



Australian Government

Defence Honours and Awards Appeals Tribunal

Low and the Department of Defence [2026] DHAAT 1 (5 January 2026)

File Number(s) 2024/004

Re Wing Commander Christopher Low (Retd)
Applicant

And The Department of Defence
Respondent

Tribunal Mr Stephen Skehill (Presiding Member)
Air Commodore Anthony Grady AM (Retd)
Air Vice-Marshal Tracy Smart AO (Retd)
Mr Jonathan Hyde

Hearing Date 28 August 2025

Attendances Wing Commander Christopher Low (Retd)
Applicant

Ms Allison Augustine, Director
Directorate of Honours and Awards, Defence
for the Respondent

Mr Kevin Lawson, Director
Nature of Service Branch, Defence
for the Respondent

Wing Commander Nicholas Edwards, RAAF Research Officer
Nature of Service Branch, Defence
for the Respondent

Ms Melissa Jones, Special Counsel (Defence People Group)
for the Respondent

DECISION

On 5 January 2026, the Tribunal decided:

- (a) to affirm the decision that Wing Commander Low not be recommended for the Australian Operational Service Medal – Indo-Pacific for his service on Operation GATEWAY prior to 1 July 2005; and
- (b) to recommend to the Minister that he should:
 - a. provide to Defence a clear definition of the term ‘hazardous service’ to guide all further consideration of matters arising under the *Australian Operational Service Medal Regulation 2012*;
 - b. direct Defence to develop a transparent and consistently applied evidentiary framework for assessment by reference to that definition of hazardous service, including required evidence and methodology;
 - c. direct Defence to conduct a comprehensive historical assessment of Operation GATEWAY’s hazard environment from 1981 to the present in order to advise the Minister in relation to any dates on which service may properly meet the hazardous threshold set out in that definition;
 - d. on receipt of that advice, consider whether he should recommend to the Governor-General that any specified service on Operation GATEWAY should be declared under the *Australian Operational Service Medal Regulation 2012*;
 - e. in the interests of protecting the integrity of the defence honours and awards system through consistent decision-making, pending resolution of steps a. to d above, either recommend to the Governor-General that the present declaration of Operation GATEWAY under the *Australian Operational Service Medal Regulation 2012* be revoked or, alternatively, direct Defence to suspend consideration of further applications for issue of the Australian Operational Service Medal – Indo-Pacific for service on Operation GATEWAY; and
 - f. pending the finalisation of any new definition of ‘hazardous’, direct Defence that any relevant future recommendations to the Minister expressly address the continuing application of the 1993 Cabinet-approved definitions, or justify any proposed departure from them.

CATCHWORDS

DEFENCE AWARD – Australian Operational Service Medal – Indo-Pacific – eligibility criteria – declared operation – Operation GATEWAY – Governor-General Declaration – date of commencement of operation – hazardous service

LEGISLATION

Defence Act 1903 – Part VIIIC – Sections 110T, 110V(1), 110VB(2), 110VB(6)

Defence Regulation 2016, Regulation 36

Australian Operational Service Medal Regulation 2012, Commonwealth of Australia Gazette S67, Letter Patent and Regulation, dated 6 June 2012

Australian Operational Service Medal Regulation 2012, Amendment 2015, Commonwealth of Australia Gazette G00827, dated 1 June 2015

Australian Operational Service Medal Regulation 2012 Amendment to Letters Patent 2020, Commonwealth of Australia Gazette G00629, dated 5 August 2020

Commonwealth of Australia Gazette G00051 dated 31 January 2025, Australian Operational Service Medal (Indo-Pacific) Instrument 2024, dated 12 January 2025

Introduction

1. The Applicant, Wing Commander Christopher Low (Retd), seeks review of a decision dated 13 February 2025 of the Department of Defence to refuse to recommend him for the Australian Operational Service Medal – Indo-Pacific in recognition of his service on Operation GATEWAY.

Decision under review

2. On 6 February 2025, Wing Commander Low wrote to the Directorate of Honours and Awards in Defence expressing concern that the *Australian Operational Service Medal – Indo Pacific Instrument 2024* incorrectly listed the commencement date for Operation GATEWAY as 1 July 2005. Wing Commander Low said the correct commencement date for the Operation was 5 February 1981. He said that the start date of 1 July 2005 specified in that Instrument was incorrect and would exclude him and many others who performed duty on Operation GATEWAY prior to that date from being eligible for the award.

3. Defence responded via email on 13 February 2025 advising that the date of 1 July 2005 reflected a change to the nature of Operation GATEWAY in that it was *being contemporised and expanded to include further scope; and that this elevated its hazardous nature to the level required for recognition under the Australian Operational Service Medal*. Defence stated:

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

Given the Tribunal have already confirmed that service before 2005 was peacetime service that was not sufficiently hazardous to warrant medallic recognition, and that the scope and conditions of Operation GATEWAY changed after this, eligibility for the AOSM for service on Operation GATEWAY does not extend to a period before 2005. It is for these reasons that the commencement date in the medal Instrument is 1 July 2005.¹

4. The Tribunal noted with some concern that in that email Defence did not advise Wing Commander Low of his right to appeal to the Tribunal against what was essentially a refusal to recommend him for the Australian Operational Service Medal – Indo-Pacific, which implicitly but quite clearly was sought by him in his approach to Defence.

5. On 17 February 2025, Wing Commander Low made application to the Tribunal seeking review of the Defence decision.

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.

¹ Application for review, Wing Commander Christopher Low (Retd), 18 June 2024

7. 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 Australian Operational Service Medal. Therefore, the Tribunal has jurisdiction to review decisions in relation to this award.

Wing Commander Low's service

8. Wing Commander Low enlisted in the Royal Australian Air Force on 14 January 1992 before transferring to the Air Force Reserve on 8 February 2024.²

9. Wing Commander Low has received the following recognition for his service:

- Defence Long Service Medal (with First and Second Clasps);
- Australian Active Service Medal with Clasps 'ICAT' and 'IRAQ 2003';
- Iraq Medal;
- Australian Operational Service Medal – Border Protection;
- Defence Long Service Medal with First, Second and Third Clasps;
- Australian Defence Medal;
- Meritorious Unit Citation – 92 Wing – Operations FALCONER, CATALYST, SLIPPER;
- Operational Service Badge; and
- Returned from Active Service Badge.³

10. Relevant to this review, Wing Commander Low rendered service on Operation GATEWAY as Royal Australian Air Force aircrew between 1995 and 2005. He served at Number 92 Wing⁴ from 1995-1998, and from 2000-2005.⁵

11. In its correspondence to Wing Commander Low, Defence defined Operation GATEWAY as *the Australian Defence Force contribution to the preservation of regional security and stability in South East Asia. The Australian Defence Force (ADF) provides maritime surveillance patrols in the North Indian Ocean and South China Sea as part of this commitment, operating out of Royal Malaysian Air Force Base Butterworth. The operation is a key aspect of the Malaysia-Australia Joint Defence Program. Commencing in 1980 and continuing through to today has seen many ADF members contribute to this successful operation.*⁶

Inquiry into Recognition for Service Undertaken with Operation GATEWAY completed by the Tribunal in 2012

12. Both Wing Commander Low's application and the Defence report refer to the Tribunal's 2012 report of the *Inquiry into Recognition for Service Undertaken with Operation GATEWAY*.

13. The Terms of Reference for that Inquiry were to *inquire into and report on recognition for members of the Australian Defence Force who served with Operation GATEWAY and to examine the Defence policy on the granting of an award where more than one operation is*

² Wing Commander Low's personnel records

³ Ibid

⁴ Headquartered at RAAF Base Edinburgh, No 92 Wing (92WG) is responsible for conducting long-range maritime intelligence, surveillance and reconnaissance missions, search and survivor supply missions, [Surveillance and Response Group | Air Force](#), accessed 31 March 2025

⁵ Application for review, Wing Commander Low, dated 17 February 2025

⁶ Email from David Herra to Wing Commander Low, dated 13 February 2025 as supplied with application for review, dated 17 February 2025

involved, in relation to service in South-East Asia between 1945 and the present, while considering the nature and context of this service in relation to the criteria for an Australian Service Medal.⁷

14. The report of the Inquiry recognised that medallic recognition for service with Operation GATEWAY fell in two time periods.

