



**Australian Government**

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Defence Honours and Awards Appeals Tribunal

**Report of the Inquiry into Eligibility for the Republic of  
Vietnam Campaign Medal**

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## LETTER OF TRANSMISSION

### **Inquiry into Eligibility for the Republic of Vietnam Campaign Medal**

The Hon. Darren Chester MP  
Parliamentary Secretary for Defence  
Parliament House  
Canberra ACT 2600

Dear Parliamentary Secretary,

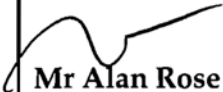
I am pleased to present the Defence Honours and Awards Appeals Tribunal's Report on the *Inquiry into Eligibility for the Republic of Vietnam Campaign Medal*.

The inquiry was conducted in accordance with the Terms of Reference approved by the former Government on 14 March 2013. The panel of the Tribunal that conducted the inquiry arrived unanimously at the findings and recommendations set out in its report.

In accordance with the *Defence Honours and Awards Appeals Tribunal Procedural Rules 2011*, a copy of this report will be published on the Tribunal's website - [www.defence-honours-tribunal.gov.au](http://www.defence-honours-tribunal.gov.au) - 20 working days after the day this report is provided to you.

I would be grateful for advice on your response to this report when available.

Yours sincerely



**Mr Alan Rose**  
Chair  
Defence Honours and Awards Appeals Tribunal

24 March 2014

## **TERMS OF REFERENCE**

The Defence Honours and Awards Appeals Tribunal (the Tribunal) is directed to inquire into and report on eligibility for the Republic of Vietnam Campaign Medal.

The Republic of Vietnam Campaign Medal is classed as a foreign award which was offered to a range of countries (including Australia, New Zealand and the United States) that supported the Government of the Republic of Vietnam during the Vietnam War. Australia accepted the Republic of Vietnam Campaign Medal and has been issuing it to members of the Australian Defence forces and accredited philanthropic organisations that it has assessed as eligible ever since.

Eligibility criteria for the Republic of Vietnam Campaign Medal were determined by the Government of the Republic of Vietnam during the Vietnam War.

Specifically, the Tribunal is directed to inquire and report on:

- application of the eligibility criteria for the Republic of Vietnam Campaign Medal over time;
- unresolved issues with the application of those criteria; and
- how any future claims for this award should be administered.

The Tribunal is to determine its own procedures, in accordance with the general principles of procedural fairness, when conducting its inquiry as set out in these Terms of Reference.

The Tribunal is to report, in writing, to the Parliamentary Secretary for Defence on the findings and recommendations that arise from the Inquiry.

In making its findings and formulating its recommendations the Tribunal is required to maintain the integrity of the Australian honours and awards system and identify any consequential impact that any finding or recommendation may have on that system.

## **EXECUTIVE SUMMARY**

1. The Tribunal commenced its inquiry on 23 March 2013. It received 76 written submissions from individuals, the Department of Defence and several ex-service organisations. The Tribunal held five hearings during the course of the Inquiry.

### **Establishment of the RVCM**

2. In May 1964 the Government of the Republic of Vietnam established its campaign medal, known in Australia as the Republic of Vietnam Campaign Medal (RVCM). In May 1966 the medal was offered to Australia for its servicemen and the Australian Government accepted it. It is important to emphasise that, in Australia, the RVCM is a foreign medal. A key factor in the Government's decision to accept the RVCM was that the RVCM was sufficiently different from the Australian campaign medal at the time, the Vietnam Medal, in that it required six months' service rather than the much shorter period required for eligibility for the Vietnam Medal.

### **Eligibility Criteria for the RVCM**

3. The original criteria, set down in Article 3 of its Directive by the Government of the Republic of Vietnam, made Allied service personnel eligible if they served for six months in Vietnam or for a lesser period if they were killed in action, evacuated as a result of being wounded-in-action or were captured. Responsibility for establishing procedures for award of the medal to eligible individuals was delegated to 'military authorities from the respective countries'. In March 1966 the Government of the Republic of Vietnam amended the criteria to include personnel who had served for six months outside the geographic limits of South Vietnam and contributing direct combat support to the RVNAF.

4. In a memorandum dated 16 September 1966, the Secretary of the Department of Defence set out the conditions for the grant of the award to Australian servicemen:

- (a) Special service - as defined by the *Repatriation (Special Overseas Service) Act 1962* - for a minimum of 6 months duration, either continuous or aggregated, in Vietnam with retrospective effect to 31st July 1962.
- (b) 'Special service' in Vietnam of less than six months' duration since 31st July 1962 if
  - (1) killed on active service or wounded-in-action and evacuated,
  - (2) captured and later released or escaped.

5. The Australian Government did not reject the amendment to the criteria established by the Government of the Republic of Vietnam, but at that time did not believe that any Australian units met the requirement of that amendment. The Australian Government was advised that the United States, which had also accepted

the RVCN, had specifically requested the amendment to Article 3 to cover US servicemen in the 7th Fleet, Thailand and Guam who were participating in the conflict. The US interpreted the amendment to cover all members of the 7th Fleet serving in waters off the coast of Vietnam, as well as air crews of aircraft operating out of Thailand and Guam. They did not interpret it to cover ground support staff in Thailand and Guam.

### **Consideration of the Criteria**

6. The Terms of Reference directed the Tribunal to consider the application of the eligibility criteria for the award of the medal rather than the criteria themselves. The Department of the Prime Minister and Cabinet provided the Tribunal with its view that the Australian Government could not amend the criteria for the award of a medal created by the former government of a state that no longer exists. Further, the Government of the Republic of Vietnam had been quite specific about the criteria, and the Australian Government had accepted the medal deliberately because the eligibility requirement was six months. Although a significant number of public submissions argued for changes to the criteria, the Tribunal considered that it would be unwise to change criteria laid down in the past for awards unless there was a particularly compelling reason to do so.

### **Amendment to Article 3**

7. The Tribunal received submissions arguing that certain circumstance had changed since September 1966, which should cause the Department of Defence to now apply the provisions of the amendment to Article 3. These circumstances, it was argued, would allow the RVCN to be awarded to members of the ship's company of HMAS *Sydney*, which undertook 25 voyages from Australia to South Vietnam providing logistic support, and to the ground crew of RAAF units based at Ubon in Thailand in the period 1965-1968. The changed circumstances argued for were:

- The awarding of the Vietnam Logistic Support Medal (VLSM) as a campaign medal to members of HMAS *Sydney* and those serving at Ubon meant that all recipients were involved in the campaign, even though they did not serve in the designated operational area, and that they should therefore become eligible for the RVCN if they served in the campaign for six months.
- The United States has applied a more liberal interpretation of the criteria for the award of the RVCN.
- In a case before the Administrative Appeals Tribunal (AAT) in 1995 there was an agreed statement of facts that at particular times 'HMAS *Sydney* was in Vietnamese waters for the purpose of direct combat support of the allied forces operating in Vietnam'.
- A Department of Defence definition of 'operational service' promulgated in 1994 should cause decisions about whether *Sydney* was involved in 'direct combat support' to be reconsidered.

- In 2010 the RAN awarded HMAS *Sydney* a battle honour for its part in the Vietnam campaign and therefore *Sydney* was involved in the campaign.

The Tribunal did not accept any of these arguments.

### **Direct Combat Support**

8. The Tribunal received numerous submissions discussing the meaning of the term 'direct combat support'. This was in the context of the amendment to Article 3 which stated that: 'Foreign military personnel serving in South Vietnam for six months during wartime and those serving outside the geographic limits of South Vietnam and contributing *direct combat support* to the RVNAF for six months in their struggle against an armed enemy will also be eligible for the award of the Campaign Medal'.

9. Despite considerable research, the Tribunal was unable to find any formal definition - either at the time of the Vietnam War or current - of 'direct combat support'. The Tribunal therefore considered contemporaneous definitions of 'direct support' and 'combat support elements', and concluded that 'direct combat support' requires the provision of support directly to combat units on the battlefield to assist them to achieve their mission in a timely manner. This assistance could include air bombing and strafing, naval gunfire, artillery fire, tactical intelligence, and tactical transport on the battlefield. It would not include logistic support provided to units before they deployed to the battlefield

10. Submissions argued that HMAS *Sydney* was providing direct combat support while serving as a logistic support ship between 1965 and 1972, and that the RAAF ground staff at Ubon in Thailand between 1965 and 1968 also provided direct combat support to the war in Vietnam. The Tribunal did not consider that *Sydney* or the RAAF ground staff at Ubon were engaged in direct combat support.

### **Wounded-in-Action**

11. Members who were wounded-in-action, resulting in evacuation from Vietnam, received the RVCM even though they had not served the full period of six months in Vietnam.

12. The Tribunal considered a range of definitions of wounded-in-action as applied both during the Vietnam and at present. The Tribunal considered that the casualty would need to occur when taking part in operations against the enemy, although the enemy need not be physically present, such as in the case of a casualty caused by a mine or booby trap. The Tribunal considered that to change the conditions to award the RVCM to personnel who had received non-battle injuries (as proposed in several submissions) would be contrary to the letter and the spirit of the criteria set down by the Government of the Republic of Vietnam and did not agree with this proposal.

13. Several submissions referred to cases of psychological injury caused by the action of the enemy. The Department of Defence advised that the Australian Defence Force (ADF) considers that if a military person suffered a psychological injury from combat while serving in Afghanistan and was then evacuated from the theatre as a result of that diagnosed injury they were deemed to be a battle casualty. The Tribunal considered that it would be inequitable for the Department of Defence to consider a psychological casualty to be a battle casualty if it occurred in one conflict, but not in another earlier conflict, even though the understanding of it might have been different in the earlier conflict.

14. The Tribunal concluded that if a psychological injury were to be used to provide eligibility for the RVCМ the following conditions would need to be met:

- the injury would need to have been incurred as described in paragraph 12 above;
- the injury would need to have been noted on the member's medical records at the time; and
- the casualty would need to have been evacuated from the operational theatre as a result of this particular injury.

