 1939-45 Star is granted for service in operations during the period from the 3rd September 1939 to the 2nd September 1945.

[...]

‘4. Army.

‘(a) The Army qualification is six months in an operational command during the period the 3rd September 1939 to the 2nd September 1945. As, however, there have been campaigns that have not covered six months, certain exceptions will be made...

‘(c) The Commonwealth of Australia (except Papua and the Mandated Territories), the Dominion of New Zealand and India (except parts of Assam and Bengal, for the purpose of the Burma operations) are not regarded as having been in the area of operational commands, and among the other territories in which service was not a qualification there may be mentioned Ceylon, Norfolk Island, New Caledonia, New Hebrides, Fiji Islands, Tonga Island, Phoenix Island and Fanning Island.’²²

...

39. Paragraphs 125 to 126 of the Dedman Paper provides information regarding operational areas in the Middle East, as relevant to Mr Ryan’s service, that qualified for the 1939-45 Star:

- a. Entry into operational service in Syria from 08 June 1941 to 11 July 1941 is qualifying service for the 1939-45 Star.*
- b. Service of six months in North Africa (troops under Allied Force Headquarters, and Middle East Command excluding formations not west of the Suez Canal*

²⁰ Ibid

²¹ Ibid

²² Ibid

*and Red Sea) from 10 June 1940 to 12 May 1943 is qualifying service for the 1939-45 Star.*²³

40. Accordingly, while it was not determinative of the issue, the Dedman Paper did indeed correctly summarise the position so far as relevant to Warrant Officer Ryan's Middle East service.

British Army Council Instructions

41. On 18 November 1943, following the publication of Command Paper 6463, the Army Council released Instruction 1690 of 1943 which gave provisional instructions for issue of the Africa Star, Ribbon and Clasps. It also stated that:

*'detailed terms of eligibility for the 1939/43 Star have not yet been definitely decided and no authority can be given for the issue of the ribbon of this Star.'*²⁴

42. On 8 January 1944, the Army Council released Instruction 32 of 1944 which set out provisional instructions for the issue of the ribbon of the 1939-43 Star. In doing so, it said:

'4. The qualifications given below apply to the more straightforward cases of entitlement. It is likely that additional categories will be added later; these are under consideration....

'5. (a) Officers and other ranks of the following classes will be eligible for the Star : -

(i) All officers and other ranks of the United Kingdom and Colonial Forces....

'6. The 1939/43 Star will be granted, to begin with, to personnel of the classes listed in para 5. Who between 3rd September 1939 and 31st December 1943 inclusive, either: -

(a) Shall have aggregated six months' service in any one or more of the following operational commands between the dates set opposite each command : - ...

<i>Operation</i>	<i>From</i>	<i>To</i>
<i>Syria</i>	<i>8 June 1941</i>	<i>11 July 1941 ...</i> ²⁵

*'13. Issue of Ribbon. – An initial free issue of 2 ½ inches of the material, sufficient to make up two medal ribbons, will be made to all ranks whose entitlement has been authorized by publication in Part II/III orders.'*²⁶

²³ Ibid

²⁴ Army Council Instruction No. 1690 of 1943, dated 18 November 1943

²⁵ Army Council Instruction No. 32 of 1944, dated 8 January 1944

²⁶ Army Council Instruction No. 450 of 1944, dated 29 March 1944

43. On 29 March 1944, further provisional instructions were set out in Army Council Instruction 450 of 1944. The qualifying period for Syria did not change and Palestine was not listed.²⁷

44. On 14 July 1945, following the release of Command Paper 6633 (but prior to the release of Command Paper 6833), Army Council Instruction 829 of 1945 set out more detailed conditions for the award of the Campaign Stars and Clasps and the Defence Medal. Paragraphs 15 and 17 of this instruction set out the qualifying commands and periods of qualification for the 1939-45 Star. The qualifying period for Syria did not change and Palestine was not listed,²⁸ but Palestine was listed as a qualifying area for the Defence Medal.²⁹

45. These documents therefore did not confer any eligibility on Warrant Officer Ryan for either the 1939-45 Star or its ribbon.