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

Service with Operation GATEWAY from 1 January 1990 is not recognised with any medallic award.⁸

15. In that report, the Tribunal agreed with submissions from Defence that Operation GATEWAY was a peacetime operation,⁹ and concluded that the period 1981 to 1989 should not be considered a 'non-warlike' or 'warlike operation'.¹⁰ It did not expressly consider whether the service should be determined to be 'hazardous'.¹¹ However, the Tribunal did agree that service on Operation GATEWAY up to the end of 1989 was properly recognised by the ASM with Clasp 'SE ASIA' because it satisfied the criteria particular to that award.¹²

16. The Inquiry did consider the relevance of the then newly created Operational Service Medal and concluded as follows:

Under its regulations, the OSM cannot be awarded unless the operation involved is declared to be a declared operation for the purposes of the award and this would require a determination that the conditions under which the operation was conducted were 'hazardous'.

Neither of these has occurred for Operation GATEWAY. The OSM could not be awarded for Operation GATEWAY in the period before 1 January 1990 because recognition for another award, the ASM with Clasp 'SE ASIA', already exists in respect of service in this period.¹³

17. The Tribunal concluded that the existing recognition¹⁴ was appropriate for Australian Defence Force personnel who served with Operation GATEWAY. It recommended that that there be no change to the existing provisions and policy approach to medallic recognition for members of the Australian Defence Force who served with Operation GATEWAY.¹⁵

⁷ *Inquiry into Recognition for Service Undertaken with Operation Gateway*, 2012

⁸ *Ibid*, paragraphs 15 and 16

⁹ *Ibid*, paragraph 79

¹⁰ *Ibid*, paragraph 75-76,

¹¹ *Ibid*, paragraph 84

¹² *Ibid*, paragraph 85

¹³ *Ibid*, paragraph 80-81

¹⁴ Service from 1981 to 1989 is recognised by the award of the Australian Service Medal (ASM) with Clasp 'SE ASIA'. Service from 1 January 1990 is not recognised with any medallic award, Inquiry report, paragraph 15-16

¹⁵ *Inquiry into Recognition for Service Undertaken with Operation Gateway*

The Australian Operational Service Medal

18. The Australian Operational Service Medal was created by Letters Patent, dated 22 May 2012 and published in the *Commonwealth of Australia Gazette S67* of 6 June 2012.¹⁶

19. The *Australian Operational Service Medal Regulation* was updated in 2015 (as per *Commonwealth of Australia Gazette G00827*)¹⁷, and was then further updated in 2019 (as per *Commonwealth of Australia Gazette G00629* dated 5 August 2020).¹⁸

20. The updated Regulation states:

3 Declared operation

(1) *The Governor-General may declare, in writing, on the recommendation of the Minister, that an operation is a declared operation.*

(2) *In making a recommendation to the Governor-General, the Minister must have regard to the recommendation of the Chief of the Defence Force.*

(3) *The Governor-General must not make a declaration about an operation unless:*

(a) *The operation is, or was, carried out in conditions that are, or were, hazardous; and*

(b) *The operation is not an operation for which recognition for an award (other than an award under this regulation) already exists; and*

(c) *The operation meets the conditions (if any) determined, in writing, by the Governor-General.*

(3A) *Without limiting subsection (1), the Chief of the Defence Force may declare, in writing, on the recommendation of the Commander Joint Operations, that a special operation is a declared operation.*

(3B) *The Chief of the Defence Force must not make a declaration about a special operation unless:*

(a) *The operation is, or was, carried out in conditions that are, or were, hazardous; and*

(b) *The operation is not an operation for which recognition for an award (other than an award under this regulation) already exists; and*

(c) *The operation meets the conditions (if any) determined, in writing, by the Chief of the Defence Force.*

(3C) *Without limiting subsection (1), the Chief of the Defence Force may declare, in writing, on the recommendation of the Commander Joint Operations or the Special Operations Commander Australia, that a counter terrorism activity or a special recovery activity is a declared operation.*

¹⁶ *Australian Operational Service Medal Regulation 2012, Commonwealth of Australia Gazette S67, Letters Patent and Regulations*, dated 6 June 2012

¹⁷ *Australian Operational Service Medal Regulation 2012, Amendment 2015, Commonwealth of Australia Gazette G00827*, dated 1 June 2015

¹⁸ *Australian Operational Service Medal Regulations 2012 Amendment to Letters Patent 2020, Commonwealth of Australia Gazette G00629*, dated 5 August 2020

(3D) *The Chief of the Defence Force must not make a declaration about a counter terrorism activity or a special recovery activity unless all of the following apply.*

- (a) *The activity is, or was, carried out in hazardous conditions.*
- (b) *The activity is not an activity for which recognition for an award (other than an award under this regulation) already exists.*
- (c) *The activity meets the conditions (if any) determined, in writing, by the Chief of the Defence Force.*

(4) *A declaration under this section must include the following matters:*

- (a) *the name by which the operation is known or a description of the operation; and*
- (b) *the area in which the operation occurs or occurred; and*
- (c) *either:*
 - (i) *the dates or period during which the operation occurred or*
 - (ii) *if the operation is continuing – the date on which the operation commenced.*

4 Eligible service

(1) *The Governor-General may declare, in writing, on the recommendation of the Minister, that service is:*

- (a) *Eligible service; or*
- (b) *Eligible service that is an additional period of qualifying service for the purposes of paragraph 6(2) (c).*

(2) *In making a recommendation to the Governor-General, the Minister must have regard to the recommendation of the Chief of the Defence Force.*

(3) *The Governor-General must not make a declaration about service under subsection (1) unless the eligible service is given as part of, and with the period of, a declared operation.*

(3A) *Eligible service declared under subsection (1) must meet the conditions (if any) determined, in writing, by the Governor-General.*

(4) *Without limiting subsection (1), the Chief of the Defence Force may declare, in writing, on the recommendation of the Commander Joint Operations, that service is:*

- (a) *Eligible service; or*
- (b) *Eligible service that is an additional period of qualifying service for the purposes of paragraph 6(2)(c).*

(5) *The Chief of the Defence Force must not make a declaration about service unless:*

- (a) *The service is given in the operational area, and within the period, of a special operation, counter terrorism activity or special recovery activity that is a declared operation; and*
- (b) *The service meets the conditions (if any) determined, in writing, by the Chief of the Defence Force*

The Australian Operational Service Medal – Indo-Pacific

21. The eligibility criteria for awarding the Australian Operational Service Medal – Indo-Pacific are contained in the Governor-General's declaration dated 12 January 2025 set out in the *Australian Operational Service Medal (Indo-Pacific) Instrument 2024*, published in the *Commonwealth of Australia Gazette G00051* dated 31 January 2025.¹⁹

22. The criteria in the Instrument relevant to Wing Commander Low's application are as follows:

5 Declared Operation

For subsection 3(1) of the Regulations, for the Australian Operational Service Medal (Indo-Pacific) the following operations, comprising the specified areas and dates, are declared operations:

(a) Operation GATEWAY that commenced on 1 July 2005 within the area comprising the maritime areas and superjacent airspace of:

- (i) The Gulf of Mannar through the Bay of Bengal*
- (ii) The Andaman Sea*
- (iii) The Malacca Strait*
- (iv) The Singapore Strait*
- (v) The Gulf of Thailand*
- (vi) The South China Sea*

[...]

6 Eligible service

(1) For paragraph 4(1)(a) of the Regulations, service is eligible service if:

- (a) The service is given by an ADF member or an allied foreign Defence Force member on deployment during the period of the declared operations*
- (b) The service occurs for 30 days during one or more deployment, whether or not the service continues throughout the whole day and whether or not the 30 days are continuous*
- (c) The service is considered to be hazardous under paragraph 3(3)(a) of the Australian Operational Service Medal Regulation*

(2) If an ADF member or an allied foreign Defence Force member gave service of a kind mentioned in paragraph (1)(a) of this section, but did not satisfy

¹⁹ Commonwealth of Australia Gazette G00051 dated 31 January 2025, Australian Operational Service Medal (Indo-Pacific) Instrument 2024, dated 12 January 2025

paragraph (1)(b) of this section because the member died or was evacuated due to service-related injury, illness or disability, the service is taken to have occurred for 30 days during the deployment.

Wing Commander Low's application to the Tribunal

23. In his application to the Tribunal, Wing Commander Low stated that Defence had advised that he was not eligible for the Australian Operational Service Medal – Indo-Pacific as his service on Operation GATEWAY had occurred prior to the start date listed in the award's Instrument.