#### **Other cases**

15. The Tribunal received submissions that the criteria should be changed so that civilian doctors and nurses who worked in Vietnam under arrangements made by the Department of External Affairs between 1964 and 1972 could receive the RVCМ.

16. National Servicemen serving with Australian Army units in Vietnam returned to Australia in time to be discharged when their two-year period of service ended. The Tribunal recognised that many National Servicemen who did not receive the RVCМ because they returned home early, served faithfully and with distinction on operations where they experienced intense combat. The Tribunal received submissions arguing that criteria should be changed; that is, the period of time to be served in Vietnam to be eligible for the RVCМ be reduced to less than six months where the reason for serving less than six months was the completion of the National Service obligation.

#### **Summary of Conclusions**

17. The Tribunal reached the following conclusions:

- The RVCМ is a foreign medal and is not an Australian campaign medal.
- The RVCМ was accepted by the Australian Government because of the special circumstances of the Vietnam War. One key factor in the Government's decision was that the RVCМ was sufficiently different from



the Australian Vietnam Medal in that it required six months' service rather than the shorter period required for eligibility for the Vietnam Medal.

- To maintain the integrity of the Australian honours and awards system and to keep faith with the intentions of the Government of the Republic of Vietnam the Tribunal concluded that the eligibility criteria for the medal should not be changed.
- In 1966 the Australian Government did not reject the amendment to Article 3 of the criteria, but it did not believe at that time that any Australian units met that criteria.
- In considering cases where the amendment to Article 3 might have applied, the Tribunal concluded that to provide direct combat support it was necessary to provide combat support to combat units on the battlefield. The Tribunal concluded that this did not occur when HMAS *Sydney* was in Vung Tau harbour, or in the case of the RAAF ground personnel at Ubon.
- The receipt of the VLSM does not indicate that the recipient met the eligibility criteria for the award of the RVCN.
- The original criteria concerning wounded-in-action should remain unchanged, but Defence should be consistent in its assessment of psychological casualties caused by enemy action.

## **Recommendations**

18. The Tribunal makes the following recommendations:

### **Recommendation 1**

No action be taken by the Australian Government to change the criteria for the award of the RVCN.

### **Recommendation 2**

The Department of Defence amend its interpretation of 'wounded-in-action' to include psychological injury under the following conditions:

- the injury would need to be incurred as a result of enemy action;
- the injury would need to be noted on the member's medical records at the time; and
- the casualty would need to be evacuated from the operational theatre as a result of this particular injury.

### **Recommendation 3**

The Department of Defence continue to assess applications for the RVCN using the present criteria with the recommended change to the interpretation of wounded-in-action, see Recommendation 2.

# REPORT OF THE TRIBUNAL

## Introduction

1. The Defence Honours and Awards Appeals Tribunal is established under the provisions in Schedule 1 of the *Defence Legislation Amendment Act 2010* (the Defence Amendment Act), which came into effect on 5 January 2011. Before that date many of the functions of the Tribunal were undertaken by the Defence Honours and Awards Tribunal (the old Tribunal) which operated administratively. The Defence Amendment Act contains the provisions for the establishment of the new Defence Honours and Awards Appeals Tribunal (the new Tribunal, or the Tribunal), as well as specifying its members, powers and functions. The Tribunal's functions are set out in s110UA of the *Defence Act 1903* (the Act). The Minister may direct the Tribunal to hold an inquiry into a specified matter concerning Defence honours or awards. The Tribunal must then hold an inquiry and report, with recommendations, to the Minister.

2. On 23 April 2012 the Parliamentary Secretary for Defence, Senator the Hon. David Feeney, referred the matter of 'Eligibility for the Republic of Vietnam Campaign Medal' to the Tribunal. With the Tribunal's heavy commitment to the Inquiry into Unresolved Recognition of Past Acts of Naval and Military Gallantry and Valour (submitted 6 February 2013) the Tribunal could not begin the new inquiry until 2013. The terms of reference for this inquiry were agreed by the Government on 14 March 2013 and are set out in full at the commencement of this report.

3. The inquiry was undertaken by the following members of the Tribunal:

Mr John Jones, AM (Presiding Member)

Mr Adam Bodzioch

Professor David Horner, AM

4. No conflicts of interest were declared. Mr Jones and Professor Horner served in Vietnam in 1971 and both were awarded the Republic of Vietnam Campaign Medal.

## Conduct of the Inquiry

5. The Inquiry commenced on 23 March 2013 with advertisements being placed in major newspapers nationally giving notice of the Inquiry and calling for submissions by 29 April 2013.

6. The Tribunal received 76 written submissions from individuals, the Department of Defence, and several ex-service organisations. The organisations and individuals who made these submissions are listed at Appendix 1.

7. The Tribunal met on 25 June 2013 to consider these submissions, and identified several questions which needed to be put to the Department of Defence by letter. The Tribunal also decided to conduct public hearings in Adelaide, Canberra and Melbourne. The Tribunal met again on 26 July 2013 to plan for the forthcoming hearings and also heard evidence from one submitter.

8. Subsequent public hearings were held in Adelaide on 5 September (when it heard evidence from five submitters), in Melbourne on 6 September (seven submitters) and in Canberra on 11 September (six submitters, including the Department of Defence, the Returned and Services League of Australia, the Vietnam Veterans' Association of Australia and the Vietnam Veterans' Federation of Australia). The Tribunal also spoke to another submitter by telephone on 10 September 2013. The submitters the Tribunal heard from during the course of the Inquiry are listed at Appendix 2.

9. The Tribunal met to consider the written and oral material put before it on 15 and 16 October 2013, 4 December 2013, 13 February 2014 and 12 March 2014.

## Historical Background

### Establishment of the RVCM

10. In May 1964 the Government of the Republic of Vietnam established its campaign medal, known in Australia as the Republic of Vietnam Campaign Medal (RVCM). Despite its name, in the Australian honours and awards system the medal is considered to be a foreign medal and is not an Australian campaign medal (this issue is discussed further in paragraph 19.) In September 1965 the Joint General Staff of the Republic of Vietnam issued a directive setting out the eligibility for the medal. The essence of the directive is as follows:

- **Article 1:** All military personnel of the Republic of Vietnam Armed Forces (RVNAF) who have 12 months service in the field during wartime, may claim the Campaign Medal award.
- **Article 2:** RVNAF personnel who do not meet the requirements of Article 1 qualify for the award if they were:
  - Wounded-in-action;
  - captured in action by the enemy, or missing while performing their duties, but were later released or escaped; or
  - killed in action or died while performing a mission entrusted to them.
  - The activities needed to take place during the war.
- **Article 3:** Allied soldiers assigned to the Republic of Vietnam after 6 months in wartime with the mission of assisting the Vietnamese Government and the RVNAF to fight against armed enemies were eligible for the Campaign Medal. Medals for allied soldiers were also to be awarded in accordance with the conditions set down in Article 2.

- **Articles 4 and 5:** These articles described how the medals were to be awarded to RVNAF personnel.
- **Article 6:** Awarding procedures for each individual from a friendly country who possessed 'appropriate eligibility' would 'be accordingly made by various military authorities from the respective countries'.<sup>1</sup>

11. In May 1966 the Government of the Republic of Vietnam raised the possibility of awarding the RVCM to Australian servicemen through diplomatic channels, and the Australian Government was initially inclined to reject the offer on the basis that it was about to award its own campaign medal (the Vietnam Medal), it did not wish to award two campaign medals, and there were restrictions on the acceptance of foreign awards.<sup>2</sup> The Australian Ambassador in Saigon, however, advised that it would be 'undesirable to reject a Vietnamese offer of this kind'.<sup>3</sup>

12. The matter was referred to the Chiefs of Staff Committee which asked for it to be examined by the Principal Administrative Officers' Committee (Personnel). This latter committee noted that the acceptance of the RVCM would be contrary to traditional practice. However, the Committee considered that a case could be made 'because of the nature of the war in Vietnam and Australia's participation in it'. With particular relevance to the Tribunal's inquiry, the reason for accepting the medal is important:

The Committee noted that the conditions for the award of the Vietnamese campaign medal requiring six months qualifying service reasons were more exacting than those prescribed for the Vietnam Medal recently approved by The Queen. In the Committee's view the conditions for the two medals were sufficiently different that the Vietnamese campaign medal could be accepted without departure from the rule that a foreign award may not be accepted for services which have already been rewarded by the grant of a British award, - for example those serving under short-term attachments, staff visits etc. would not qualify. <sup>4</sup>

That is, one of the crucial factors in Australia accepting the award was that it was for six months, not the lesser period required for the award of the Vietnam Medal.

13. On 24 June 1966 the Prime Minister, Harold Holt, wrote to the Governor-General advising that he had given the matter of offer of the RVCM 'careful consideration' and that there were 'exceptional grounds justifying acceptance of the Vietnamese offer'. He asked that Her Majesty's approval be sought to accept the RVCM.<sup>5</sup>

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<sup>1</sup> Government of the Republic of Vietnam Directive Nr HT.655-430, 1 September 1965.

<sup>2</sup> Cable 557, Canberra to Saigon, 5 May 1966, NAA: A1838, 696/8/6 Part 1.

<sup>3</sup> Cable 568, Saigon to Canberra, 10 May 1966, NAA: A1838, 696/8/6 Part 1.

<sup>4</sup> Minute by the Principal Administrative Officers' Committee (Personnel), 30 May 1966, NAA: A1838, 696/8/6 Part 1.

