



Australian Government

Defence Honours and Awards Appeals Tribunal

Miller and the Department of Defence [2026] DHAAT 6 (22 April 2026)

File Number(s) 2025/023

Re **Mr Keith Miller**
Applicant

And **The Department of Defence**
Respondent

Tribunal Ms Karen Fryar AM (Presiding Member)
Mr Jonathan Hyde
Air Commodore Anthony Grady AM (Retd)

Hearing Date 16 February 2026

Attendances Mr Keith Miller
(Applicant)

Mrs Allison Augustine
Director, Defence Honours and Awards, Defence
Mr Shane Donohoe
Manager, Current Service, Defence Honours and Awards, Defence
(for the Respondent)

DECISION

On 22 April 2026, the Tribunal decided to affirm the decision that Mr Keith Miller not be recommended for the Australian Operational Service Medal (Civilian) with Clasp IRAQ 2003.

CATCHWORDS

DEFENCE AWARD – Australian Operational Service Medal (Civilian) Clasp IRAQ 2003 - Operation FALCONER - Defence chartered Qantas flight

LEGISLATION

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

Defence Regulation 2016, Regulation 36

Australian Operational Service Medal Regulation 2012, Letters Patent and Regulations, dated 22 May 2012, Commonwealth of Australia Gazette S67 of 6 June 2012.

Australian Operational Service (Civilian) with Clasp IRAQ 2003 dated 12 December 2012, Commonwealth of Australia Gazette G00260 of 12 February 2013.

Australian Operational Service Medal Regulation 2012, Amendment 2015, dated 30 April 2015, Commonwealth of Australia Gazette G00827, of 1 June 2015.

Australian Operational Service Medal Regulations 2012, Chief of the Defence Force Determination, dated 24 November 2015.

Australian Operational Service Medal Regulations 2012 – Amendments dated 14 July 2020, Commonwealth of Australia Gazette G00629, dated 5 August 2020.

Introduction

1. The Applicant, Mr Keith Raymond Miller, seeks review of a decision of Defence dated 8 August 2025, to refuse to recommend him for the award of the Australian Operational Service Medal (Civilian) with Clasp IRAQ 2003, for his involvement with Defence chartered Qantas flights to and from the Middle East between February and May 2003.¹

Decision under review

2. On 1 March 2019, Mr Miller applied to Defence via its online application form for a full medal assessment.² On 1 May 2019, Defence responded by email to Mr Miller describing the ‘strict conditions’ which must be met to be awarded the Australian Operational Service Medal (Civilian) with Clasp IRAQ 2003.³ On 10 February 2025, Mr Miller made a subsequent application to Defence for a ‘full medal assessment.’⁴ On 17 March 2025, Mr Miller contacted the Defence Customer Service Centre requesting a formal response to his application of 10 February 2025.⁵ On 1 May 2025, Defence responded by email to Mr Miller stating that he should provide any further material that would assist with the medal assessment.⁶ Mr Miller did not appear to have provided any further material at that time.

3. On 8 August 2025, Mr Miller was advised by letter that his application for the Australian Operational Service Medal (Civilian) with Clasp IRAQ 2003 was unsuccessful.⁷ Defence stated that it had found that Mr Miller had not rendered 30 days eligible service during the declared operation and could not be recommended for the Australian Operational Service Medal (Civilian) with Clasp IRAQ 2003. It also stated that Qantas aircrew were not included as a *class of persons* eligible for consideration for the Australian Operational Service Medal (Civilian) with Clasp IRAQ 2003. Further, Defence implied that those staff did not meet the definition of ‘civilian’ as set out in the Regulations for that award.

4. On 18 August 2025, Mr Miller made application to the Tribunal seeking review of the above decision.^{8 9}

Tribunal jurisdiction

5. 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

¹ Letter, Defence to Mr Miller, dated 8 August 2025 included with Mr Miller’s application to Tribunal.

² Defence Report to the Tribunal, dated 18 September 2025.

³ See paragraph 15 of this report.

⁴ Defence Report to the Tribunal, dated 18 September 2025.