24. Wing Commander Low detailed a number of reasons why he should be considered eligible for the Australian Operational Service Medal – Indo-Pacific, including that the Instrument, dated 13 January 2025, was in contradiction and contravention of the 2012 Letters Patent and Regulation for the Australian Operational Service Medal, and that the 2025 Instrument included an incorrect start date for Operation GATEWAY.²⁰ He said:

In accordance with the Regulation Part 1, 3 (3) a, the governor-general must not make a declaration about an operation unless:

(a) the operation is, or was, carried out in conditions that are hazardous.

The governor-general declared Operation GATEWAY under the Regulation; therefore, Operation GATEWAY is or was carried out in conditions that are hazardous.

I argue the AOSM (Indo-Pacific) Instrument 2024 is invalid, because the Operation GATEWAY commencement date as written, contravenes the AOSM Regulation 2012. Operation GATEWAY is a continuing operation. For a continuing operation, a declaration under the Regulation must state the date on which the operation commenced. Operation GATEWAY commenced on 5 February 1981, vice (sic) the listed 1 July 2005...

To validate the AOSM (Indo-Pacific) Instrument 2024, the correct date for the commencement of Operation GATEWAY (5 February 1981) should be annotated and the Instrument re-signed by the governor-general.²¹

25. In his correspondence to the Directorate of Honours and Awards, Wing Commander Low referred to the *Inquiry into Recognition for Service Undertaken with Operation Gateway* completed by the Tribunal in 2012, and requested the Directorate change the commencement date for Operation GATEWAY to correctly reflect 5 February 1981.

In 2012, the Defence Honours and Awards Appeal Tribunal (DHAAT) conducted an inquiry into recognition for GATEWAY and found there should be no change; however, they recommended principles that should govern the eligibility for awards for service in South-East Asia from 1945 to the present where more than one operation is involved... CDF (GEN Hurley) wrote to the Minister and confirmed Defence would adhere to these principles (see attached MINSUB).

²⁰ Australian Operational Service Medal Regulation 2012, Commonwealth of Australia Gazette S67, Letters Patent and Regulations, dated 6 June 2012

²¹ Application for review, Wing Commander Low, dated 17 February 2025

The applicable principle is:

If an operation does not merit an award in its own right, but the service meets the criteria of a more general award, then the member should be eligible for that more general award.

The governor-general has declared Operation GATEWAY under the AOSM Regulation. If the retrospective principle agreed by CDF (covering all operational service in SE Asia since 1945) is correctly applied, then the whole of Operation GATEWAY from 5 February 1981 should be countable as eligible service, not just that portion after 1 July 2005²²

26. Although Defence confirmed that Operation GATEWAY commenced in 1981 and that the Operation was continuing, it stated that the date of 2005 in the Instrument reflected a change to the nature of Operation GATEWAY *being contemporised and expanded to include further scope; and that this elevated its hazardous nature to the level required for recognition under the Australia Operational Service Medal.* Defence stated:

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

Given the Tribunal have already confirmed that service before 2005 was peacetime service that was not sufficiently hazardous to warrant medallic recognition, and that the scope and conditions of Operation GATEWAY changed after this, eligibility for the AOSM for service on Operation GATEWAY does not extend to a period before 2005. It is for these reasons that the commencement date in the medal Instrument is 1 July 2005.²³

27. Wing Commander Low also queried Defence's statement that the scope of Operation GATEWAY had changed in 2005, and quoted information from a table in the 2004-05 Defence Annual Report, which stated:

Operation Gateway continued to be conducted at a reduced rate of effort due to assets being assigned to Operations Relex II and Catalyst/Slipper, and the P-3 Orion maritime patrol aircraft upgrade program.²⁴

28. Wing Commander Low further noted that the 2012 Tribunal inquiry also did not mention any change in scope in 2005.

29. Finally, Wing Commander Low commented that should the start date in the Instrument be corrected, it would enable him and his fellow Royal Australian Air Force members who served on Operation GATEWAY between 1995 and 2005 to qualify for the award. He said:

In accordance with the Regulation, I argue the commencement date of Operation GATEWAY in the AOSM (Indo-Pacific) Instrument 2024 should be amended to the correct date, which is 5 February 1981. I would have eligible service as defined in

²² Ibid, emphasis added by applicant

²³ Application for review, Wing Commander Christopher Low, 13 February 2025

²⁴ Table 4.6, FY 2004-05 Defence Annual Report, as supplied with application for review, Wing Commander Low, dated 17 February 2025

that Instrument and fulfil all of the conditions of that Instrument. I should therefore be eligible for the award of the OSM Indo-Pacific.

...it would allow the visible and well-deserved recognition of ex-92WG RAAF members who served on Operation GATEWAY from 1990-2005. Most of us are ex-aircrew with logbooks and we can easily prove 30 days of eligible service on the operation. The maintenance and support crews at 92WG DETA were either posted or attached, so it should not be difficult to prove their eligibility either. In this way, all eligible members who served on the ADF's longest-running operation will be recognised.²⁵

The Defence report

30. As set out in the Defence report, following Wing Commander Low's application to the Tribunal and the Tribunal's request for that report, Defence conducted a further assessment of his eligibility for the Australian Operational Service Medal – Indo Pacific.

31. Defence argued that Wing Commander Low had not sought an assessment of his service prior to submitting his application for review to the Tribunal and that, as such, the Department of Defence had not made a formal decision regarding his eligibility for the award.²⁶ However, Defence confirmed that it would not recommend Wing Commander Low for the Australian Operational Service Medal – Indo Pacific.

32. Defence confirmed previous advice to Wing Commander Low that his service on Operation GATEWAY was prior to the date of medallic entitlement as listed in the *Australian Operational Service Medal (Indo-Pacific) Instrument 2025*.²⁷

33. Defence did not address in the report Wing Commander Low's concerns regarding the start date of 1 July 2005 for Operation GATEWAY as listed in the Instrument, advising that it had previously addressed his concerns via email.²⁸

Wing Commander Low's comments on the Defence report

34. On 10 April 2025, Wing Commander Low was provided with a copy of the Defence report and asked to provide his comments on it. Wing Commander Low provided an initial response on 17 April 2025 in which he noted that Defence had not addressed any of his concerns that the commencement date of Operation GATEWAY set out in the Instrument was in contradiction and contravention to the 2012 Letters Patent and Regulation for the Australian Operational Service Medal. He said:

...Their evidence is not credible. Defence has not discussed how and why this date (1 July 2005) was annotated on a legal document signed by the governor-general. Who made the decision about this date and why was it made? These are obvious, fair and crucial questions.

Operation GATEWAY commenced on 5 February 1981. In my initial submission to the tribunal, I stated the declaration should be from that date; however, the operation was recognised by the ASM-SEA from 5 February 1981- 31 December 1989. Therefore, in

²⁵ Application for review, Wing Commander Low, 17 February 2025

²⁶ Defence report, dated 6 March 2025

²⁷ Ibid

²⁸ Ibid

accordance with the AOSM regulation, I argue the declaration for Operation GATEWAY should be from 1 January 1990.

To restate the crux of this matter, the governor-general cannot declare an operation under the AOSM regulation unless it is or was 'hazardous'. This implies that the continuously-running Operation GATEWAY suddenly became 'hazardous' on 1 July 2005, when the rate of effort was historically low. My research demonstrates this is not credible. As a RAAF pilot who was deployed on Operation GATEWAY many times over many years, I instinctively know that this date and the justification for it is suspect.²⁹

35. Wing Commander Low also queried Defence's statement that the date of 1 July 2005 in the Instrument was chosen due to a change in nature and scope of Operation GATEWAY. He said:

Defence is using this statement to justify the notion that Operation GATEWAY became 'hazardous' on 1 July 2005, and hence the declaration is from that date. It appears this statement is from a set of cleared talking points as I have seen it used a senate estimates brief The Defence Report did not address my rebuttal of this statement.

.... To make a change to an ADF operation, an order is released under the authority of CDF. There were no orders or directives for Operation GATEWAY released in 2005.³⁰

36. Wing Commander Low further stated that Defence had misinterpreted the findings of the Tribunal's 2012 *Inquiry into Recognition for Service Undertaken with Operation Gateway*. He said:

This statement is taken out of context, was distorted and is misleading. H&A have also referred to this statement as 'evidence' in the Defence Report. There was no direct examination of Operation GATEWAY service before and after 1 July 2005 in the DHAAT inquiry. The 'Peacetime' Nature of Service (NoS) is irrelevant, as Operation GATEWAY has always been 'Peacetime' service.

...Operation GATEWAY was still Peacetime service in 2011. There is no evidence that the scope and conditions of the operation changed after 1 July 2005. This is false. There is no mention of this 2005 'change of scope' in the DHAAT report, which was published in 2013, because there was no change of scope.