<sup>5</sup> Letter, Prime Minister Harold Holt to Governor-General 24 June 1966, NAA: A1838, 696/8/6

14. Meanwhile, unbeknown to the Australian Government at this stage, on 22 March 1966 the Government of the Republic of Vietnam had amended Article 3 of the conditions of the RVCM to read as follows:

**Article 3:** Foreign military personnel serving in South Vietnam for six months during wartime and those serving outside the geographic limits of South Vietnam and contributing direct combat support to the RVNAF for six months in their struggle against an armed enemy will also be eligible for the award of the Campaign Medal. Foreign authorities will determine eligibility for their personnel for this award. Foreign military personnel are also entitled to this award under the special conditions provided for in Article 2.<sup>6</sup>

15. In advising the Australian Government of this amendment on 13 July 1966 the Australian Embassy in Saigon explained that it had been:

specifically requested by the United States authorities to cover those United States servicemen in the Seventh Fleet, Thailand and Guam, who are participating in the present conflict. United States interpretation of this amendment is that it covers all members of Seventh Fleet serving in waters off the coast of Vietnam, as well as the air crews of aircraft operating out of Thailand and Guam. They did not interpret it to cover ground support staff in Thailand and Guam.<sup>7</sup>

16. On 24 June 1966 Her Majesty The Queen granted unrestricted approval for members of the Australian armed forces to accept and wear the RVCM.<sup>8</sup>

17. On 1 July 1966, in a ceremony in Saigon, three Australian officers were presented with the RVCM by Lieutenant General Tan, Chairman of the Free World Organisation. The press release stated that this was the first time that a campaign award by a foreign nation had been made available to Australian servicemen taking part in a campaign. The report emphasised the requirement for the completion of 'more than six months satisfactory service in the theatre of operations'.<sup>9</sup>

### **Administration of the RVCM**

18. It now remained for the Department of Defence and the three Services to promulgate the conditions for the awarding of the RVCM. On 16 September 1966 the Secretary of the Department of Defence forwarded a memorandum to the

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Part 1.

<sup>6</sup> Cable 882, Australian Embassy, Saigon, to Canberra, 13 July 1966, attached to Defence Submission 52.

<sup>7</sup> Ibid.

<sup>8</sup> Cable, London to Canberra, 24 June 1966, NAA: A3111, 1966/3374. Subsequently there was considerable discussion about the wearing of the 'cluster' showing the date 1960 on the ribbon. Approval to wear the cluster was eventually agreed

<sup>9</sup> Signal, Austforce Vietnam to Canberra, 30 June 1966, AWM 103, R445/1/31.

Secretaries of the Departments of the Navy, Army and Air setting out the criteria for the award.<sup>10</sup> These criteria were based on and largely reflected those specified by the Government of the Republic of Vietnam with the March 1966 amendment. Referring to the amended Article 3, the Secretary stated that Australia's 'interpretation is the same as that of the United States. At present no Australian serving with Australian units outside the Vietnamese theatre would be eligible for the award'. He continued that the conditions for the grant of the award to Australian servicemen, 'which are in line with those laid down by the United States authorities', were as follows:

- (a) Special service - as defined by the *Repatriation (Special Overseas Service) Act 1962* - for a minimum of 6 months duration, either continuous or aggregated, in Vietnam with retrospective effect to 31st July 1962.
- (b) 'Special service' in Vietnam of less than six months' duration since 31st July 1962 if
  - (1) killed on active service or wounded in action and evacuated,
  - (2) captured and later released or escaped.

19. As noted earlier (paragraph 10), although the RVCM was established by the Republic of Vietnam as its campaign medal, it is not an Australian campaign medal.<sup>11</sup> The Australian campaign medal for service in South Vietnam is the Vietnam Medal, which was, and is, awarded by the Australian Government according to quite different criteria. The VLSM, which was established long after the war, also has the status of a campaign medal (discussed further in paragraph 32). The RVCM is a foreign medal. The conditions for its award were laid down by a foreign government and accepted by the Australian Government. It was up to the Australian authorities to determine which individuals were eligible for the award.

20. In accordance with the Secretary's memorandum of 16 September 1966, the criteria for the award of the RVCM to Australian service personnel were reiterated in Navy, Army and Air Force instructions between 1966 and 1970, which stated that to qualify a member must be allotted for 'Special Service' in Vietnam and must:

- a. have served in Vietnam for a minimum period, either continuously or aggregated, for six months (181 days)<sup>12</sup> from 31 July 1962 inclusive to a future date, or
- b. have served in Vietnam for a period of less than six months (181 days) from 31 July 1962 to a future date if the member was:
  - i. killed on active service,

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<sup>10</sup> Memo, Secretary, Department of Defence to Secretaries, Departments of Navy, Army and Air, 16 September 1966, attached to Defence Submission 52. The Tribunal tried to locate the departmental file with the documents that led to this memorandum, but was unsuccessful.

<sup>11</sup> The Department of Defence Honours and Awards website ([www.defence.gov.au/medals](http://www.defence.gov.au/medals), accessed on 9 October 2013) lists the RVCM as a campaign medal and hence gives an inaccurate impression that it is an Australian campaign medal.

<sup>12</sup> The original criteria merely stated six months. Defence's initial intention was to set this at 183 days, but later reduced it to 181 days.

- ii wounded in action and evacuated (ie classified as a Battle Casualty in NOTICAS signed vide Military Board Instruction 38-1), or
- iii captured and later released or escaped.<sup>13</sup>

21. There was no mention in the Services' instructions of qualifying by serving in direct combat support outside the specified geographic area (as allowed under the amendment to Article 3). The Services' instructions were presumably based on, and were in accordance with the Secretary's memorandum in making no reference to the provisions of the amendment of Article 3.

22. Although these criteria were applied by the three Services, the Royal Australian Navy (RAN) made an error in assessing the qualifying period with respect to its destroyers that were deployed with the US 7th Fleet off the coast of Vietnam to provide naval gunfire support between 1967 and 1971. The RAN considered that the time of 'Special Service' in Vietnam for the members of these ships' companies covered the period when they were 'allotted' for duty, and that this allotment began when the ship departed its last Australian port and continued through until it returned to its first Australian port. None of the ships concerned appears to have served in the Vietnam area of operations for six months; they operated there for between five and six months. As a result, the members in these ships were incorrectly awarded the RVCN. On 23 January 1987 the Chief of Defence Force (CDF) advised the Chief of Naval Staff (CNS) that the Navy had misinterpreted the qualifying conditions for the RVCN. No attempt was to be made to recover the medals already awarded by the Navy as a result of this misinterpretation. However, the CDF stated that:

applications for the Medal submitted on or since 12 Nov 85 (the date of the Minister's statement in the Parliament on veterans' entitlements) should be assessed strictly in accordance with the intent of the 1966 Defence memorandum, ie., only periods of service within the prescribed operational areas of Vietnam while allotted for special duty in Vietnam or while deemed to have been allotted for duty in Vietnam may be counted as qualifying service for the Medal.<sup>14</sup>

23. The Navy accepted this advice. Neither the Navy nor Defence made any attempt or expressed any desire to recover the medals that had been incorrectly awarded. However, the Navy's past use of 'allotment' to determine eligibility has caused confusion among veterans who believed that their time allotted for duty as assessed by the Department of Veterans' Affairs should be used by Defence to determine eligibility for the RVCN. As noted above, according to Defence Instructions, to be eligible a member must have served for a minimum period of six

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<sup>13</sup> Military Board Instruction, MBI 102-4, 23 December 1968; Australian Navy Order 500/67 Vietnamese Campaign Medal – Award for Service in South Vietnam 1970; Air Board Instruction A5/30, 21 December 1966, NAA: A6913, 2.

<sup>14</sup> Memo, AM R. G. Funnell (for CDF), to CNS, 23 January 1987, attached to Defence Submission 52.

months in the operational area. The matter of allotment for travel to and from the operational area is not relevant in determining eligibility for medallic recognition.<sup>15</sup> The prescribed operational area included that land mass of North and South Vietnam and the off-shore waters to a distance of 100 nautical miles (185.2 kilometres) (see map).



Figure 1: Area of Operations as determined by the Australian Department of Defence.

### Award of the RVCM to Other Countries

24. As noted above (paragraph 10), the eligibility of Australian service personnel for the RVCM was to be determined by the Australian Department of Defence. However it is useful to set out how it was handled in New Zealand and in particular, the United States, which had sought the amendment to Article 3 in order to cover personnel serving outside the area of operations in specified circumstances.

### New Zealand Awards

25. The New Zealand Vietnamese Campaign Medal (the name given to the RVCM by New Zealand) was awarded by the Government of the Republic of

<sup>15</sup> There is no 'legal linkage' between veterans' entitlements and the granting of honours and awards. This was articulated by Professor Robin Creyke in 2005 when she advised that 'although there are similarities between terms used in the *Veterans' Entitlements Act 1986* (Cth) and in the criteria for eligibility in the Regulations for award of medals, there is no necessary connection between the two.' (Report of the *Post-Armistice Korean Service Review*, December 2005, Appendix 7.)



Vietnam to members of the New Zealand armed forces for assisting the RVNAF during the Vietnam War. The New Zealand Government's *South Vietnamese Campaign Medal Regulations 1966*<sup>16</sup> enabled members of the New Zealand forces who served six months on the strength of a unit or formation in Vietnam between 1964 and 1973 to be awarded the medal. The full term of service was waived where personnel were captured, wounded in action or killed on active service. The Sovereign approved the wearing of the South Vietnam Campaign Medal by eligible New Zealand personnel in 1966.<sup>17</sup>

### United States Awards

26. On 7 February 1966, the US Secretary of Defense accepted the Government of the Republic of Vietnam's offer to award the RVCM to US military personnel. This acceptance was legislated in Public Law 88-257 which permits acceptance of this medal to recognise service performed in Vietnam during the period 1 March 1961 to 28 March 1973 inclusive. Criteria for the award were established by the Government of the Republic of Vietnam.<sup>18</sup>

27. Prior to 28 January 1973, US military personnel were eligible if they served in South Vietnam for six months. As well, those who served outside the geographic limits of South Vietnam in direct combat support roles for six months, as covered by the amendment to Article 3, were also eligible.<sup>19</sup>

28. The US Government specifically requested the amendment to Article 3 to cover those US servicemen in the 7th Fleet, Thailand and Guam who participated in the conflict and provided direct combat support. To determine eligibility, the US Department of Defense decreed that only members who met the criteria established for the Armed Forces Expeditionary Medal (AFEM) (Vietnam) or the Vietnam Service Medal during the period of service required were considered to have contributed direct combat service support to the RVNAF.<sup>20</sup> With respect to these medals, the US Department of Defense defined 'direct support' as:

services being supplied to the combat forces in the area of operations by ground units, ships, and aircraft provided it involves actually entering the designated area. That includes ships and aircraft providing fire, patrol, guard, reconnaissance, or other military support.