⁵ Ibid.

⁶ Ibid.

⁷ Application to the Tribunal from Mr Keith Miller, dated 18 August 2025.

⁸ Ibid.

⁹ The Tribunal also noted from submissions made by Mr Miller, that in 2008 and 2012 he made representations for the relevant service. These representations predated the institution of the award now being sought.

Department of Defence to refuse to recommend a person for a defence award in response to an application.

6. 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.

The Australian Operational Service Medal

7. 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 2012.¹⁰ As per the Letters Patent, the award is governed by Regulations, which were established with the Letters Patent dated 22 May 2012. *The Australian Operational Service Medal Regulations 2012* were updated in 2015 as notified in the *Commonwealth of Australia Gazette G00827* of 1 June 2015.¹¹ The Regulations were further updated in 2020, notified in *Commonwealth of Australia Gazette G00629* dated 5 August 2020.¹²

8. The Regulations as amended state:

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.*

...

(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.*

...

¹⁰ *Australian Operational Service Medal Regulation 2012, Letters Patent and Regulations*, dated 22 May 2012, *Commonwealth of Australia Gazette S67*, of 6 June 2012.

¹¹ *Australian Operation Service Medal Regulation 2012, Amendment 2015*, dated 30 April 2015, *Commonwealth of Australia Gazette G00827*, of 1 June 2015.

¹² *Australian Operational Service Medal Regulations 2012 – Amendments 2020*, dated 14 July 2020, *Commonwealth of Australia Gazette G00629*, of 5 August 2020.

7 **Civilians – award of the medal, standard civilian ribbon and clasp**

The Governor General may, on the recommendation of the Chief of the Defence Force, award to a civilian who has given eligible service during a declared operation:

- (a) The medal; and*
- (b) A standard civilian ribbon; and*
- (c) A clasp denoting the declared operation.¹³*

9. The eligibility criteria for awarding the Australian Operation Service Medal (Civilian), and more particularly the Australian Operation Service Medal (Civilian) with Clasp IRAQ 2003 were created by Declaration of the Governor-General on 12 December 2012, and notified in the *Commonwealth of Australia Gazette G00260* of 12 February 2013.¹⁴ The Declaration outlines the following as *declared operations* for the purposes of the Regulations:

(a) Declare under regulation 3 of the Regulations, the following operations in which persons rendered service, to be a declared operation for the purposes of the Regulations;

- (i) Operation FALCONER – that commenced on 18 March 2003 and ended on 22 July 2003 in the specified areas comprising the following*
 - 38°00' North Latitude, 68°00' East Longitude*
 - 38°00' North Latitude, 32°00' East Longitude*
 - 10°00' North Latitude, 32°00' East Longitude*
 - 10°00' North Latitude, 68°00' East Longitude;*
- (ii) Operation CATALYST – that commenced on 16 July 2003 and ended on 31 July 2009 in the area comprising the total land areas, territorial waters, internal waterways and superjacent airspace boundaries of Iraq, Kuwait, Bahrain, Qatar, United Arab Emirates, Saudi Arabia north of 23 degrees North latitude, the Persian Gulf and the Strait of Hormuz;*

(b) Determine, under regulation 4 of the Regulations, that the conditions for the award of the Australian Operational Service Medal (Civilian) with Clasp IRAQ 2003 (“the medal”) for that declared operation are that:

- (i) The medal may be awarded to a civilian as defined under regulation 2 of the Regulations, who was employed for duty as such a person of the declared operation for a period of not less than an aggregate of 30 days;*

AND PROVIDED THAT where a person does not complete the prescribed period for the award of the Medal required by subparagraph (b)(i) owing to his or her death evacuation due to

¹³ *Australian Operational Service Medal Regulation 2012, Amendment 2015, dated 30 April 2015, Commonwealth of Australia Gazette G00827, of 1 June 2015.*

¹⁴ *Australian Operational Service (Civilian) with Clasp IRAQ 2003 dated 12 December 2012, Commonwealth of Australia Gazette G00260 of 12 February 2013.*

illness, injury or other disability due to service, the person will be deemed to have completed that prescribed period.