H&A are implying the NoS of Operation GATEWAY was 'Peacetime' before 2005; therefore, it was not 'hazardous' before 2005. This is a false equivalence. The Border Protection operations recognised by the AOSM (Border Protection) are 'Peacetime'. The AOSM (Indo Pacific) recognises Operations SAVILLE and RENDER SAFE which are also Peacetime. All Peacetime operations recognised by the AOSM are 'hazardous'. The term 'Peacetime operation' has no relevance to the AOSM regulation. H&A use of the term 'Peacetime service' in their argument is irrelevant and misleading.

I made the point that all other operations recognised under the AOSM (Indo Pacific) are dated in accordance with CDF orders. These dates are immutable and transparent for all to see. In the case of Operation GATEWAY, 1 July 2005 does not appear on any order or directive. I again point out that the rate-of-effort on Operation GATEWAY

²⁹ Wing Commander Low response to Defence report, dated 17 April 2025

³⁰ Ibid

was historically low in 2005, so it makes no sense that the operation suddenly became 'hazardous' in July 2005.

*Defence's position is that Operation GATEWAY is 'hazardous' from 1 July 2005, because "we say it is". My case is this date was arbitrarily set at some point in 2024, and set for Defence's convenience. It bears no relation to the history of the operation or the hazard level, which is an unacceptable position.*³¹

37. Finally, Wing Commander Low referred to a matter he had previously raised with Defence regarding the Instrument leading to 'double-medalling'. He said:

I informed H&A regarding this issue via a separate email, but they have not addressed this in their report either.

In accordance with paragraph 7 of the Instrument:

7 Conditions

- (1) An ADF member or allied foreign Defence Force member is not eligible for an award of the Australian Operational Service Medal (Indo-Pacific) for service during the same period for which they receive one of the following medals:
 - (a) The Australian Operational Service Medal.
 - (b) The Australian Service Medal.

I served with aircrew who were awarded the ASM-SEA for their Operation GATEWAY service from 1981-1989. There are a number of these members who will also fulfil the criteria for the AOSM after 1 July 2005. The AOSM Instrument does not preclude award of both the AOSM and the ASM-SEA, as the AOSM is awarded after the period of the ASM-SEA, which ended on 31 December 1989. These members will be awarded two medals for their Operation GATEWAY service.

*Those of us who only served on Operation GATEWAY from 1 January 1990 - 30 June 2005 will receive nothing.*³²

Tribunal hearing and subsequent documentation

38. The Tribunal hearing was held in Canberra on 28 August 2025 and attended in person by all participants.

39. Following that hearing, the Tribunal wrote to Defence as follows:

...the Tribunal would be grateful if you could advise the following in relation to the map which you showed to, but did not leave with, the panel and the applicant:

- *The date on which the area of operations shown on that map was authorised for Operation GATEWAY, and whether it is still current;*
- *The dates on which each of each of the areas with A, B and C prefixes was authorised for that operation and, if any was later removed from the scope of Operation GATEWAY, the date on which any such area was removed.*

³¹ Wing Commander Low response to Defence report, dated 17 April 2025

³² Ibid

[...]

As discussed at the hearing, the Tribunal understands that Defence is currently unable to provide documentary evidence of the reasons why the Instrument made for the purposes of the AOSM Regulations set 1 July 2005 as the date of commencement, or of any analysis undertaken as to how the hazard levels of operations were considered to have varied from those previously applicable. If that position changes, the Tribunal would appreciate your advice as soon as practicable thereafter.

40. On 26 September 2025 Defence replied as follows:

Defence consulted Air Force Headquarters as some operational documents related to service over this period are held on file at Royal Malaysian Airforce Base Butterworth, Malaysia. ...

Defence offer the following advice:

- *The Alpha and Bravo areas of operation were instituted when Operation GATEWAY was first established in February 1981.*
- *Operations in the Charlie area commenced between January and June 2007 and was first flown in the latter half of 2007.*
- *Operations in all Zones remain current and are still actively used for Operation GATEWAY.*
- *Operation GATEWAY is part of the ongoing Australian Defence Force contribution to the preservation of regional security and stability in South East Asia. The Australian Defence Force provides maritime surveillance patrols in the North Indian Ocean and South China Sea as part of this commitment, operating out of Royal Malaysian Air Force Base Butterworth.*
- *The operation is a key aspect of the Malaysia-Australia Joint Defence Program and established under the provisions of the Five Power Defence Arrangements of 1971.*
- *Once Headquarters Joint Operations Command determine Australian priorities, twice a year there is a meeting between Australia and Malaysia to review the operation and approve any changes around its scope and conduct.*

Defence is mindful that during the hearing it advised that the eligibility date of 1 July 2005 was selected due to the expansion of the patrol area for Operation GATWEAY. To date, Defence has been unable to locate the written documentation that confirm this.

Additionally, Defence acknowledges that the purpose of Operation GATEWAY has not deviated since its inception. The catalyst for recommending the inclusion of Operation GATEWAY was combination of the extension of the area of operations for GATEWAY into more contested areas in the region; and the contemporary environment of operations, which have become increasingly hazardous with aggressive challenges from other nations. This increased hazard is due to incidents where aircraft were intercepted or aggressively challenged by foreign military assets, the threat of foreign interference instances of actual harm, and increased levels of psychological hazard.

41. Wing Commander Low was invited to offer any comment he wished on the Defence response. On 1 October 2025 he advised as follows:

I note Defence has stated:

Operations in the Charlie area commenced between January and June 2007 and was first flown in the latter half of 2007.

This is immaterial. The fact that more lines were drawn on a map does not mean the operation has become more hazardous. A far more in-depth threat analysis is required. The CDF order after 2007 showed no change in the strategic objectives for Op GATEWAY.

I also note that Defence states:

*Defence is mindful that during the hearing it advised that the eligibility date of 1 July 2005 was selected due to the expansion of the patrol area for Operation GATEWAY. **To date, Defence has been unable to locate the written documentation that confirm this.***

This implies they still might find this documentation. They won't. It does not exist and the documents I provided to the tribunal prove this. This statement about 2005 was a blatant lie and Defence are persisting with this fiction. In the hearing, I stated that 01 Jul 05 was set as the declaration date regardless of military advice and I am more certain than ever that was the case.

The Secretary, CDF and Minister should be deeply troubled about how this declaration date was justified.

Lastly, Defence states:

The catalyst for recommending the inclusion of Operation GATEWAY was combination of the extension of the area of operations for GATEWAY into more contested areas in the region; and the contemporary environment of operations, which have become increasingly hazardous with aggressive challenges from other nations. This increased hazard is due to incidents where aircraft were intercepted or aggressively challenged by foreign military assets, the threat of foreign interference instances of actual harm, and increased levels of psychological hazard.

Operations in contested airspace and maritime areas has always been a feature of Op GATEWAY. I have highlighted a number of anecdotes from Cold War Warriors, which is an official Air Force history publication about the P-3 Orion in RAAF service.

- *A mission to Cam Ranh Bay in 1983, pg. 257-260*
- *Encounters with Russian Bear MPA and Iranian warship (1987), pg 330-331*
- *Intercept by Indonesian fighters (1987), pg 332*
- *Intercept by Indonesian F5Es (1990), pg 359-360*
- *Mission into the Spratly's (1990), pg 361-362*

42. The Tribunal further asked Defence to provide dates for the *incidents where aircraft were intercepted or aggressively challenged by foreign military assets, the threat of foreign interference instances of actual harm, and increased levels of psychological hazard occurred*, to which it referred in its response to the questions asked by the Tribunal following the hearing. Defence advised on 26 November 2025 as follows:

The Directorate of Nature of Service has provided the following information with regards to the incidents during Operation GATEWAY:

- a. 20 July 1990: Vietnamese Patrol Boat fired on RAAF P3 after aircraft misidentified and flew approach too close (as mentioned in the DHAAT GATEWAY report 2013 para 60).*
- b. 18 Aug 2005: A PLA-N frigate fired a total of three flares (below and off-centre) whilst an RAAF P3 was conducting surveillance.*
- c. 7 Mar 2022: PLAAF Su27 conducted an unsafe approach manoeuvre to within 78ft of an RAAF P-8A.*
- d. 11 Mar 2022: 2 x PLA-AF aircraft conducted unsafe approach within 50ft of RAAF P3.*
- e. 26 May 2022: PLA-AF aircraft conducted unsafe approach manoeuvres on RAAF P-8A including release of flares (off-centre) and chaff directly in flight path of RAAF P-8A.*
- f. 4 May 2024: HMAS Hobart's embarked helicopter experienced an unsafe and unprofessional interaction by a PLAAF J-10 fighter jet releasing flares across the MH-60R's flightpath.*
- g. 11 Feb 2025: A PLA-AF fighter aircraft dispensed flares in close proximity to an RAAF P-8A in the South China Sea.*
- h. 19 Oct 2025: A PLA-AF aircraft release flares in close proximity to RAAF P-8A.*

43. Finally, the Tribunal asked Defence to provide copies of the Ministerial brief or briefs mentioned by Defence at the hearing that they had indicated discussed the concept of ‘peacetime hazardous’ operations on the basis of which it said the decision had been made to declare Operation GATEWAY from 1 July 2025. On 26 November 2025 Defence provided a copy of ministerial briefing MS24-000836 dated 3 December 2024. This briefing is discussed in some detail in the Tribunal analysis below.