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<sup>16</sup> *South Vietnamese Campaign Medal Regulations 1966*, at <http://medals.nzdf.mil.nz/warrants/14-reg.html>, accessed on 24 October 2013.

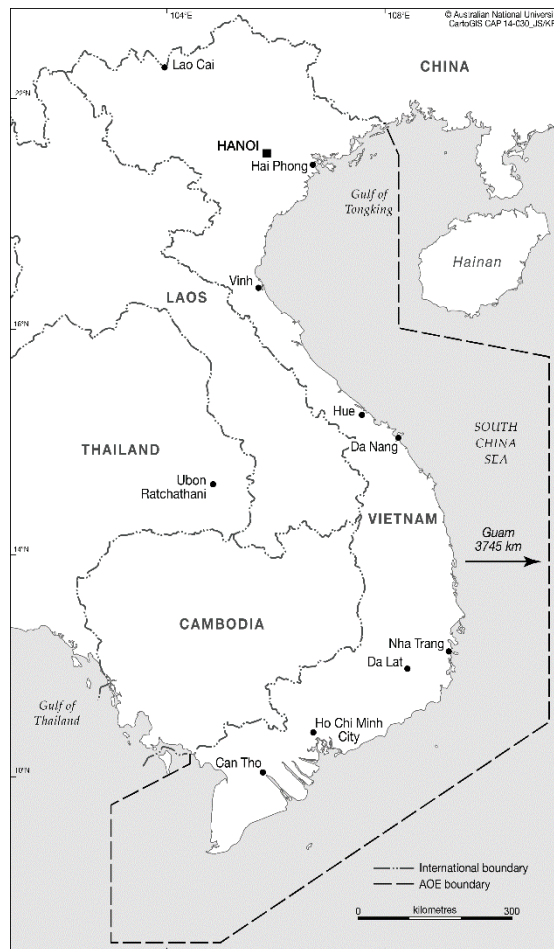
<sup>17</sup> Ibid.

<sup>18</sup> US Department of the Navy SECNAV Instruction 1650.1H

<sup>19</sup> Letter, Lt Col L. C. Counts, USAF, Chief Recognition & Special Programs Division, Directorate, Personnel Program Management to Mr Lees, HMAS Sydney & Vietnam Logistics Support Veterans' Association, Mr Allan Lees Submission 6 and Mr Fredrick McLeod-Dryden Submission 17.

<sup>20</sup> Letter, Col Alan C Brendsel, Director, Officer and Enlisted Personnel Management, US Department of Defense, to Mr Allan Lees Submission 6 and Mr Michael Prowse Submission 34. See also US Army Regulation 600-8-22 Personnel-General Military Awards.

The United States did not define 'direct combat support'. The minimum requirement for the Vietnam Service Medal, which was less restrictive than the AFEM, was that (in the case of US Army and US Air Force (USAF) air crew) the recipient must have served as a crew member in one or more aerial flights directly supporting military operations. For non-air crew the recipient needed to have served in the actual theatre of operations for one day.<sup>21</sup> That is, to receive the RVCM, US personnel first needed to be eligible for the AFEM or the Vietnam Service Medal. Then they needed to meet the requirements of the RVCM, in particular the six months service in the area of operations. The area of operations as determined by the US Department of Defense is shown in the following map:



**Figure 2: Area of Operations as determined by the US Department of Defense**

29. After the cease-fire on 28 January 1973, the Chief of Staff, Joint General Staff, Republic of Vietnam, advised the US Secretary of Defense that in order to stimulate and enhance morale of the allied personnel still serving in support of South Vietnam forces, the duration of service for eligibility for the RVCM had been reduced to two

<sup>21</sup> Extracts from US Department of Defense *Manual of Military Decorations and Awards*, attached to letter, Col Alan C Brendsel, Director, Officer and Enlisted Personnel Management, US Department of Defense, to Mr Allan Lees, Submission 6; Mr Michael Prowse Submission 34; and Mr Frederick McLeod-Dryden Submission 17.

months. Eligibility for the RVCM was terminated on 28 March 1973 to coincide with the final withdrawal of US forces from Vietnam.<sup>22</sup> This further amendment to the eligibility criteria reflected the different circumstances facing servicemen deployed in Vietnam after the ceasefire. No Australian servicemen were deployed in Vietnam during this period.

### **Australian Vietnam Campaign Medals**

30. Australia has two campaign medals for the Vietnam War, the Vietnam Medal and the Vietnam Logistic and Support Medal (VLSM); but members of the Australian Services are not permitted to be awarded both medals; they can only have one or the other.

31. The Vietnam Medal is a joint Australian and New Zealand campaign medal awarded for service in the Vietnam War between 29 May 1964 and 27 January 1973. Qualifying service for the Vietnam Medal includes:

- 28 days in ships or craft on inland waters or off the coast of Vietnam;
- one or more days on the posted strength of a unit or formation on land;
- one operational sortie over Vietnam or Vietnamese waters by aircrew on the posted strength of a unit;
- official visits either continuous or aggregate of 30 days; or
- one day or more by members of accredited philanthropic organisations attached to Australian forces in an official capacity for full-time duty.

32. The VLSM was established in 1993 to recognise the service of Australian personnel who were in support roles during the Vietnam War but did not qualify for the Vietnam Medal. Qualifying criteria for the medal include:

- service of one day or more as a member of a crew of a ship or aircraft operating in the prescribed area of operations of Vietnam in support of Australian forces;
- service of one day or more within the prescribed area of operations of Vietnam while attached to a unit or organisation in support of Australian forces; and
- service of one day or more while attached to, or serving with, a unit of the Australian armed forces or allied forces as an observer.<sup>23</sup>

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<sup>22</sup> Letter, Lt Col L. C. Counts, USAF, Chief Recognition & Special Programs Division, Directorate, Personnel Program Management to Mr Allan Lees, HMAS Sydney & Vietnam Logistics Support Veterans' Association, Mr Allan Lees Submission 6; and Mr Fredrick McLeod-Dryden Submission 17. See also letter, Major General Howard H. Cooksey, Acting Chief of Staff MACV, to Commander-in-Chief, Pacific, 15 March 1973. The last American troops withdrew on 29 March 1973 although Embassy guard remained until April 1975.

<sup>23</sup> *Commonwealth of Australia Gazette*, No S 79, 10 March 1993.

33. As a result of the old Tribunal's report of the *Inquiry into Unresolved Recognition Issues of Royal Australian Air Force personnel who served at Ubon between 1965 and 1968*, dated 18 February 2011, on 18 January 2013 the Government amended the regulations for the award of the VLISM to allow it to be awarded to Royal Australian Air Force (RAAF) personnel who served at Ubon between 1965 and 1968.

34. The VLISM has therefore been awarded to members of the ship's companies of HMAS *Sydney* and other ships, which undertook logistic voyages to Vietnam, to RAAF personnel who served at Ubon in Thailand in a specified period, to civilian surgical and medical teams who served in South Vietnam, and to other smaller groups.

35. There is no regulation which states that a recipient of the VLISM cannot be awarded the RVCMB, but the framing of the criteria for the respective awards means that this is not possible. To receive the RVCMB the recipient must have been on 'special service' for six months in the prescribed Vietnam area. In that case the recipient would also have received the Vietnam Medal. The VLISM was created for men and women who did not qualify for the Vietnam Medal.

36. Australian service personnel who served in Vietnam are also eligible for the Australian Active Service Medal (AASM) 1945-1975 with Clasp 'VIETNAM'. This medal was introduced to recognise members of the Defence Force and certain other persons who rendered service in warlike operations. It is not a campaign medal for the Vietnam conflict.

## **General Issues**

37. In the course of its Inquiry the Tribunal found that there were several key general issues to be considered. These were:

- The integrity of the Australian honours and awards system
- The criteria specified by the Government of the Republic of Vietnam
- The amendment to Article 3
- The application of Article 3 (Amendment) by the United States
- Direct combat support
- Wounded-in-action

These general issues are discussed in the following paragraphs

### **Integrity of the Australian Honours and Awards System**

38. Under its Terms of Reference, in making its findings and in formulating its recommendations, the Tribunal was required to maintain the integrity of the Australian honours and awards system and to identify any consequential impact that any finding or recommendation might have on that system.

39. The Tribunal viewed the integrity of the system to be a guiding principle in the conduct of the Inquiry and in the considerations of all other issues. The Tribunal considered that to maintain the integrity of the system it would be unwise to change criteria laid down in the past for awards unless there was a particularly compelling case. On the other hand, in considering definitions such as wounded-in-action, there should be consistency in their use when considering eligibility for different awards.

### **Criteria Specified by the Government of the Republic of Vietnam**

40. The Terms of Reference for this Inquiry direct the Tribunal to consider the application of the eligibility criteria for the award of the RVCN rather than the criteria themselves. However a significant number of public submissions to the Tribunal argue for changes to the criteria. In its deliberations, the Tribunal considered that the issue of whether the Australian Government should (or could) change the criteria set down by the Government of the Republic of Vietnam is so fundamental to the inquiry that it needed to be resolved before the other issues could be tackled.

41. The RVCN was established by the Government of the Republic of Vietnam. Following the victory of the Democratic Republic of Vietnam (North Vietnam) over the Republic of Vietnam (South Vietnam) on 30 April 1975, the latter ceased to exist as an identifiable sovereign country. This led to the question of how Australia was to administer the award of the RVCN over the succeeding years. The 1994 *Report of the Committee of Inquiry into Defence and Defence Related Awards (CIDA)* touched on this question when it recommended that the relevant Australian Government Minister 'be given a discretion to waive the requirements of paragraph 2 of the 1989 Guidelines on the Acceptance and Wearing of Foreign Honours or Awards by Australians where a formerly allied government had ceased to exist'.<sup>24</sup> This recommendation is not quite as broad as might appear at first glance. Paragraph 2 of the Guidelines refers to requests to confer a foreign honour by a foreign government. CIDA was merely recommending that the Australian Government continue to provide foreign awards to Australian service members, even though the foreign government might have ceased to exist. The Tribunal considered that the CIDA recommendation did not imply that the Australian Government should change the existing criteria set down by the foreign government.