*(c) **Determine**, for the purposes of this determination, that a person is not eligible for an award of the Medal where an entitlement exists to another Australian Medal for the same deployment.¹⁵*

10. A civilian is defined in the *Australian Operational Service Medal Regulations – Amendments 2015, dated 30 April 2015,¹⁶* as being a person who:

[...]

(a) Is employed or contracted by the Commonwealth to support, in a civilian capacity, the operations of a Defence Force deployed force; and

(b) Is

(i) subject to the Defence Force Discipline Act 1982; or

(ii) included in a class of persons determined, in writing, by the Chief of the Defence Force for the purposes of this definition.

Note: Paragraph (a) would cover a member of the Reserves who is employed or contracted by the Commonwealth to support, in a civilian capacity, the operations of a Defence Force deployed force.

11. A class of person is defined in the *Determination by the Chief of the Defence force, dated 24 November 2015,¹⁷* and made under the *Australian Operational Service Medal Regulations 2012*, as follows:

[...]

(a) Under section 2 of the Australian Operational Service Medal Regulation, I determine the persons described below to be a class of persons eligible for consideration for the Australian Operational Service Medal – Civilian:

(i) Employed by the Commonwealth to support the operations of the Australian Defence Force deployed force in a civilian capacity; and

(ii) Deployed under the Department of Defence or the Department of Foreign Affairs and Trade portfolios and were not subject to the Defence Force Discipline Act 1982.

(b) An individual classed as a class of person by this determination must also satisfy the other requirements of the Australian Operational Service Medal Regulation in order to qualify for the award of the medal and/or Clasp.

¹⁵ *Australian Operational Service (Civilian) with Clasp IRAQ 2003 dated 12 December 2012, Commonwealth of Australia Gazette G00260 of 12 February 2013.*

¹⁶ *Australian Operational Service Medal Regulation 2012, Amendment 2015, dated 30 April 2015, Commonwealth of Australia Gazette G00827, of 1 June 2015.*

¹⁷ *Australian Operational Service Medal Regulation 2012, Determination by Chief of the Defence Force dated 24 November 2015.*

Mr Miller's 2019 application to Defence

12. In his online application to Defence, dated 1 March 2019, Mr Miller requested a full medal assessment, and stated:

As a Customer Service Supervisor with Qantas Airways, on two occasions I was involved in the transport of ADF personnel from a base in Katherine (Western Australia) in an unmarked aircraft to a United States base in Qatar and again I was asked to volunteer in May to return to the US Base in Qatar to pick up personnel returning to Australia. With the first trip because of security no written roster or fellow crew details were issued but on the second occasion advance notice was given and I can provide a copy of the issued roster and a list of names. My Qantas Staff No. 031665.¹⁸

13. On 1 May 2019, Defence wrote to Mr Miller via email stating:

[...]

There are strict conditions that have to be met to be awarded the Australian Operational Service Medal (Civilian). You must first establish that you meet the definition in the Regulations for the Australian Operational Service Medal to be defined as a civilian for the purpose of this medal. Under the Australian Operational Service Medal regulations they are:

- a) be employed or contracted by the Commonwealth to support, in a civilian capacity, to the operations of a Defence Force deployed force; and*
- b) you must have signed the Defence Force Disciplinary Act 1982 (DFDA).*

Both these items must be satisfied for a Delegate to award any variant of the Australian Operational Service Medal (Civilian). There is provision to award to those members who do not sign up under the DFDA, however, a class of persons must be determined specifically by the Chief of Defence Force. Such a determination cannot be done for an individual's circumstance but is for a group of persons.

Each variant of the civilian Australian Operational Service Medal has its own Instrument of Declaration detailing what operations relate to that medal and the amount of days required to be served within the operational area, namely 30 days service.

Please note the Civilian Australian Operational Service Medal is a Defence award and recognises contribution specific to Defence's operations and is not representative of Whole of Government to missions or other agencies contribution to a whole of Government mission.¹⁹

¹⁸ Defence Report, dated 18 September 2025.