44. The Defence responses of 26 November 2025 were provided to Wing Commander Low on 27 November 2025 for his information and any comment he wished to make. On 2 December 2025 he advised as follows:

Thank you for the opportunity to comment on Defence's latest submission. I note in para. 11 of the attached MINSUB, the statement:

“The hazardous component within the AOSM framework has not been defined in the medal Regulations, enabling discretion and flexibility on its application.”

From my perspective, the ‘discretion and flexibility’ to declare an operation as ‘hazardous’ is uncontroversial, provided a whole operation is declared ‘hazardous’. But setting a ‘hazardous’ demarcation line within a continuous operation such as GATEWAY is clearly problematic.

Defence has used ‘discretion and flexibility’ to arbitrarily claim that Op GATEWAY

became 'hazardous' on 1 July 2005:

"In 2005 the nature of Operation GATEWAY was contemporised and expanded to include further scope. This elevated its hazardous nature to the level required for recognition under the Australia Operational Service Medal." (Attachment A)

I have pointed out to Defence Honours and Awards and the tribunal there is abundant contemporaneous evidence to show there was no change to the operation on 1 July 2005.

*An examination of the **UNCLASSIFIED** unit history shows that in June 2005, there were 63 hours flown over nine missions (see Attachment B). As per Attachment C, there was no mission on 1 July 2005 and only four totalling 32.5 hours in the entire month of July 2005, including the re-deployment to RAAF base Edinburgh. The sorties in July 2005 were in the same patrol areas as my deployment in June 2002 (Attachment D). I will also point out the deployment in July 2005 was a training deployment carried out to convert replacement aircrew onto the AP-3C. In the hearing, I made the point that there was no difference in the hazard level of Op GATEWAY between 30 June 2005 and 01 July 2005. This is grounded in evidence. The first date is not eligible service for the AOSM but the following day is. Given the historical facts, this is simply absurd.*

I served under the same operation, directed by the same CDF order so I should be eligible for the AOSM Indo-Pacific. I challenge Defence to prove that I'm wrong.

Of note, the statement from Attachment A justifying the declaration date for Op GATEWAY does not appear in the MINSUB. It is possible that the minister and governor-general were not even aware of the justification regarding 1 July 2005, and genuinely believed the operation actually commenced on that date.

In their letter to you dated 26 September 2025 (Attachment E), Defence Honours and Awards stated:

"Defence is mindful that during the hearing it advised that the eligibility date of 1 July 2005 was selected due to the expansion of the patrol area for Operation GATEWAY. To date, Defence has been unable to locate the written documentation that confirm this."

As seen from Attachment C, there was no expansion of the patrol area on 1 July 2005. Clearly, the Op GATEWAY AOSM declaration date rests on very shaky ground.

*With regard to Defence's submissions concerning incidents during GATEWAY operations where aircraft were intercepted or aggressively challenged by foreign military assets, Defence has not included those incidents from the 1980s which I provided to the tribunal in my previous correspondence. I emphasise this was **UNCLASSIFIED** information. You can buy the book 'Cold War Warriors' on Amazon. As a reminder these were:*

- *A mission in the vicinity of Cam Ranh Bay, Vietnam, in support of submarine operations (1982)*
- *Close encounter with a Russian Bear maritime patrol aircraft (1987)*
- *Threat to shoot down a RAAF P-3C from Iranian warship (1987)*
- *Intercept by Indonesian fighters (1987)*

- *Intercept by Indonesian F5Es (1990)*
- *Mission into the Spratly's (1990). This was included in Defence's last submission.*

*Please also see attached **UNCLASSIFIED** evidence of two further intercepts from foreign air forces in the 1990s:*

- *Intercept by Indian Navy Sea Harriers over the Indian Ocean on 12 July 1993 (Attachment F)*
- *Intercept by two Indonesian Air Force F-16A's in the northern Malacca Straits on 9 August 1994 (Attachment G)*

The Op GATEWAY medal instrument will deny recognition to literally thousands of ex-RAAF personnel who served on Op GATEWAY prior to 1 July 2005. Despite my previous correspondence, all members who served 30 days on Op GATEWAY should be eligible for the AOSM Indo Pacific from the start date of the operation (5 February 1981), regardless of whether they have been awarded the ASM-SEA, as award of this medal was incidental to the members' service in Malaysia prior to 31 December 1989.

Finally, I recall a statement from the hearing that Defence was considering moving the Operation GATEWAY declaration date even further to the right. Frankly, I don't understand how this is legal or possible. The governor-general declared Operation GATEWAY with effect 1 July 2005. There is no mechanism in the AOSM regulation to revoke the declaration once it is made. There is a mechanism to cancel awards, but I imagine the tribunal will be very busy if Defence tries to cancel or withhold the awards of members who previously qualified, but do not qualify under a later declaration date.

Again, I would like to thank the tribunal and the secretariat for considering my input into this very complex matter.

Tribunal analysis

A preliminary issue.

45. The Tribunal noted that, in its letter to Wing Commander Low conveying the decision under review, Defence stated that *the Tribunal have already confirmed that service before 2005 was peacetime service that was not sufficiently hazardous to warrant medallic recognition, and that the scope and conditions of Operation GATEWAY changed after this.*

46. While it might be the result of poor sentence construction, when read literally this statement is in fact both incorrect and highly misleading. In its report of the 2012 *Inquiry into Recognition for Service Undertaken with Operation Gateway* the Tribunal agreed with Defence's contention that Operation GATEWAY service was peacetime service as concluded by Defence's own Nature of Service reviews in both 2005 and 2011. The Tribunal certainly did not find that the scope or conditions of Operation GATEWAY service had changed after 2005.

Wing Commander Low's submissions

47. In his written documentation and at the hearing, in essence, Wing Commander Low challenged the Defence decision to refuse to recommend him for the Australian Operational Service Medal – Indo-Pacific on a number of bases.

48. First, he said that the *Australian Operational Service Medal (Indo-Pacific) Instrument 2024* was invalid because it did not specify the correct date of commencement for Operation GATEWAY as required by Regulation 3(4)(c)(ii) of the *Australian Operational Service Medal Regulation 2012*. That provision requires that, for a continuing operation, the Governor-General's declaration must specify the date of commencement of the operation. It is clear that Operation GATEWAY is a continuing operation, and that it commenced in 1981 and not on 1 July 2005, which was the date specified in the relevant declaration set out in the Instrument.

49. Second, he challenged the rationale for the date 1 July 2005 stated by Defence – i.e., that such a date reflected the nature of Operation GATEWAY *being contemporised and expanded to include further scope*; and that *this elevated its hazardous nature to the level required for recognition under the Australia Operational Service Medal*. He said that there was no material difference in the nature of service on Operation GATEWAY immediately before or after 1 July 2005, and he provided multiple documents that certainly appeared to the Tribunal to support that contention. He thus said that, if service after 1 July 2005 warranted recognition by the Australian Operational Service Medal – Indo-Pacific, then service prior to that date was equally deserving of the same recognition.

50. And third, he said that service on Operation GATEWAY prior to and after 1 July 2005 was properly classified as 'peacetime' service, rather than 'non-warlike' or 'warlike' service. However, he also argued that 'peacetime service' could be 'hazardous' for the purpose of the Australian Operational Service Medal and that other peacetime operations had been classified as such and recognized by that medal.

51. These arguments put forward by Wing Commander Low gave rise to a number of complex, technical and important questions.