42. Several submissions argued that if the Government of the Republic of Vietnam still existed it might have changed the criteria.<sup>25</sup> Hence the Australian Government should now change the criteria with regard to the required period of six months service in the operational area. Other submissions argued that the

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<sup>24</sup> *Report of the Committee of Inquiry into Defence and Defence Related Awards (CIDA)*, AGPS, Canberra, 1994, p. 97.

<sup>25</sup> For example, letter, Ba Phuc Tran, President Australian Vietnamese Council to Secretary Committee of Inquiry into Defence Awards, 22 June 1993, attached to Submission 34, Mr Michael Prowse.

requirement of six months should be changed for various reasons that are set out in later paragraphs.

43 The Tribunal noted that members of the RVNAF were required to serve for twelve months before they became eligible for RVCM and that the period of service for members of foreign armed forces was set at six months. The Government of the Republic of Vietnam clearly intended that the award be made for an extended period of service. Further, other Allied countries have continued to apply the period of six months service (with the exception mentioned in paragraph 29 above). As noted in paragraph 12, a major factor in the Australian Government's decision to accept the RVCM was the 6 month eligibility requirement.

44. While most submissions received by the Tribunal argued for some changes to the criteria or the interpretation of them to meet the needs of the claimants, the Tribunal received a smaller number of submissions, including from the Department of Defence, the Returned and Services League, the No 9 Squadron Association, the Vietnam Veterans' Federation of Australia ACT (Inc) and the Vietnam Veterans' Association of Australia, which argued that the criteria and its current interpretation should not be changed.<sup>26</sup> In the Defence submission the CDF, General David Hurley, stated:

Defence strongly reiterates the view that the RVCM should be respected as a [foreign] campaign award intended to recognise the commitment of Republic of Vietnam nationals involved in attempting to oppose a significant threat to national sovereignty. For this reason qualifying criteria that may seem excessive by Australian standards were applied. These included a long qualifying period and stringent criteria for those who left the battlefield before meeting the qualifying period. The value placed on the medal defines the nature and character of the award. The acceptance of the original criteria by the Australian Government in accepting the award indicates the respect for this value. It would diminish both the quality of the award and the contribution of those who have qualified for it by modifying the criteria to render it a defacto third Australian award.<sup>27</sup>

45. The Tribunal was mindful of its terms of reference which required it to inquire and report on 'the application of the eligibility criteria for the Republic of Vietnam Campaign Medal over time'. The Tribunal was not directed to consider the actual eligibility criteria specified by the Government of the Republic of Vietnam. Further, the Department of the Prime Minister and Cabinet advised the Tribunal that it was its view that the Australian Government cannot amend the criteria for the

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<sup>26</sup> It should be noted, however, that the national body of the Vietnam Veterans Federation stated that the eligibility for the RVCM should be reduced to 90 days, as well several other changes. Mr Timothy McCombe National President, Submission 66.

<sup>27</sup> Letter, Gen D. J. Hurley, CDF, to Chair, DHAAT, Defence Submission 52B. In evidence on 11 September 2013 Mr Tony Sillcock of the Department of Defence agreed that the word 'foreign' should be added in brackets as shown above.

award of a Medal created by the former government of a state that no longer exists'<sup>28</sup>. The Tribunal noted this advice, but resolved to consider each argument put to it on its merits.

### **Amendment to Article 3**

46. On 22 March 1966 the Government of the Republic of Vietnam amended Article 3 of the criteria to allow foreign military personnel to be eligible if they had served outside the geographic limits of South Vietnam and contributed direct combat support to the RVNAF for six months. The Australian Department of Defence stated in the Secretary's memorandum of 16 September 1966 that its interpretation of the meaning of amended Article 3 was the same as that of the United States; ie that the US did 'not interpret the amendment to cover support staff in Thailand and Guam'. In the same memorandum the Secretary went on to state that: 'At present no Australians serving with Australian units outside the Vietnamese theatre would be eligible for the award'. At that time HMAS *Sydney* had already carried out four logistic voyages to South Vietnam. Further, RAAF personnel had been serving at Ubon, Thailand, since 1962, and United States Air Force (USAF) units based at Ubon had been involved in Operation Rolling Thunder from 2 March 1965.<sup>29</sup> Presumably, in making his statement, the Secretary was declaring that the personnel in HMAS *Sydney* and at Ubon were not eligible for the award.

47. In its submissions the Department of Defence stated unequivocally that the Australian Government 'chose' not to apply the amendment to Article 3 to Australian personnel stationed outside the operational area.<sup>30</sup> In support of this statement the Department of Defence referred to the 1994 CIDA report, which stated that 'noting the requirement for "direct combat support" . . . [the Committee] believes the Australian interpretation to be a fair interpretation of the intentions of the Vietnamese Government'. CIDA added, that it 'believes that an interpretation by the US Department of the Navy that "personnel who served on US ships in the Vietnam area for at least one day in six different months qualify for an award" is a very generous and flexible interpretation of the conditions attached to this award by the Government of the Republic of Vietnam'. CIDA endorsed 'the existing interpretation in relation to the award of the Vietnamese Campaign Medal to Australian servicemen and recommends that this continues'.<sup>31</sup>

48. In the public hearing on 22 September 2013, Mr Tony Sillcock from the Department of Defence conceded that there was no documentary evidence that the Government made a 'deliberate decision' not to apply the provisions of the amendment to Article 3. In a practical sense, however, in promulgating the criteria

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<sup>28</sup> Letter, E. Kelly, Deputy Secretary Governance, PM&C, to Chair DHAAT Submission 68.

<sup>29</sup> This is the date from which RAAF personnel serving at Ubon became eligible for the AASM 1945-1975 with Clasp 'THAILAND'.

<sup>30</sup> Letters, Gen D. J. Hurley to Chair DHAAT, Defence Submission 52 and 52A.

<sup>31</sup> CIDA, p. 71.

for the RVCM (see paragraph 15 above) the Department of Defence did not apply the provisions of the amendment to Article 3. That is, while it was open to the Department of Defence to apply the provisions of the amended Article 3, it did not do so. Further, it is a matter for the Australian Government through the Department of Defence to determine how it applies the criteria set down by the Government of the Republic of Vietnam. The Australian Government was not bound to apply the provisions of the amended Article 3. Mr Sillcock added that the Department of Defence could re-consider applying the provision of the amendment to Article 3 if it could be shown that there were units that clearly met its provisions.

49. In his submission Mr Allan Lees claimed that there were at least five circumstances that have changed since September 1966 which should cause the Department of Defence now to apply the provisions of the amendment to Article 3.<sup>32</sup> These circumstances were:

- The awarding of the VLSM as a campaign medal allegedly meant that all recipients were involved in the campaign and that they should therefore become eligible for the RVCM if they served in the campaign for six months. The Tribunal did not accept this argument, noting that the VLSM was instituted specifically to recognise the service of Australian personnel who were in support roles for short periods of time and were not eligible for the Vietnam Medal. The Tribunal considered that the introduction of the VLSM did not change the circumstances relating to the amendment to Article 3.
- The United States has applied a more liberal interpretation of the criteria for the award of the RVCM. Because several submissions to the Inquiry raised this argument the Tribunal considered this to be an important issue and it is discussed further in the report (at paragraphs 51-53 below).
- In the case of *Francis and Department of Defence* before the Administrative Appeals Tribunal (decision dated 22 December 1995) there was an agreed statement of facts that at particular times 'HMAS *Sydney* was in Vietnamese waters for the purpose of direct combat support of the allied forces operating in Vietnam'.<sup>33</sup> The Tribunal did not accept that this was a change in the circumstances relating to the amendment to Article 3; but because this argument was presented in several submissions the Tribunal discusses it further at paragraph 75 below.
- In 1994 the Department of Defence promulgated a definition of 'operational service' as follows: 'A military action or the carrying out of a strategic, tactical, service, training or administrative military mission, the process of carrying on combat, including movement, supply, attack,

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<sup>32</sup> Mr Allan Lees Submission 6. Further, in the public hearing in Adelaide on 5 September 2013 Mr Lees elaborated on these circumstances more clearly than set out in his submission. His submission also mentioned the issue of allotment. As explained in paragraph 17, the matter of allotment is not relevant, and when this was explained at the hearing Mr Lees accepted this.

<sup>33</sup> *Francis and Department of Defence and Repatriation Commission Party Joined* [1995] AATA 708.



defence and manoeuvres needed to gain the objectives of any battle or campaign'.<sup>34</sup> It was alleged that under this new definition, decisions about whether HMAS *Sydney* was involved in 'direct combat support' needed to be reconsidered. The Tribunal noted that the requirement under the amendment to Article 3 was for 'direct combat support', not 'operational service' and did not consider that this changed the circumstances relating to the amendment to Article 3. However, the more specific issue of what constituted 'direct combat support' is important and is discussed further in the report (at paragraphs 54-61 below).

- In 2010 the RAN awarded HMAS *Sydney* a battle honour (Vietnam 1965-1972) for its contribution to the Vietnam campaign. On this basis it was alleged that HMAS *Sydney* was involved in the campaign. The RVCMB is a foreign medal, not a campaign medal, and it has its own eligibility criteria. The Tribunal did not accept the argument that this changed the circumstances relating to the amendment to Article 3.

50. Although the Tribunal was not persuaded by any of these alleged changes of circumstances relating to the amendment to Article 3, as explained above, several of them required further examination, which is discussed in the following paragraphs.