¹⁹ Ibid.

Mr Miller's 2025 application to Defence

14. On 10 February 2025, Mr Miller submitted a further online application to Defence for a full medal assessment which included the statement:

Defence chartered from Qantas a 747BA and we departed from Sydney to Dubai, where we had a slip for 24 hours and then picked up an unmarked aircraft and flew into a US air force base in Qatar with Australian Defence force personnel, followed by taking the empty and unmarked aircraft to London. At the time we were not issued with a written roster due to security. This operation was part of Operation Falconer. I again I volunteered to return and left Sydney on 19 May 2003 and returned to the Middle East to bring home 250 airmen and women deployed with squadron 14 F/A18 Hornets Royal Australian Air Force fighter aircraft. The welcome home was an official ceremony at the RAAF base Tindal in the Northern Territory with Prime Minister Howard and officials. This was the first of personnel returning from completion of the offensive operations phase in Iraq. The Qantas Skippy Squadron from the Vietnam conflict were awarded the Logistics and Support Medal and the Australian Active Service Medal with Clasp Vietnam.²⁰

15. On 8 August 2025, Defence wrote to Mr Miller refusing his application, stating that he could not be recommended for the award because he did not render 30 days of eligible service during the declared operation for the purpose of the Regulations.²¹ However, Defence also said:

In accordance with the conditions that must be met to be considered for an AOSM (Civilian) award, I am unable to confirm that your contribution was in support of operations of the Australian Defence deployed force in a civilian capacity, or that you signed the DFDA.

In addition, the initial Defence chartered Qantas 747BA flight departed on 17 February 2003, which is outside of the qualifying period for Operation FALCONER therefore if cannot be counted as eligible qualifying service towards the AOSM (CIV) IRAQ03. The subsequent Defence chartered Qantas 747BA flight departed 13 May 2003 and returned 24 May 2003, which is a total of 12 days. While this is within the qualifying period the 30 day requirement for the AOSM (CIV) IRAQ03 has not been met.

Further, DH&A considered the information in regards to 'a class of persons' contained in the Determination by the Chief of the Defence Force - dated 24 November 2015. On this occasion, Qantas aircrew were not included as a 'class of persons' eligible for consideration for the AOSM (CIV) IRAQ03.²²

Mr Miller's application to the Tribunal

16. In his application to the Tribunal, Mr Miller discussed the operational and human environments of his service, and outlined his history of seeking recognition for that service. He indicated that he had been verbally informed by Defence that, while he did not meet the criteria of 30 days of continuous or aggregated service, he was *kind of eligible*.

²⁰ Defence report, dated 18 September 2025.

²¹ Ibid

²² Ibid

17. Mr Miller referred to the lack of recognition of his service in comparison to like-aircrew from previous conflicts, such as Vietnam, whom he submitted were awarded the Vietnam Logistic and Support Medal and the Australian Active Service Medal 1945-1975 with Clasp 'VIETNAM'. He referred to the 1999 report of the *Review of Service Entitlement Anomalies in respect of South East Asian Service* which stated:

It would be unfair to restrict the award of the clasp to only those who had been in direct contact with the enemy. Any successes are attributable to the overall effort; The award is recognition that a man has taken part in operations or in a campaign and not that he has necessarily been under fire²³

and

There are grounds for the Department of Defence's medals policy for civilians to be reworked especially for those civilians drawn into future conflicts. Noting the current trend to pare down the Australian Defence Force's numerical uniformed strength and to increase the use of civilian contractors for services such as transportation, aircraft maintenance etc., it is manifestly preferable to sort out policy in advance rather than attempt to do so twenty plus years later on.²⁴

The Defence report

18. The Defence report stated that Mr Miller's service record confirmed he enlisted in the Australian Regular Army Supplement (National Service) on 29 January 1969 and discharged on 28 January 1971, having completed his prescribed period of service. In recognition of that service, he has been awarded the following:

- a) Australian Service Medal 1945 -1975 with Clasp 'SE ASIA'
- b) Australian Defence Medal
- c) Anniversary of National Service 1951 – 1972 Medal.²⁵