Did the Operation GATEWAY declaration comply with the Regulation requirement

52. As noted above, Regulation 3(4)(c)(ii) of the *Australian Operational Service Medal Regulation 2012* required that, for a continuing operation, the Governor-General's declaration must specify the date on which the operation commenced. It was clear that Operation GATEWAY was a continuing operation, and that it commenced in 1981 and not on 1 July 2005, which was the date specified in the relevant declaration.

53. While at first glance this seems to be a convincing argument for saying that the declaration was not validly made, the Tribunal concluded that this was not in fact the case.

54. The *Australian Operational Service Medal Regulation 2012* does not define the word 'operation'. If that word was defined in the *Defence Act 1903*, or perhaps in the *Defence Regulation 2016*, it would be reasonable to assume that it was intended to bear the same meaning when used in a Regulation relating to defence honours and awards, even though such regulations were made under Royal Warrant and the executive power of the Commonwealth and not under the Defence Act itself.

55. The word ‘operation’ does not appear at all in the *Defence Regulation 2016*. However, the word ‘operation’ (or variants of it, such as ‘operations’ or ‘operationally’) appears more than 70 times in the Defence Act but is nowhere defined in that Act. Most uses of the word in the Defence Act imply nothing more than its ordinary English language meaning – for example, a reference to the ‘operation’ of the Tribunal, or to the ‘operation’ of a provision of the law, or to ‘operationally sensitive’ information. There are some limited uses of the word in relation to military activities, but none of these conferred a power to designate an operation such as Operation GATEWAY or any other ‘Named OPERATION’. Rather, it appears that the Defence procedures for the designation of some military activities as a named operation with a title such as Operation GATEWAY were nothing more than an administrative step undertaken in reliance on sections 9 or 10 of the Act, which conferred command of the Australian Defence Force on the Chief of the Defence Force, and administration of the Defence force jointly on the Secretary of the Department of Defence and the Chief of the Defence Force.

56. Accordingly, the Tribunal concluded that the term ‘operation’ when used in the *Australian Operational Service Medal Regulation 2012* bore its ordinary English language meaning of *an activity that is planned to achieve something* (as per the Cambridge Dictionary, or similar references to activities generally as set out in other dictionaries). In the view of the Tribunal, this meant that it would not be necessary for the declaration of an operation under the Regulation to specify the date on which a named operation commenced, but only the date from which specified activities were determined to be ‘hazardous’ and thereby eligible for recognition by award of the Australian Operational Service Medal. To interpret the Regulation otherwise would lead to what might be viewed as the manifestly absurd result that the entirety of a named operation had to be either declared or not declared on an all-or-nothing basis, with the effect that changes in threat and danger within the course of what might be a very fluid operation could not be recognised without also recognising other less deserving activity.

57. This means that if Operation GATEWAY activities from a date later than the commencement of that named operation were able to be properly classified as ‘hazardous’, they could be declared under the Regulation from that date notwithstanding that other activities prior to that date were also conducted under the same designation of Operation GATEWAY.

58. This in turn leads to the essence of the second and third grounds of challenge raised by Wing Commander Low.

Change in Operation GATEWAY service

59. Regardless of what meaning is properly to be attributed to the term ‘hazardous’ as used in the *Australian Operational Service Medal Regulation 2012*, it is necessary to consider how the nature of service on Operation GATEWAY changed over time to ascertain whether there was a date from which it could be said to have intensified from non-hazardous to hazardous, so as to warrant declaration of service from that date for the purpose of recognition by the Australian Operational Service Medal.

60. As noted above, Wing Commander Low claimed that there was no material difference in the nature of service on Operation GATEWAY before and after 1 July 2005, and he submitted a number of documents that supported his argument to the extent that they each appeared to reflect a ‘business as usual’ situation.

61. Accordingly, the Tribunal asked Defence for an explanation of the changes in service on Operation GATEWAY over time. Defence provided a copy of a map that showed different areas of the North Indian Ocean and the South China Sea over which Operation GATEWAY flights had been conducted. These areas largely overlapped one another. Moreover, the dates that

Defence advised for the commencement of flights within those areas suggested no rationale for the selection of 1 July 2005 as the date from which Operation GATEWAY service was to be declared to be hazardous. More significantly, Defence said that it had been unable to locate any analysis of changes to hazard levels prepared in the course of preparing the recommendation to the Minister that he should recommend declaration under the Regulation to the Governor-General.

62. The Tribunal found this to be extraordinary. The decision to make that declaration was taken by the Governor-General in January 2025 and presumably on the basis of recommendations to and from the Minister in 2024. It is highly unlikely that documentation relating to so recent a process would have become ‘lost in the mists of time’, and the Tribunal was concerned that Defence had simply failed to do the work that should have been necessary to justify its choice of a commencement date for medallic recognition of 1 July 2005.

63. It is a matter of very public knowledge that there have been incidents in the South China Sea in very recent times where routine Royal Australian Air Force surveillance flights are considered by Defence and the Government to have been subjected to danger by foreign aircraft. But the Tribunal had not been provided with any material by Defence that would justify a ‘hazardous’ classification from as early as 1 July 2005 based on incidents of this nature.

64. The Tribunal thus asked Defence for dates for the *incidents where aircraft were intercepted or aggressively challenged by foreign military assets, the threat of foreign interference instances of actual harm, and increased levels of psychological hazard occurred* to which it had referred in its response to the questions asked by the Tribunal following the hearing. The Defence response identified the following incidents set out at paragraph 42 above.

65. However, Wing Commander Low claimed that *Operations in contested airspace and maritime areas has always been a feature of Op GATEWAY* and said that Defence’s incident list should also have included a number of other incidents referred to at paragraph 44 above.

66. The Tribunal’s 2012 report on Operation GATEWAY also referred, at paragraphs 50, 64 and 74, to a number of incidents which might be additional to those above. Additionally, Wing Commander Low drew the Tribunal’s attention to a number of incidents referred to in Chapter 13 of *Cold War Warriors* detailing Operation GATEWAY incidents with the Soviet Navy in the early 1980s, well before 1 July 2005 and at a time subsequently claimed by Defence to be ‘peacetime’ service.

67. Clearly, the dates included in these lists do not support any justification for the Defence assertion that the character of Operation GATEWAY service changed on 1 July 2005. Further, it seemed to the Tribunal to be clear that, without any detailed factual analysis of each of the incidents referred to by Defence and Wing Commander Low, there was no apparent justification for the Defence assertion that Operation GATEWAY service had been *elevated ... to the level required for recognition under the Australian Operational Service Medal* from 1 July 2005. It may be that some of the incidents in question were of such a serious nature as to reach the ‘hazardous’ threshold – such as the most recent release of flares in close proximity to an Australian aircraft - while others may have been far less serious.

68. Moreover, whether any of these incidents would justify a subsequent declaration of any part of Operation GATEWAY under the *Australian Operational Service Medal Regulation* would necessarily depend on the meaning that should properly be attributed to the term ‘hazardous’ as used in that Regulation.

69. Operation GATEWAY service between the commencement of that operation on 1 February 1981 and 31 December 1989 is recognised by the Australian Service Medal with Clasp South East Asia. This is not because of any incident that occurred on flights during that period, but because those flights operated from Air Base Butterworth in Malaysia which was, at the time, subject to a communist insurgency. However, following the conclusion of a peace accord between the Malaysian Government and the Malaysian Communist Party, service at Air Base Butterworth after 31 December 1989 was deemed to be ‘peacetime’ and thus no longer eligible for the Australian Service Medal, which is only applicable to ‘non-warlike’ service. While a few of the incidents referred to above are claimed to have occurred in the period 1981 to 1989, and thus could not attract any additional recognition under the *Australian Operational Service Medal Regulation*, the Tribunal considered that those incidents should nevertheless be examined in the course of any assessment designed to ascertain when, if ever, Operation GATEWAY flights may have become ‘hazardous’ by reason of the flights themselves rather than their point of departure.

What is the meaning of hazardous

70. Regulation 3(3)(a) of the *Australian Operational Service Medal Regulation 2012* is very clear in specifying that an operation cannot be declared by the Governor-General for the purposes of the Australian Operational Service Medal unless *the operation is, or was, carried out in conditions that are hazardous*.

71. Unfortunately, the Regulation does not define the word ‘hazardous’. Accordingly, it is appropriate to have regard to how that word is defined and used in other contexts of relevance.

72. In 1993, the Cabinet approved definitions of ‘warlike’ and ‘non-warlike’ service, and inferentially of ‘peacetime’ service, and decided that recommendations for the award of medals were to be aligned to those definitions.