### **Application of Article 3 (Amendment) by the United States**

51. A number of submissions claimed that because the United States accepted the amendment to Article 3, and applied it using certain eligibility criteria, Australia should also accept the amendment and apply the same US eligibility criteria. This claim is based on two sections of the Secretary of Defence's memorandum of 16 September 1966.

- The first section refers to two sentences which read: 'The Americans do not interpret the amendment to cover ground support staff in Thailand and Guam. Our interpretation is the same as that of the United States'. Several submissions claimed that this meant that Australia accepted all the provisions of the amendment to Article 3.<sup>35</sup> The Tribunal considered this argument and it concluded that the meaning of this part of the Secretary's memorandum was that Australia accepted the US interpretation as not covering ground support staff in Thailand and Guam. The Secretary's statement that no Australians were eligible under the provisions of the Amendment - notwithstanding the activities of HMAS *Sydney* and the RAAF contingent in Ubon - does not exclude the possibility that the Amendment might be accepted in principle if any Australians were to satisfy the criteria within the Amendment.
- The second section refers to the sentence: 'The conditions of the grant of the award of the Vietnamese Campaign Medal to Australian servicemen, which are in line with those laid down by the United States authorities, are

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<sup>34</sup> CIDA, p. 163.

<sup>35</sup> For example, Mr Frederick McLeod-Dryden Submission 17.

as follows'. The following sentence, which listed the criteria, did not mention service outside the geographic area. Several submissions claimed that this meant that Australia was committed to ensuring that its criteria would conform to the way they were interpreted by the United States. The Tribunal did not accept this argument; it concluded that the sentence was a mere statement of fact that the criteria as listed were 'in line' with those listed by the United States at that time. The Tribunal noted that in the Vietnamese Directive it was directed that 'Foreign authorities will determine eligibility for their personnel for this award'.

52. In his submission Mr Lees stated that he had asked the US Department of Defense whether its criteria for the award of the RVCM (including the eligibility of personnel who served outside the geographic limits of South Vietnam) conformed to the criteria laid down by the then Vietnamese authorities. On behalf of the US Department of Defense, the US Army replied to Mr Lees that it had interpreted its criteria as conforming to the criteria established by the then Vietnamese authorities.<sup>36</sup> Mr Lees then argued that since the 'criteria requirements were set by the Vietnamese Government, they cannot be changed and they apply to all recipient countries', Australia is bound to apply the criteria as interpreted by the US Government.<sup>37</sup> The Tribunal referred to the original criteria set down by the South Vietnamese Government which stated: 'Foreign authorities will determine eligibility of their personnel for this award'. The Tribunal could find no statement which required the Australian Government to conform to interpretations by the US Government, and concluded that Australia was not required to apply the criteria as interpreted by the US Government.

53. Submissions referred to a number of cases where the United States had awarded the RVCM to personnel who would not have been awarded the RVCM by the Australian Government. For example, the US logistic support ships, USS *Castor*, USS *Mars* and USS *Juneau* were home-ported in Japan and their crews received the RVCM for logistic support missions into the South Vietnam operational area.<sup>38</sup> It was also claimed that US Air Force (USAF) ground crew serving at Ubon in Thailand received the RVCM.<sup>39</sup> It was argued that in the interests of fairness and equity Australian personnel doing similar tasks to those performed by US personnel should receive the RVCM. The Tribunal noted that in 1994 CIDA had concluded that the interpretation by the US Department of the Navy that 'personnel who served on US ships in the Vietnam area for at least one day in six different months qualify for the award' was 'a very generous and flexible interpretation of the conditions attached to this award by the Government of the Republic of Vietnam'.<sup>40</sup> While recognising the argument about fairness and equity, the Tribunal concluded that it was for the

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<sup>36</sup> Letter, Lt Col P. A. Sigle, Chief Military Awards Branch, US Army, to Mr Allan Lees, 26 August 1994, attached to Submission 6A, Mr Allan Lees.

<sup>37</sup> Mr Allan Lee Submission 6.

<sup>38</sup> Mr Frederick McLeod-Dryden Submission 17.

<sup>39</sup> Group Captain John Jacobsen (Retd) Submission 56.

<sup>40</sup> CIDA, p. 71.

Australian Government to interpret the requirements set down by the South Vietnamese Government and did not believe that the criteria should be changed to conform to US interpretations. The issue of eligibility of RAAF personnel who served at Ubon in Thailand between 1965 and 1968 is addressed in paragraphs 85 to 107.

### **Direct Combat Support**

54. The Tribunal received numerous submissions discussing the interpretation of the term 'direct combat support'. This was in the context of the amendment to Article 3 which stated that: 'Foreign military personnel serving in South Vietnam for six months during wartime and those serving outside the geographic limits of South Vietnam and contributing *direct combat support* to the RVNAF for six months in their struggle against an armed enemy will also be eligible for the award of the Campaign Medal'. It was noted earlier (paragraph 15) that the United States was particularly concerned to ensure that the eligibility for the RVCMB applied to all members of the 7th Fleet serving in waters off the coast of Vietnam, as well as the air crews of aircraft operating out of Thailand and Guam, but not the ground support staff in Thailand and Guam.

55. There is no Australian Department of Defence definition of 'direct combat support' for the purposes of assessing RVCMB applications.<sup>41</sup> Further, Defence argued that because the Australian Government chose not to accept the amendment to Article 3, the term 'direct combat support' had 'no relevance' when Defence staff were assessing eligibility for the RVCMB.<sup>42</sup> As has been shown earlier in this report, there is no documentary evidence that the Government 'chose' not to apply the amendment and a definition would therefore be relevant if a compelling case were made for a particular unit.

56. One argument put to the Tribunal is that in announcing the conditions for the RVCMB in Parliament in May 1967 the Minister for Defence, Allen Fairhall, stated, in part, that 'qualifying service by serving personnel for the Campaign Medal issued by the Vietnamese Government is six months continuous service with the Australian forces in direct support of the Republic of Vietnam Armed Forces'. The argument is then extended to claim that if the amendment for Article 3 is applied, the requirement for 'direct combat support' should be changed to 'direct support'. In this context, several submissions stated that for purposes of eligibility for medals the US Department of Defense defines 'direct support' as:

services being supplied to the combat forces in the area of operations by ground units, ships, and aircraft provided it involves actually entering the

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<sup>41</sup> Additional Defence Submission attached to letter, Gen D. J. Hurley, CDF to Chair, DHAAT Submission 52B.

<sup>42</sup> Additional Defence Submission letter, Air Marshal Binskin, Acting CDF to Chair DHAAT Submission 52D.

designated area. That includes ships and aircraft providing fire, patrol, guard, reconnaissance, or other military support.<sup>43</sup>

The Tribunal considered that this argument over-looked the fact that Mr Fairhall's statement was a brief explanation of the criteria that had already been laid down by the Department of Defence, which did not include the conditions of the amendment to Article 3. Further, if the Department wished to apply the provisions of the amendment to Article 3 it would be bound to use the term 'direct combat support' as specified by the South Vietnamese Government, not direct support. The Tribunal did not accept the argument that the term 'direct support' could be used instead of 'direct combat support'.

57. The Tribunal was unable to find any contemporaneous definition of 'direct combat support'. Defence was unable to provide either a contemporaneous or a present-day definition. However, the Tribunal found several definitions of 'direct support', which were useful as the first step in trying to determine the meaning of 'direct combat support'. The *Australian Joint Services Glossary* of May 1970 defined 'direct support' as:

The support provided by a unit or formation, not attached or under command of the supported unit or formation, but required to give priority to the support required by that unit or formation.

The US Joint Staff at the same time defined 'direct support' as:

A mission requiring a force to support another specific force and authorising it to answer directly the supported force's request for assistance.<sup>44</sup>

At that time the RAAF used a Royal Air Force Manual, which defined 'direct support' as:

direct intervention in the land battle. This air intervention may take several forms such as close air support, air reconnaissance or tactical air transport support ; and it may be used offensively to support and advance or defensively to counter an enemy attack'.<sup>45</sup>

58. Similarly, as a further step in trying to determine the meaning of 'direct combat support', the Tribunal noted that the *Australian Joint Services Glossary* of May 1970 defined 'combat support elements' as:

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<sup>43</sup> Extracts from US Department of Defense *Manual of Military Decorations and Awards*, attached to Letter, Col Alan C Brendsel, Director, Officer and Enlisted Personnel Management, US Department of Defense, to Mr Allan Lees, 11 October 1996, included with Mr Michael Prowse's Submission 34.

<sup>44</sup> *Joint Services Staff Manual, Australian Joint Service Glossary*, May 1970.

<sup>45</sup> *Royal Air Force Manual Operations*, (AP 1300), March 1957

Those elements whose primary missions are to provide combat support to the combat forces and which are a part, or prepared to become a part, of a theatre, command or task force formed for combat operations.<sup>46</sup>

59. Considering these contemporaneous definitions, the Tribunal concluded that 'direct combat support' requires the provision of support directly to combat units on the battlefield to assist them to achieve their mission in a timely manner. This assistance could include air bombing and strafing, naval gunfire, artillery fire, tactical intelligence, and tactical transport on the battlefield. It would not include logistic support provided to units before they deployed to the battlefield.

60. The statement by the Secretary of the Department of Defence in September 1966 that no Australian serving with Australian units outside the theatre would be eligible for the award strongly implied that HMAS *Sydney* and the RAAF personnel at Ubon were not involved in 'direct combat support'. With regard to 'direct combat support', CIDA believed 'the Australian interpretation to be a fair interpretation of the intentions of the Vietnamese Government'.<sup>47</sup>

61. Several submissions argued that HMAS *Sydney* was providing direct combat support while serving as a logistic support ship between 1965 and 1972, while others contended that the RAAF ground staff at Ubon between 1965 and 1968 also provided direct combat support of the war in Vietnam. Taking into account the discussion in the preceding paragraphs, the Tribunal did not consider that HMAS *Sydney* or the RAAF ground staff at Ubon were engaged in direct combat support. Nonetheless, the situations in these two cases are discussed in more detail in later paragraphs.