19. Of relevance to this review, the Defence report also stated that Mr Miller completed two separate Qantas flights:

1. Defence chartered Qantas flight 747BA from 17 February 2003 to 18 February 2003, which Defence stated was outside of the qualifying period for the award.
2. Defence chartered Qantas flight 747BA from 13 May 2003 to 24 May 2003.²⁶

20. Defence submitted that as a result of Mr Miller's application for review to the Tribunal, it analysed the decision of 8 August 2025 and reassessed his eligibility for the award. It submitted that this re-assessment confirmed he was a member of a Qantas aircrew on board Defence chartered Qantas 747BA flights between 17 February 2003 and 24 May 2003.

²³ *Review of Service Entitlement Anomalies in 2000 in respect of the South-East Asian Service 1955-75*, p.38.

²⁴ Ibid.

²⁵ Defence report, dated 18 September 2025.

²⁶ Ibid.

21. The Defence report helpfully contained a table setting out the detail of those flights, based on material provided by Mr Miller:

Location (depart)	Date	Location (arrive)	Date
Sydney	13/5/2003	Singapore	14/5/2003
Singapore	15/5/2003	Katherine	15/5/2003
Katherine	15/5/2003	Singapore	15/5/2003
Singapore	19/5/2003	Dubai	19/5/2003
Dubai	21/5/2003	Doha	21/5/2003
Doha	21/5/2003	Dubai	21/5/2003
Dubai	22/5/2003	Singapore	22/5/2003
Singapore	23/5/2003	Sydney	24/5/2003

Table 1: Aircrew Resource Management System Details as provided by Mr Miller

22. The Defence report stated that, by its decision dated 8 August 2025, Defence advised Mr Miller that the flights outlined above constituted 12 days of service during Operation FALCONER. However, the Defence report also stated that a closer examination of this document showed that only four of those days were within the operational area of Operation FALCONER.²⁷ Nonetheless, Defence stated that this had no bearing on Mr Miller’s entitlement to the Australian Operational Service Medal (Civilian) with Clasp IRAQ 2003.

23. Defence further stated that the fact that *Defence chartered Qantas aircraft is not disputed*. However, Defence went on to state that it was unable to determine that Mr Miller’s contribution was *in support of the Australian Defence deployed force in a civilian capacity*, or that he *was subject to the Defence Force Disciplinary Act 1982*.

24. Defence further stated that it was unable to confirm whether Mr Miller *was employed for duty as such a person of the declared operation for a period of not less than an aggregate of 30 days*. Defence stated that this position was supported by the Qantas Aircrew Resource Management System Details Documentation provided by Mr Miller.²⁸

25. Defence also submitted that Qantas aircrew were not included as a *class of persons* eligible for consideration under the Australian Operational Service Medal (Civilian) with Clasp IRAQ 2003. For those reasons, Defence recommended that the decision to not recommend Mr Miller for the Australian Operational Service Medal (Civilian) with Clasp IRAQ 2003 be affirmed.

Mr Miller’s comments on the Defence Report

26. On 19 August 2025, Mr Miller was provided with a copy of the Defence report for comment. On 14 October 2025, Mr Miller provided his comments and stated that he believed

²⁷ Defence report, dated 18 September 2025.

²⁸ Ibid.

that there was an anomaly in the assessment of his service, given it was unrealistic to have an aircraft on the ground (in theatre) for 30 days.

27. He referred to contemporary media talking points which indicated that the 747 aircraft had a greater passenger carrying capacity than other available leased aircraft. He also referred to the ‘secret nature of the (February 2003) trip’, logistic arrangements for it, the fact that the aircraft was unmarked, and his previous military service. He went on to describe the second flight pattern from March to July 2003 and the pride of those returning from the conflict.

28. Mr Miller referred to the previous decisions made by Defence, stated that he could not recall ‘signing any document’ (presumably in reference to the *Defence Force Discipline Act 1982*), and referred to the limited preparation time and small amount of personnel involved in arranging the flights as possible reasons why this may have occurred. He also pointed to perceived inconsistencies in those letters.