Australian Army General Routine Orders

46. On 14 September 1944, General Sir Thomas Blamey, Commander Allied Forces in the South West Pacific Area and Commander in Chief of the Australian Military Forces made General Routine Order A 329 of 1944. This was the provisional order for the issue of the ribbon of the 1939-43 Star. It stated, relevantly:

'2. The issue of instructions regarding the eligibility of members of the AMF for the 1939/43 Star has been held over pending determination of the areas in which Australian Army personnel may qualify for the award. Final determination of the full list of such areas cannot yet be completed, but, in order to avoid delay, this order is promulgated to cover those cases in which eligibility has already been determined. As further areas are approved, particulars will be promulgated...

'6. (a) Officers and other ranks of the AMF including members of the AANS, members of the VAD and physiotherapists attached to the AMF, and representatives of philanthropic societies attached to the AMF, and civilians attached to the AMF in an official capacity, will be eligible for the 1939/43 Star...

'7. Subject to the provisions of this order, the 1939/43 Star will be granted, to begin with, to personnel of the classes listed in para 6(a) who performed service in accordance with the following conditions:-

(a) Any service in any of the operations listed in Schedule A to this order, during the period set opposite that operation; or

(b) Service in any one or more of the operational commands listed in Schedule "B" to this order, between the dates set opposite the particular commands, for an aggregate period of six months; ...³⁰

²⁷ Army Council Instruction No. 829 of 1945, dated 14 July 1945

²⁸ Ibid.

²⁹ Ibid

³⁰ Australian Army General Routine Order A 329, 14 September 1944

<i>SCHEDULE "A"</i>		
<i>Operation</i>	<i>From</i>	<i>To</i>
...		
<i>Syria</i>	<i>8th June, 1941</i>	<i>11th July, 1941</i>
...		
<i>SCHEDULE "B"</i>		
<i>Operational Command</i>	<i>From</i>	<i>To</i>
...		
<i>Palestine</i>	<i>7th January, 1940</i>	<i>31st December, 1943'</i> ³¹

47. The Tribunal has been unable to locate any Imperial documentation that would provide authority for the inclusion of Palestine in this schedule. It may therefore have been an error. But, even if there was such authority, the clear requirement was for six months' service in Palestine and Warrant Officer Ryan's service there was somewhat short of that.

48. Schedule B to this order was amended on 25 May 1945 by way of General Routine Order 140 of 1945, however the stated qualifying period for Palestine did not change.³²

49. On 14 September 1945, General Routine Order 233 of 1945 set out detailed qualifying conditions for the Campaign Stars and Clasps and the Defence Medal. In doing so, paragraph 1(b) of the order stated that the conditions under which those awards would be made to Australian Army personnel were still the subject of negotiations between the governments of the United Kingdom and Australia, but, pending a final decision being reached, the order was promulgated to cover those cases in which eligibility had already been determined.³³

50. Paragraph 15 of the order listed Palestine as a "Qualifying Command" for the 1939-45 Star for six months' service between 7 January 1940 and 31 December 1943.³⁴ Relevantly, the copy of this Order available to the Tribunal is 'pencil amended' as being cancelled by Military Board Instruction 36 of 1947.³⁵

51. On 21 September 1945, General Routine Order 241 of 1945 was made which amended Order 233. In doing so, among other things, the following text was added (emphasis as per original).