### **Wounded-in-Action**

62. Members who were wounded-in-action (i.e. classified as battle casualties in a NOTICAS) and evacuated from the theatre of operations received the RVCM even though they had not served the full period in Vietnam of six months.<sup>48</sup> The Tribunal received submissions that individuals who had been evacuated from the theatre with psychological injuries as a result of action with the enemy should be considered as having been wounded-in-action, and hence should receive the RVCM.

63. In 1970 the Department of Defence defined 'wounded-in-action' as:

A battle casualty other than 'killed in action' who has incurred an injury due to an external agent or cause. The term encompasses all kinds of wounds and other injuries incurred in action, whether there is a piercing of the body, as in

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<sup>46</sup> *Joint Services Staff Manual, Australian Joint Service Glossary, May 1970.*

<sup>47</sup> CIDA, p. 71.

<sup>48</sup> Units notified headquarters of casualties using a NOTICAS message which specified whether they were battle casualties or non-battle casualties. Under the definition applying at the time a NOTICAS was a 'notifiable casualty'. *Joint Services Staff Manual, Australian Joint Service Glossary, May 1970.*

a penetrating or perforated wound, or none, as in the contused wound, all fractures, burns, blast concussions, all effects of biological and chemical warfare agents, the effects of exposure to ionizing radiation, or any other destructive weapons or agent.<sup>49</sup>

64 In 1970 the Department of Defence defined 'battle casualty' as:

Any person lost to his organisation because of death, wound, missing, capture, or internment providing such loss is incurred in action. 'In Action' characterises the casualty status as having been the direct result of hostile action, sustained going to or returning from a combat mission provided that the occurrence was directly related to hostile action, or through misadventure, friendly action. However, injuries due to the elements or self-inflicted wounds are not to be considered as sustained in action and are thereby not to be interpreted as battle casualties.<sup>50</sup>

65. The Department of Defence advised that since the formation of the Directorate of Honours and Awards in 1997 it has interpreted the term 'wounded-in-action and evacuated' for the purposes of assessing applications for the RVCN as follows:

- a. 'wounded in action . . .' - a member of the ADF sustains injuries in the course of proceeding to, during or returning from a combat mission or any other action by the enemy (for example a mortar attack on a base camp).
- b. '. . . and evacuated' - a member of the ADF is wounded in action and is removed (evacuated) from the operational area not to return for further service within that operational area.<sup>51</sup>

66. The Department of Defence also advised that the approved definition of battle casualty is: 'Any casualty incurred as a direct result of hostile action sustained in combat or relating thereto or sustained going to or returning from a combat mission.'<sup>52</sup>

67. The Tribunal received submissions from several individuals outlining their specific circumstances and claiming that they were 'wounded-in-action' and evacuated from Vietnam and had been denied the RVCN. It is not in the terms of reference for this inquiry for the Tribunal to consider these individual cases. However, these cases raised several important general points.

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<sup>49</sup> *Joint Services Staff Manual, Australian Joint Service Glossary, May 1970.*

<sup>50</sup> *Ibid.*

<sup>51</sup> Additional Defence Submission attached to letter, Gen D. J. Hurley, CDF, to Chair DHAAT, Submission 52A

<sup>52</sup> Defence submission attached to letter, Gen D. J. Hurley, CDF, to Chair DHAAT, Submission 52.

68. The Tribunal considered that in the spirit of the conditions laid down by the South Vietnamese Government, the casualty would need to be caused by the action of the enemy. The enemy need not be physically present. For example, a casualty caused by a mine laid by the enemy would be considered eligible under the criteria, even though the enemy might not be physically present at the time the casualty was incurred. In an extreme case, a casualty caused by crawling through a tunnel constructed by the enemy in a defensive position, would be caused by the enemy even though the enemy was not present at the time the casualty was incurred. A casualty caused by illness (such as malaria or encephalitis) would not be eligible.

69. Several submissions referred to cases of psychological injury caused by the action of the enemy. Mr Sillcock of the Department of Defence advised the Tribunal that Headquarters Joint Operations Command considered that if an ADF person suffered a psychological injury from combat while serving in Afghanistan and was then evacuated from the theatre as a result of that diagnosed injury they were deemed to be a battle casualty. The general understanding of psychological injury caused by combat has changed over the years. RAAF aircrews who suffered a mental breakdown because of the stress of flying bombing missions over Germany in the Second World War were returned to Australia because of Lack of Moral Fibre (LMF) or because they were a 'waverer'. By implication, they were cowards.<sup>53</sup> It is now understood that psychological injury, while it does not strike everyone, is a natural outcome of a highly stressful situation such as occurs in combat. The Tribunal considered that it would be inequitable for the Department of Defence to consider a psychological casualty to be a battle casualty if it occurred in one conflict, but not in another earlier conflict, even though the understanding of it might have been different in the earlier conflict.

70. This is not to suggest that everyone incurring a psychological injury from service in Vietnam should qualify for the RVCMB. The Tribunal concluded that if a psychological injury were to be used to provide eligibility for the RVCMB the following conditions would need to be met:

- the injury would need to be incurred as a result of enemy action as described in paragraphs 68 and 69 above;
- the injury would need to be noted on the member's medical records at the time; and
- the casualty would need to be evacuated from the operational theatre as a result of this particular injury.

71. The Vietnam Veterans' Federation of Australia submitted that 'those who were "medevac" due to injuries or illness other than "WIA" should also have entitlement to the Medal'.<sup>54</sup> The Tribunal considered that such a change to the

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<sup>53</sup> John McCarthy, *A Last Call of Empire; Australian aircrew, Britain and the Empire Air Training Scheme*, Australian War Memorial, Canberra, 1988, pp. 115-6.

<sup>54</sup> Letter, Mr Timothy McCombe OAM, President, Vietnam Veterans Federation, to DHAAT, Submission 66.

conditions would be contrary to the letter and the spirit of the criteria set down by the Government of the Republic of Vietnam.

## Specific Cases

72. Apart from the general issues discussed in the previous section, the Tribunal found several specific issues which were brought to notice in the submissions and which needed more detailed consideration. These were:

- The case of HMAS *Sydney*
- Australian Army Small Ships
- RAAF service at Ubon, Thailand
- Civilian surgical and medical teams
- National Servicemen
- Other categories

These specific issues are discussed in the following paragraphs.

### The Case of HMAS *Sydney*

73. Between 1965 and 1972 the fast troop transport HMAS *Sydney* undertook 25 voyages from Australia to South Vietnam, each time spending between one and three days at Vung Tau harbour. Members of *Sydney's* ship's company on any of these trips to Vietnam were deemed not eligible for the Vietnam Medal (unless they achieved 30 days in South Vietnam in the aggregate under the provision for temporary duty) but subsequently received the VLSM for that service.

74. The Tribunal received submissions arguing that members of *Sydney's* ship's company should receive the RVCMB because:

- the amendment to Article 3 should be applied, and that *Sydney* was engaged in direct combat support; and
- in the interests of equity, members should receive the same medal as that awarded to members of the ships' companies of the destroyers (described in paragraph 22).

Similar arguments could be mounted for the members of the supply ships HMAS *Jeparit* and HMAS *Boonaroo*.

75. **AAT decision.** Several submitters claimed that the Administrative Appeals Tribunal (AAT) had found that *Sydney* provided direct combat support to the RVNAF. The AAT decision cited in these submissions is *Francis and Department of Defence*.<sup>55</sup> This case concerned the review of a decision by the Department of Defence not to make an amendment to a RAN personnel record relating to the applicant, Mr Francis. Mr Francis wanted the record to show that he had rendered

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<sup>55</sup> *Francis and Department of Defence and Repatriation Commission Party Joined* [1995] AATA 708.



'special service' within the meaning of the *Repatriation (Special Overseas Service) Act 1962*. The AAT rejected his appeal. As part of its proceedings the AAT made 'findings of facts which are not in dispute' which included the statement that: 'On 27 December 1967 and 3 February 1968 the HMAS Sydney was in Vietnamese waters for the purpose of direct combat support of the allied forces engaged in operations in Vietnam.' The Tribunal noted that the case before the AAT was not about the nature of the operations in which *Sydney* was engaged. Rather the case was about a decision to refuse the amendment of a record of service of the applicant. The purpose of *Sydney* being in Vietnamese waters was not considered by the AAT because it was not an issue in the case. The Tribunal also notes that the finding specified two particular days on which the ship was in Vung Tau, which is contrary to the argument that the AAT had established that *Sydney* had provided *continuous* direct combat support. The Tribunal concluded that the AAT decision did not suggest that *Sydney* had served in direct combat support for any more than two particular days.

76. **Tasking.** Submitters claimed that *Sydney* continuously provided direct combat support to the RVNAF from its first deployment in 1965 through to its last deployment in 1972, even when it was training or refitting in Australia. Submitters argued that *Sydney* had no higher priority task during the time between its first and last trips to Vietnam other than to provide direct combat support to operations in Vietnam. The Tribunal accepted that there were no higher priority tasks for the ship than the provision of logistic support to the Vietnam War effort. The Tribunal noted that *Sydney* did not sail to Vietnam between June 1966 and April 1967, a gap of ten months, nor between May 1967 and December 1967, a gap of almost seven months. A gap of nine months separated the trip to Vietnam in November 1972 (to deliver aid for Cambodia) from the penultimate voyage in February 1972. Conversely there were several instances where trips to Vietnam were close together in time, for example in late 1971 when three trips were made in successive months from September to November. In all *Sydney* made 25 trips to Vietnam in a period of 90 months, an average of one trip every 3.6 months. Although trip durations varied somewhat depending on the task details of the particular trip, the average journey time appears to be about three weeks.