29. Mr Miller outlined his long history of seeking recognition for his service, and value of the civilian contribution to operational Defence activities. He again referred to the deliberations of the *Review of Service Entitlement Anomalies into South East Asian Service 1955-75* undertaken in 1999 and its discussion of civilian service.

30. Mr Miller set out the view that those recommendations had been ignored in the consideration of subsequent conflicts and submitted that ‘civilian status’ had been granted to airline crews from previous conflicts, such as the Vietnam War.

Tribunal hearing

31. The hearing was held on 16 February 2026 and was conducted remotely. Mr Miller attended by video link. There was no new evidence presented throughout the course of the hearing. Elements of the hearing that were central to the Tribunal’s determination are discussed in the following section.

Temporal context

32. On 1 February 2003, the Australian Government announced that it would deploy a squadron of F/A-18s to the Middle East as part of Australia’s contribution to the Global War on Terror. Between 13 and 16 February 2003, F/A-18 Hornets from No. 75 Squadron from RAAF Base Tindal in the Northern Territory deployed to Al Udeid Air Base in Qatar.²⁹

33. The pre-war deployment, workup and preparation phases in theatre were collectively known as Operation BASTILLE. In broad terms, the commencement of combat operations in Iraq signalled the end of Operation BASTILLE and the commencement, sequentially, of Operations FALCONER (combat operations; 18 March 2003 to 22 July 2003) and CATALYST (stabilisation and recovery operations; 16 July 2003 to 31 July 2009). No. 75

²⁹ The squadrons manning was augmented with pilots other F/A-18 squadrons within No. 81 Wing.

Squadron flew its last combat sortie on 27 April 2003, and had reconstituted at Tindal by mid-May 2003.³⁰

Tribunal consideration

34. The Tribunal is required to review decisions 'on the merits'. This requires an examination of the merits of the matter in dispute rather than the lawfulness of the decision under review.³¹ The merits review revolves around the evidence and accordingly, the Tribunal conducts an independent review, with values, expertise, methods and procedures of its own, and not those of the decision-maker.

35. The facts, law and policy aspects of the decision are all considered afresh and a new decision made.³² The Tribunal reviews the decision, and not the reasons for the decision. In doing so, there is no legal onus of proof, and there is no presumption that the decision was correct.³³ The Tribunal is bound to make what it regards as the 'correct or preferable' decision and must reach a decision that is legally and factually correct.

36. In reaching its decision, the Tribunal is bound by the eligibility criteria that governed the making of the reviewable decision in the first instance and has no discretion to alter or amend these criteria.

Did Mr Miller meet the conditions for the award

37. The conditions for awarding the Australian Operation Service Medal (Civilian) are laid out at paragraph 9 of this report. In the first instance, these specifically state:

The medal may be awarded to a civilian as defined under regulation 2 of the Regulations, who was employed for duty as such a person of the declared operation for a period of not less than an aggregate of 30 days.

38. The key elements of the conditions for the Australian Operational Service Medal are discussed sequentially, in more detail, in the following paragraphs.

Was Mr Miller a civilian and was he employed for duty as such?

39. Per the *Australian Operational Service Medal Regulations – Amendments 2015, dated 30 April 2015*,³⁴ a civilian is defined as being a person who:

[...]

(c) Is employed or contracted by the Commonwealth to support, in a civilian capacity, the operations of a Defence Force deployed force; and

³⁰ Holmes, Tony (2006). *US Marine Corps and RAAF Hornet Units of Operation Iraqi Freedom*. Osprey Combat Aircraft 56. Oxford: Osprey Publishing.

³¹ Council of Australian Tribunals Practice Manual dated 7 April 2006 p.1.3.1.2.

³² Pearson, Linda, 'Merit Review Tribunals', in Creyke, Robin and' McMillan, John, *Administrative Law - the Essentials*, AIAL 2002, p. 68

³³ *McDonald v Director-General of Social Security* (1984) 1 FCR 354.