73. The Cabinet-approved definition of ‘non-warlike’ specified that such operations were *military activities short of warlike operations where there is a risk associated with the assigned task(s) and where the application of force is limited to self-defence. Casualties could occur but are not expected*. The definition then specified that ‘non-warlike’ operations *encompass but are not limited to*:

(a) *Hazardous. Activities exposing individuals or units to a degree of hazard above and beyond that of normal peacetime duty such as mine avoidance and clearance, weapons inspections and destruction, Defence Force aid to civil power, Service protected or assisted evacuations and other operations requiring the application of minimum force to effect the protection of personnel or property, or other activities.*

74. It seems clear from the terms of this Cabinet-approved definition that hazardous activities necessarily form part of the response to hostile forces where the application of force was warranted and where casualties were possible.

75. During the Tribunal’s 2012 *Inquiry into Recognition for Service Undertaken with Operation Gateway*, Defence strongly maintained that Operation GATEWAY service was ‘peacetime’ service, not ‘non-warlike’ or ‘warlike’ service. It said that a Nature of Service review in 2002 had resulted in the Vice Chief of the Defence Force confirming in 2005 that Operation GATEWAY constituted peacetime service, and that a further Nature of Service review in 2011 had confirmed that Operation GATEWAY service was peacetime service. On the basis of Defence submissions to the Inquiry, Operation GATEWAY service up to at least 2011 could not be ‘hazardous’ within the 1993 definition.

76. Accordingly, if the 1993 definitions were applicable to determining the meaning of ‘hazardous’ in the *Australian Operational Service Medal Regulation 2012*, it seems clear that Operation GATEWAY service up to at least 2011 could not validly be declared as an operation for the purposes of that Regulation (unless it was subsequently decided that Defence’s previous classification of Operation GATEWAY service up to 2011 as ‘peacetime’ was incorrect, which Defence did not claim to be the case in the course of these proceedings).

77. In the course of its extensive examination of related materials during the 2023 *Inquiry into medallic recognition for service with Rifle Company Butterworth*, the Tribunal considered whether or not the 1993 definitions had been altered or overtaken by any subsequent Government decision. It concluded that there was, to that time, no properly-informed decision by any Minister, or by Cabinet, that contradicted the 1993 Cabinet decision referred to above.

78. Also in the course of that examination, the Tribunal noted that on 23 November 2017 the then Chief of the Defence Force had recommended (and the then Minister had subsequently approved) revised definitions, but these were expressly to apply only to future Australian Defence Force operations and only for the purpose of Nature of Service classification, thus leaving the 1993 definitions to continue to apply to past Australian Defence Force operations for all purposes, and to medallic recognition for service at any time. In his minute to the Minister, the Chief of the Defence Force said:

The 1993 framework (warlike, non-warlike and peacetime) remains practical for classifying ADF operations, and other government agency support. However, the guidance to Defence on how to assess NOS for ADF operations has been reviewed to ensure relevancy for future ADF operations.

...

It is important to note that the new definitions do not alter the intent or direction provided by the 1993 definitions.

79. The Tribunal acknowledges that the *Australian Operational Service Medal Regulation 2012* does not use the terms ‘warlike’ or ‘non-warlike’. But this does not mean that those terms and their Cabinet-approved definitions are irrelevant in considering the proper interpretation of the Regulation and, in particular, its use of the term ‘hazardous’. This is because, in announcing the creation of the Australian Operational Service Medal, the then Minister for Defence Science and Personnel, the Hon Warren Snowdon MP, said in a media release on 19 July 2012:

The Australian Operational Service Medal will replace the Australian Active Service medal and the Australian Service Medal for new military operations, which will be phased out as current operations wind up.

80. There was nothing in that media release, or in any other Government documentation of which the Tribunal was aware, that suggested that there was any intention that the Australian Operational Service Medal should be able to be awarded for service otherwise classified as ‘peacetime’.

81. Accordingly, at the hearing, the Tribunal asked Defence how it had been determined that Operation GATEWAY service was ‘hazardous’ when, at least to 2011, the Defence position had been that it was ‘peacetime’ service (and thus not within the ‘hazardous’ sub-category of ‘non-warlike’).

82. The following discussion ensued in response to those questions:

Tribunal: You are familiar with the 1993 cabinet decision, which does give you a definition of hazardous, and hazardous is said to be a subset of non-warlike which is there's a risk where the application of force is limited to self-defence, casualties could occur but are not expected, and these operations encompass hazardous activities exposing individuals or units to a degree of hazard above and beyond that of normal peacetime duty (indistinct)...So I am not too sure why you say you don't have a definition of hazardous. You may choose to ignore it...

Defence: No, no, no, I've got those words down that you have but I think it is because we look further beyond that, you know, the environmental hazard, the psychological hazard and we are mindful that if we actually lock it in to a definition of hazardous we could miss a particular hazard that comes contemporarily, we see a lot more these days of psychological hazard...it is a very big thing that is within the military, if we were to lock it in and say you know normal associated to peacetime or training service, and it could limit us and we might not recognise our ADF members the way we want to.

...

Tribunal: What is the threshold? What is the threshold for hazardous service to take you from non-medallic recognition to AOSM?

Defence: So we have conversations with Nature of Service and JOC about what's actually happening, it could be a particular event but we are in the process of developing a matrix, in the past we have used Nature of Service's matrix, for us now under the AOSM it doesn't matter what the nature of service is, it's about the level of hazard and I think at the moment by not locking that in we are actually able to recognise more people for the operations that they are on, as you are aware under the Royal Commission it is about making sure we recognise our people and we have a Regulation where we are bound to and not using a definition gives us a little bit more flexibility that we can recognise people because everyone experiences different things on an operation as well, so we look collectively at the whole operation and what they are doing...GATEWAY, it came about more about what happened more recently in about 2022, what happened in 2022 for GATEWAY, and that's when we started looking back about what other things might have happened that might have elevated the level of hazard for individuals on GATEWAY as well.

Tribunal: So you were talking about a 'hazardous peacetime' operation, where do you say that is?

Defence: So it's either in the brief for CDF on the AOSM Indo Pacific or in the Regulation where it says hazardous peacetime operation

Defence: It's not in the Regs but it's in our briefing up to CDF

Tribunal: So do you have any Government authority for ignoring the Cabinet definition of hazardous?

Defence: So that was a separate...under sort of nature of service, so it's a subset of non-warlike...

Tribunal: Yeah, which doesn't include things like hazards and environmental hazards and..

Defence: And the AOSM now doesn't mention warlike, non-warlike or peacetime...

Tribunal: No, no, but it does require it to be hazardous and there is a need to give meaning to it, and the only definition that we are aware of is the Cabinet-approved definition

Defence: Yep

Tribunal: And you're saying essentially, we ignore that?

Defence: I don't know that we ignore it. We present all the information to CDF and the Minister and he determines whether he agrees or doesn't agree with it and makes the recommendation to the Governor-General....

Defence: So in the brief I'm pretty sure it was signed off in the AOSM Indo Pacific that was the term that the Minister signed off on, hazardous peacetime operation

Defence: Yes

83. It is of course open to the Government to change its policy on the application and interpretation of terms such as 'hazardous' used in the *Australian Operational Service Medal Regulation 2012*. The above discussion raised in the Tribunal's mind a question about whether or not the Government had in fact done so (and, if it had, whether it had done so upon the basis of properly-explained and informative advice from Defence), or whether Defence of its own initiative and without Government authority had chosen to act in a manner contrary to the settings approved by Cabinet at the highest levels of Government, both as to the definitions themselves and as to the use of consistent definitions in relation to both nature of service, veterans' entitlements and medallic recognition.

84. Accordingly, the Tribunal asked Defence to provide a copy of the ministerial brief referred to in the above discussion.

85. The Tribunal noted that the brief to the Minister, on the basis of which he recommended to the Governor-General that Operation GATEWAY be declared as a hazardous operation for the purposes of the *Australian Operational Service Medal Regulation 2012*, did not discuss or analyse what might constitute hazardous service or why 1 July 2005 was chosen as the date from which that service became hazardous. While the brief said *The hazardous component within the AOSM framework has not been defined in the medal Regulations, enabling discretion and flexibility on its application*, it did not explain why the circumstances of Operation GATEWAY should be accepted as being hazardous beyond saying *Over recent years Defence operations conducted in the Indo-Pacific region are increasingly facing a higher level of psychological hazard, the threat of foreign interference, along with instances of actual harm (eg. Navy Divers and the sonar burst, laser targeting of aircraft and close contact helicopter incidents)* without explaining why these factors warranted declaration from 1 July 2005. And, as noted above, the incident information provided by Defence and set out above, supplemented by the additional information suggested by Wing Commander Low, does not suggest any clear case for 1 July 2005.