*'115. IT IS AGAIN EMPHASISED THAT THIS ORDER IS NOT FINAL IN REGARD TO DETAILED CONDITIONS OF QUALIFICATION AND QUALIFYING AREAS AS A NUMBER OF MATTERS ARE STILL UNDER CONSIDERATION.'*³⁶

³¹ Ibid

³² Australian Army General Routine Order 140/145, dated 25 May 1945

³³ Australian Army General Routine Order 233/1945, dated 14 September 1945

³⁴ Ibid

³⁵ Ibid

³⁶ Australian Army General Routine Order 241/1945, dated 21 September 1945

Military Board Instruction 36/1947

52. Some 14 months later, and after the release of Command Paper 6833 (but prior to the Dedman Paper) on 27 January 1947, Military Board Instruction 36/1947 was made which set out revised conditions for the award of the campaign stars and clasps and the Defence and War Medals. It again stated at paragraph 1(b) that in certain respects the conditions under which these awards would be made were still the subject of negotiation between the British and Australian governments. Relevantly though, paragraph 7(c) of the instruction categorically stated, regarding the 1939-45 Star:

*(c) Service in Palestine, Sinai and in India, except for the purpose of operations in Burma and the North West Frontier, is excluded.*³⁷

53. Service in Palestine for the duration of the war in Europe was listed as a non-operational area subject to enemy air attack or closely threatened, attracting the award of the Defence Medal rather than the 1939-45 Star.³⁸

Commonwealth of Australia Gazette Notices

54. Since 1995, further changes have been made by the Governor-General of the Commonwealth of Australia to the eligibility criteria for the 1939-45 Star. These have been made by the Governor-General in accordance with powers delegated by Queen Elizabeth II on 10 February 1995. These include extending eligibility to service in a specified area of the Northern Territory from 19 February 1942 to 12 November 1943 where certain conditions are met.^{39, 40, 41}

55. Warrant Officer Ryan's Northern Territory service did not fall within those dates and so on this basis also he was not eligible for the 1939-45 Star.

³⁷ Military Board Instruction 36-1947, dated 27 January 1947

³⁸ Ibid

³⁹ Commonwealth of Australia Gazette No. S133 dated 10 April 1995

⁴⁰ Commonwealth of Australia Gazette No. S350, 9 July 1998

⁴¹ Commonwealth of Australia Gazette No. S374, 17 September 2001

The photograph of Warrant Officer Ryan

56. As noted above Mr Ryan supplied the following scanned photo of his father wearing what he believed to be the ribbon bar with the 1939-45 Star.⁴² Mr Ryan stated that the photograph was taken in the Sergeants Mess at the School of Military Engineering at Chatham. According to Warrant Officer Ryan's Service Record, he undertook this training between September 1949 and October 1950.



57. The Tribunal was satisfied that Warrant Officer Ryan is the second from the right – this can be confirmed by reference to the photograph of him taken on enlistment and retained in his service record.

⁴² Photo of Mr Esmond Ryan, second from right, provided by Mr Geoffrey Ryan, response to Defence report, dated 22 December 2022

58. However as the photo is over 70 years old and in black and white, it was very difficult to discern what ribbons were being worn. An enlargement of the image provided by Mr Ryan is set out below, but it is still grainy and it is difficult to read the ribbon bar, even in direct comparison with the colour mock-up of the purported ribbon bar which the Tribunal secretariat made using original Second World War stock ribbon:



59. The Tribunal thus was uncertain that Mr Ryan was correct in believing that the photograph does in fact show his father wearing the ribbon for the 1939-45 Star. While it was clear that such ribbons were issued ahead of the production of medals and while there were changes in eligibility over time, he was at no time eligible for the 1939-45 Star even allowing for the possibility that the Australian Army Instructions may have been in error in stating that six months' service in Palestine was a qualification. Thus, if he was indeed wearing the ribbon, the Tribunal would presume that it had been provisionally issued to him by mistake. Certainly there was no suggestion that Warrant Officer Ryan would have deliberately worn a ribbon not issued to him or to which he did not believe he was entitled.

60. The Tribunal agreed with the Defence comment that it was possible that Warrant Officer Ryan was wearing the ribbon of the 1939-45 Star up until the time his service was assessed and confirmed as not eligible in 1951. This included during his post-war service in England.

Tribunal decision

61. In light of all of the above, and despite Mr Ryan's very understandable view to the contrary, the Tribunal was satisfied that Defence was correct in its assertion that Warrant Officer Ryan did not qualify for the 1939-45 Star.

62. Accordingly, the Tribunal has no option but to affirm the decision under review.