³⁴ *Australian Operational Service Medal Regulation 2012, Amendment 2015, dated 30 April 2015, Commonwealth of Australia Gazette G00827*, of 1 June 2015.

(i) *is subject to the Defence Force Discipline Act 1982; or*

(ii) *included in a class of persons determined, in writing, by the Chief of the Defence Force for the purposes of this definition.*

40. The Tribunal noted that Mr Miller and the other members of the Qantas crew were chartered, by way of Commonwealth contract, and considered that they were likely therefore *contracted by the Commonwealth.*

41. The Tribunal also took it as self-evident that the crew and Mr Miller acted solely in a *civilian capacity.* The Tribunal held the view that where a civilian trained to perform a specialist civilian role is contracted to provide exactly those same services to a deployed military force it necessarily follows that this met the definition of providing support in a *civilian capacity.* Further there was no suggestion, in any of the tendered evidence, that the crew were requested, or elected, to provide any other support than those that were central to their civilian role.

42. As to whether Mr Miller had *support[ed] the operations of a Defence Force deployed force,* the Tribunal took the view that, in the context of subparagraph (c) (and the regulation more generally) the term *operations* was not intended to refer exclusively to those activities that were central to any Operation, but was broader, necessarily including those elements of ADF activity (such as deployment and redeployment) that underpinned the ADF's ability to generate in-theatre effects. In other words, the Tribunal considered that providing direct support to the deployment phase of Operation BASTILLE, and redeployment phases post-Operation FALCONER, constituted supporting the operations of a Defence Force deployed force.

43. However, noting that Mr Miller had indicated prior to the hearing that he could not recall signing any document which might have bound him to what he termed “the *Defence Act*”³⁵, and was therefore almost certainly not subject to the provisions of the Defence Force Discipline Act 1982, it was clear that Mr Miller's ability to meet the provisions of subparagraph (c) was entirely contingent upon whether he could be *included in a class of persons determined, in writing, by the Chief of the Defence Force for the purposes of this definition.*

44. In this regard, a *class of person* is defined in the *Determination by the Chief of the Defence force, dated 24 November 2015*,³⁶ and made under the *Australian Operational Service Medal Regulations 2012, as a person who is:*

[...]

(i) *Employed by the Commonwealth to support the operations of the Australian Defence Force deployed force in a civilian capacity; and*

(ii) *Deployed under the Department of Defence or the Department of Foreign Affairs and Trade portfolios and were not subject to the Defence Force*

³⁵ Defence report, dated 18 September 2025.

³⁶ *Australian Operational Service Medal Regulation 2012, Determination by Chief of the Defence Force dated 24 November 2015.*

Discipline Act 1982.

45. Although the Tribunal noted that the term *contractor* did not feature in this definition (as opposed to the quite similar definition for *civilian* as discussed at paragraph 39 of this report) the rationale for this change in definition was not immediately clear to the Tribunal. The Tribunal also noted that, although Defence had originally contended as part of its report that it was unable to determine that Mr Miller’s contribution was in support of the Australian Defence deployed force in a civilian capacity, it had recently changed its stance and now took the view that Mr Miller had in fact met the *class of persons* definition.

46. At the hearing, a Defence representative, in referring to two previous Tribunal reviews which related to the Australian Operational Service Medal (Civilian), stated:

*And what they looked at was about a CDF Determination to see whether somebody met the criteria to be classed as a civilian and therefore get the award.....And from that point of view I can actually confirm that you would meet the criteria for the CDF Determination.*³⁷

47. The issue of whether the 2015 Chief of the Defence Force Determination was intended to include *contractors* or not also became a central feature of the 2023 Tribunal review in *Ryder and the Department of Defence*.³⁸ In the *Ryder* case, Defence had contended that the Chief of the Defence Force Determination of 24 November 2015 did not apply to contractors. Rather, Defence submitted that *it instead applies to individuals employed³⁹ by the Commonwealth to support the operations of the Australian Defence Force deployed force in a civilian capacity and⁴⁰ deployed under the Department of Defence or the Department of Foreign Affairs and Trade portfolios and not subject to the Defence Force Discipline Act 1982.*^{41,42}