86. Noting that the Defence brief to the Minister referred to other documents, the Tribunal asked Defence whether any of those had canvassed the meaning of the term 'hazardous'. Defence advised that neither the documentation leading to the Minister's in-principle approval for a new medal for operational service in the Indo-Pacific region, the submission MS24-001561 mentioned in the Minister's handwritten annotation, nor the 2012 submission leading to the creation of the Australian Operational Service Medal - Border Protection (which was described as *currently the only medal that recognizes peacetime operations*) had dealt with the question of what constituted a 'hazardous' operation.

87. In its covering letter of 26 November 2025 to the Tribunal, Defence said:

In response to the question about 'peacetime/hazardous service': – This term is used by Defence Honours and Awards in a submission to the Chief of the Defence Force to approve the establishment of the AOSM INDO-PACIFIC and the medallic regulations establishing the AOSM when it replaced the Australian Service Medal and the Australian Active Service Medal.

There is no term or definition, and there has never been a nature of service classification of 'peacetime – hazardous' service.

In the original Nature of Service definitions approved by CABINET in 1993, there were two subsections listed under non-warlike service (peacekeeping and hazardous service). There is no intention to connect honours and awards and the current AOSM medallic regulations pertaining to 'peacetime – hazardous' service and the previous Nature of Service non-warlike (hazardous) service definition. Additionally, there is no specific honours and awards definition of 'peacetime – hazardous' service.

88. The Tribunal found this explanation not only confusing but also concerning. It appears that Defence has unilaterally purported to create a new category of service as 'peacetime/hazardous' outside the established service categorisation definitions, without any attempt at defining that term, and with no authority to do so. Moreover, the statement that *There is no intention to connect honours and awards and the current AOSM medallic regulations pertaining to 'peacetime – hazardous' service and the previous Nature of Service non-warlike (hazardous) service definition* is in direct contradiction of the still-extant 1993 Cabinet decision that recommendations for medallic recognition are to be aligned with the same definitions that are to apply to nature of service and veterans entitlements.

89. Those concerns also from various statements made by Defence at the hearing, as quoted at paragraph 82 above, which additionally suggested that Defence was seeking to extend medallic recognition beyond categorisation of service to impacts of service on the individual (through references to environmental and psychological effects which are recognised under veterans' entitlements administered by the Department of Veterans' Affairs).

90. At the hearing Defence said *We present all the information to CDF and the Minister and he determines whether he agrees or doesn't agree with it and makes the recommendation to the Governor-General.*

91. However, in the view of the Tribunal, Defence did not provide 'all the information' to the Minister but rather failed to provide adequate or proper advice to the Minister. The *Australian Operational Service Medal Regulation 2012* was made by the Prime Minister with the concurrence of the Sovereign who created the Australian Operational Service Medal by Royal Warrant. As such, it is a matter for the Government to determine the meaning of terms used but

not defined in the Regulation. While Defence may have a role in assisting the Government in that regard, it clearly cannot assume to itself the role of such decision-making as it appears to have done.

92. Instead, the Tribunal considered that the Minister should have been advised of:

- a) the 1993 Cabinet decision and the text of definitions then approved;
- b) the fact that 'hazardous' service was defined as a sub-set of 'non-warlike' service;
- c) the fact ordinary 'peacetime' service was defined to be separate and distinct from hazardous service;
- d) the fact that there had been no Ministerial or Cabinet decision to vary the 1993 definitions;
- e) the fact that Operation GATEWAY service had been classified as 'peacetime' and not 'non-warlike' at least to 2011; and
- f) the fact that Cabinet had decided that the definitions it then approved were to be applied equally to nature of service, veterans' entitlements and recommendations for medallic recognition.

93. If Defence, having laid out these relevant and applicable factors, still wished to propose the declaration of Operation GATEWAY as a hazardous operation under the *Australian Operational Service Medal Regulation 2012*, it should then have provided a clearly argued case for reversing the 1993 decision and a revised definition to apply, at least in the case of medallic recognition (if not more generally for nature of service and veterans' entitlements). And, if it wished to propose a commencement date of 1 July 2005, it should have provided a clear analysis of why service after that date was hazardous and why service prior to that date was not hazardous.

94. This led the Tribunal to conclude that there is a pressing need for clarity as to the meaning of the term 'hazardous' as used in the *Australian Operational Service Medal Regulation 2012*. This is a matter that can only be resolved by the Minister, or by the Cabinet, or by the Prime Minister and the Sovereign amending the Regulation. It cannot be unilaterally resolved 'in-house' by Defence, as it appears to have sought to do to date.

95. In settling on an appropriate definition, the Tribunal thought that it would be appropriate for consideration to be given to matters such as:

- a) whether involvement by a hostile force was to remain a necessary pre-condition and, if so, the nature of that involvement;
- b) whether casualties must be possible or likely;
- c) whether the possibility of psychological harm, which would not necessarily affect all participants and which might arise on service of any nature at all dependent upon the individual circumstances of each participant, was relevant to operational classification, or was better covered by workers' compensation and veterans' entitlements;
- d) whether environmental dangers unrelated to action by a hostile force (for example, exposure to tropical disease while on a Part IIIA call-out to assist civilian

authorities in northern Australia, or to asbestos while working in an older ADF building) by themselves should be considered, or are better covered by workers' compensation and veterans' entitlements; and

- e) whether declaration should be considered after the event on an incident-by-incident basis.

96. Further, it appeared to the Tribunal that once that definition was settled by Government, it would be necessary to embark on a detailed evidentiary and historical assessment of the various incidents referred to above to form a justifiable view as to whether or not any service on Operation GATEWAY met that definition and, if so, from, or on, what dates. It appeared, from Defence's inability to produce to the Tribunal any relevant documentation to support its argument that the date of 1 July 2005 reflected the nature of Operation GATEWAY *being contemporised and expanded to include further scope*; and that *this elevated its hazardous nature to the level required for recognition under the Australia Operational Service Medal*, that this vital step had not been undertaken to date.

97. The Tribunal noted Defence's statements that the lack of a definition of 'hazardous' in the *Australian Operational Service Medal Regulation 2012* enabled 'discretion and flexibility' in its operation. In the view of the Tribunal, this approach to the interpretation of a statutory instrument would run a grave risk of undermining the integrity of the defence honours and awards system by allowing and potentially fostering inconsistent decision-making. In any event, if that approach is to be adopted, it should be adopted by the Government and not unilaterally be Defence.

Tribunal decision

98. It is clear that, under present Regulation and Determination, Wing Commander Low does not meet the eligibility criteria for award of the Australian Operational Service Medal – Indo-Pacific for his service on that operation prior to 1 July 2005 and thus the Tribunal was bound to affirm the Defence decision to that effect.

99. However, given the serious concerns outlined above about the validity of the Operation GATEWAY determination and the lack of any clear understanding of what is required to constitute a 'hazardous' operation, the Tribunal felt equally bound to recommend to the Minister that he should:

- a) provide to Defence a clear definition of the term 'hazardous' to guide all further consideration of matters arising under the *Australian Operational Service Medal Regulation 2012*;
- b) direct Defence to develop a transparent and consistently applied evidentiary framework for assessment by reference to that definition of hazardous service, including required evidence and methodology;
- c) direct Defence to conduct a comprehensive historical assessment of Operation GATEWAY's hazard environment from 1981 to the present in order to advise the Minister in relation to any dates on which service may properly meet the hazardous threshold set out in that definition;

- d) on receipt of that advice, consider whether he should recommend to the Governor-General that any specified service on Operation GATEWAY should be declared under the *Australian Operational Service Medal Regulation 2012*;
- e) in the interests of protecting the integrity of the defence honours and awards system through consistent decision-making, pending resolution of steps a. to d. above, either recommend to the Governor-General that the present declaration of Operation GATEWAY under the *Australian Operational Service Medal Regulation 2012* be revoked or, alternatively, direct Defence to suspend consideration of further applications for issue of the Australian Operational Service Medal – Indo-Pacific for service on Operation GATEWAY; and
- f) pending the finalisation of any new definition of ‘hazardous’, direct Defence that any future recommendations to the Minister expressly address the continuing application of the 1993 Cabinet-approved definitions, or justify any proposed departure from them.