48. In response, Mr Ryder took the view that *the purpose of the Regulations is to enable the AOSM to be awarded to persons who are employed on ADF operations in a declared operational area in recognition of hazardous service. He offered the view that, whether those persons are military, Defence civilians, or other civilians, the over-riding ambit of the award recognises the contribution of service of all people so engaged by the Commonwealth in a declared operational area. He argued that, on fairness principles, not only should military personnel be recognised for operational service, so too should Defence civilians and other civilians.*⁴³

49. However, whether Defence’s most recent interpretation of the *class of persons* definition is, in light of the discussion above, technically correct or not, is somewhat academic in this review. The Tribunal reserved its judgement in relation to the issue of whether Mr Miller

³⁷ Oral submission, Defence Representative, 16 February 2026.

³⁸ *Ryder and the Department of Defence [2023]*, DHAAT 17, (14 September 2023).

³⁹ Emphasis added by Defence.

⁴⁰ Emphasis added by Defence.

⁴¹ Defence Report to Tribunal, dated 25 January 2023 re *Ryder and the Department of Defence [2023]* DHAAT 17 (14 September 2023)

⁴² *Ryder and the Department of Defence [2023]*, DHAAT 17, (14 September 2023), paragraph 20.

⁴³ *Ryder and the Department of Defence [2023]*, DHAAT 17, (14 September 2023), paragraph 32.

met the *class of persons* definition since, as will become evident in the following section, whether Mr Miller met the more detailed aspects of this definition or not is secondary to a more central argument, this being whether Mr Miller met the requirement to accrue 30 days or more inside the prescribed area.

Did Mr Miller meet the 30 day requirement?

50. The Regulations provide that:

An individual classed as a class of person by this determination must also satisfy the other requirements of the Australian Operational Service Medal Regulation in order to qualify for the award of the medal and/or Clasp.

51. Therefore, even if Mr Miller had indeed met the *class of persons* definition, he was still required to satisfy the other requirements of the *Australian Operational Service Medal Regulation*, this being the requirement to aggregate 30 days inside the declared area.

52. The evidence tendered by Mr Miller clearly showed that the first series of flights into the Middle East occurred in February 2003, during the period in which Operation BASTILLE was being conducted. At the hearing, Defence confirmed that unlike Operations FALCONER and CATALYST, Operation BASTILLE was not a declared operation in any of the Declarations made under the Australian Operational Service Medal (Civilian) IRAQ 2003 Regulations. This aligned with the Tribunal's own research. Days spent in the area throughout Operation BASTILLE therefore cannot be used to count towards the 30 day in-theatre requirement.

53. In contrast, the second series of flights were aligned with the qualification period for Operation FALCONER and therefore did contribute to the 30 day aggregate. However, as Defence identified prior to the hearing, the time Mr Miller spent inside the lateral boundaries of the declared area amounted to just four days rather than the 12 days that had previously featured in correspondence from Defence to Mr Miller. The Tribunal accepted the revised Defence calculations.

54. It is clear that, whether the relevant period be four or 12 days, Mr Miller did not meet the eligibility criteria for the Australian Operational Service Medal. Moreover, while the Regulations also provide that *where a person does not complete the prescribed [30 day] period for the award of the Medal.....owing to his or her death, evacuation due to illness, injury or other disability due to service, the person will be deemed to have completed that prescribed period*, it was self-evident that Mr Miller was still very much alive and, at the hearing, he submitted that he had not been prematurely removed from theatre because of *illness, injury or other disability due to service*.

Tribunal findings

55. The Tribunal thus found that Mr Miller did not meet the criteria for the Australian Operational Service Medal (Civilian) with Clasp IRAQ 2003, principally on the basis that he did not accrue the 30 days of service in theatre.

Tribunal decision

56. The Tribunal decided to affirm the decision that Mr Keith Miller not be recommended for the Australian Operational Service Medal (Civilian) with Clasp IRAQ 2003.