77. In support of this case, submitters argued that *Sydney* provided continuous direct combat support to the RVNAF even while in dry dock in Sydney or on training and exercise visits to Canada and the United States, and that these activities should therefore count as eligible service for the RVC. The Tribunal was unable to accept this proposition. If this argument were to be accepted then it would follow that the service of soldiers who participated in training mandated as essential preparation for service in an infantry battalion in Vietnam should also include that time as contributing to their service in Vietnam for purposes of being awarded the RVC.<sup>56</sup> Such service has never previously been counted toward the eligibility of soldiers for the medal. If it were to be counted many of the submitters to this

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<sup>56</sup> This specific proposition was advocated by Mr Frederick McLeod-Dryden at the public hearing in Melbourne on 6 September 2013.

inquiry who returned to Australia having served for less than six months would have satisfied the six month criteria. Indeed many would have become eligible for the RVCN before they had even left Australia. The Tribunal therefore did not accept the proposition that *Sydney* provided direct combat support continuously between its first voyage in June 1965 and its last in November 1972.

78. **Allotment.** Submitters argued that although members of *Sydney* were not formally allotted for 'special service', they were in effect so allotted, as determined by a decision of the Federal Court Australia, *Repatriation Commission v. Thomas James Hawkins*.<sup>57</sup> The Navy in its administrative instructions in the 1960s relating to the award of the RVCN stipulated that eligible service commenced on the date of allotment for duty in Vietnam. As described in paragraph 22, the CDF stated that the Navy had been incorrect in determining eligibility on the basis of allotment and that the correct criterion was actual service in the area of operations. The issue of allotment is therefore irrelevant to considerations of eligibility for the RVCN.

79. **Direct Combat Support.** As mentioned earlier, the Department of Defence was unable to provide the Tribunal with a definition of direct combat support. Accordingly, as described in paragraph 59 the Tribunal developed its own understanding of the meaning of direct combat support, basing its views on the accepted understanding of direct support and combat support during the period of the Vietnam War.

80. While the Tribunal noted that the AAT decision (described in paragraph 75), suggested that HMAS *Sydney* might have been involved in direct combat support for a very limited number of days, the Tribunal concluded that in a military sense even when HMAS *Sydney* was in Vung Tau harbour this could not be described as providing direct combat support.

81. As mentioned earlier, the Tribunal noted the US Department of Defense definition of 'direct support', for the purposes of eligibility for medals, as:

services being supplied to the combat forces in the area of operations by ground units, ships, and aircraft provided it involves actually entering the designated area. That includes ships and aircraft providing fire, patrol, guard, reconnaissance, or other military support.<sup>58</sup>

Under this definition, 'direct support' involved the provision of 'services' and this could include logistic services. But this US definition seems to be concerned more with direct combat support in that it specifically refers to fire, patrol, guard and reconnaissance and does not mention logistic support. The Tribunal therefore

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<sup>57</sup> *Repatriation Commission v. Thomas James Hawkins* [1993] FCA 479.

<sup>58</sup> Extracts from US Department of Defense *Manual of Military Decorations and Awards*, attached to letter, Col Alan C Brendsel, Director, Officer and Enlisted Personnel management, US Department of Defense, to Mr Allan Lees, 11 October 1996, Mr Michael Prowse Submission 34.

concluded that *Sydney*, and by extension *Jeparit* and *Boonaroo*, were not providing direct combat support while they were in the area of operations (including in Vung Tau harbour).

82. **Equity.** Submitters argued that although the RVCN medal was awarded in error to the members serving on the destroyers, those members received an unfair advantage over those who served in *Sydney*, and this inequity should be removed. The error made by the RAN in calculating time served in the Vietnam area of operations by the Australian destroyers with the US 7th Fleet originated in the mistaken application of the so called 'port to port' dates, which was legitimate in calculating eligible service for the purposes of entitlement to repatriation benefits under the *Repatriation (Special Overseas Service) Act 1962* and its successor the *Veterans' Entitlements Act 1986*. As explained earlier, the period of six months service for the RVCN should have been determined by counting the period of service to commence on the first day in the theatre of operations and to cease on the last day in the theatre. If port to port were applied to eligibility of members of the ship's company of *Sydney* then any member who completed ten or more (and in some cases nine) trips to Vietnam would be eligible for the RVCN.

83. With regard to equity, the Tribunal concluded that to waive the requirements for members of *Sydney* to serve for six months in the operational area would produce a cascading series of inequalities. For example, if a sailor in *Sydney* who made, say, ten visits to Vietnam each of one day's duration were to receive the RVCN, a soldier who served in intense combat for a period 175 days before returning to Australia at the end of his National Service obligation and did not receive the RVCN could well feel aggrieved. Further, while it might now be recognised that sailors who served on destroyers with the US 7th Fleet for between five and six months might have been incorrectly awarded the RVCN, there would be no sailors from *Sydney* who actually served in the operational area for that period of time. The Tribunal concluded that it should not change the criteria for the RVCN for members of *Sydney* on the grounds of equity with respect to sailors who served on destroyers with the US 7th Fleet.

### **Australian Army Small Ships**

84. During the Vietnam War ships from the Australian Army's 32nd Small Ships Squadron made 21 visits to Vietnam carrying and moving supplies and vehicles. The Army small ships consisted of the Landing Ships Medium (LSM) *Clive Steele*, *Harry Chauvel*, *Vernon Sturdee*, *Brudenell White* and *John Monash*. Visits lasted from about two weeks though to five months. On at least one occasion *Clive Steele* was struck by enemy rocket fire. Army personnel posted to the ships were awarded the Vietnam Medal after service in the operational area. They could have been awarded the RVCN if they served for six months in the operational area. For instance, *Clive Steele* served in the operational area from 26 June 1966 to 23 November 1966, from 3 December 1966 to 9 January 1967, and from 17 January 1967 to 16 March 1967 – a total period of 245 days.<sup>59</sup>

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<sup>59</sup> Ashley Ekins with Ian McNeill, *Fighting to the Finish*, Allen & Unwin, Sydney, 2012, p. 779.

## RAAF Service at Ubon, Thailand

85. The Tribunal received submissions that RAAF personnel who served at Ubon in Thailand between 1965 and 1968 for periods in total of six months or more should receive the RVCMM.

86. **Historical background to RAAF service at Ubon.** Ubon is a Royal Thai Air Force (RTAF) base in South Eastern Thailand. In 1962, as part of Australia's SEATO<sup>60</sup> commitment, RAAF No. 79 Squadron comprising eight Sabre jets, together with associated support staff, was posted to the base.<sup>61</sup> The purpose of the posting was to provide support for Thailand against a possible communist invasion from Laos. The Rules of Engagement (ROE) for No. 79 Squadron allowed the use of force against aircraft attacking Thailand with weapons without warning. The Squadron's area of activity was limited to the Thai borders.

87. By 1965 it was apparent that the threat to Thailand had passed and it was proposed by the RAAF that the Squadron return to Australia. However, by this time the USAF 8th Tactical Fighter Wing had commenced using Ubon, initially in support of Thailand but later as a base for air attacks on North Vietnam. Following high-level negotiations it was agreed that No. 79 Squadron would remain at Ubon with a view to its providing a bilateral joint US/Asian military presence to confront the spread of communism in South East Asia.

88. An integrated air defence system for Thailand was developed involving the USAF, the RTAF and the RAAF with fighter planes on air defence alert. This system was part of the USAF's Mainland South East Asia Air Defence Network which was in turn part of the Pacific Air Defence Network operated by US Pacific Command.

89. From March 1965, the USAF increased its bombing of North Vietnamese targets under Operation Rolling Thunder. Because Ubon was one of the bases used for this operation, it was perceived that Ubon had become a significant target for retaliatory raids.

90. On 25 June 1965, with the consent of the Australian Government, No. 79 Squadron commenced the highest sustainable armed air defence alert of Alert State Five. This alert level applied daily from dawn to dusk seven days per week; two of the Squadron's eight Sabres were continuously fully armed and ready for take-off on five minutes' notice. New ROE permitted use of force against aircraft attacking

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<sup>60</sup> SEATO was the Southeast Asia Treaty Organisation, a multi-national collective defence arrangement established between 1954 and 1977. Member states included Australia, New Zealand, Thailand, France, (East) Pakistan, The Philippines, ROC (Taiwan), USA and the UK. Notably, Singapore and Malaysia were not members.

<sup>61</sup> The following historical account is drawn from the Defence Honours and Awards Appeals Tribunal *Inquiry into Unresolved recognition issues for Royal Australian Air Force Personnel who served at Ubon between 1965 and 1968*. The report was presented to Government on 24 February 2011 and was formally accepted by Government on 19 June 2012

forces in Thailand and before the attackers used their weapons. However, the restriction on flying only within Thailand airspace was maintained.

91. At about the same time a flight of Airfield Defence Guards (ADG) was sent to Ubon to protect the base from ground attacks. These guards patrolled the base on a 24 hours, seven days per week basis. They also undertook patrols outside the base perimeter which US forces were not permitted to do.

92. High-level Government discussions occurred from time to time on the broadening of No. 79 Squadron's activities. These were not proceeded with, largely because of the perceived sensitivities of the Thai and Malaysian Governments to being seen to support the USAF's involvement in the Vietnam War and as such activities were outside the SEATO treaty obligations.

93. No action was taken by the USAF to protect Ubon with aircraft while No. 79 Squadron was at the base. Rather the base was used as the take-off point for Phantom fighter bomber aircraft on a 24 hours seven days per week basis. Planes took off in groups of four every 15 minutes throughout daylight hours and in groups of two at that interval during the night.

94. No. 79 Squadron withdrew from Ubon on 26 July 1968. Before doing so, a request was made to Commander US 7th Air Force for approval to release the Squadron from its alert status. This was duly given.

95. **Previous consideration of claims for awards.** Claims for recognition for service in Ubon have been considered on a number of occasions. The following is an outline of those reviews and their outcomes.

96. CIDA recommended in 1994 the award of the Australian Service Medal (ASM) 1945-75 with Clasp 'UBON' for all who served at the Ubon airbase for a period of 30 days or more. This recommendation was accepted by the government, although the Clasp was amended to 'THAILAND'.

97. The *Review of Service Entitlement Anomalies in Respect of South-East Asian Service 1955-75, 2000*, (Mohr Review) considered that service at Ubon between 25 June 1965 and 31 August 1968 was properly to be regarded as 'warlike'. It accordingly recommended that medallic awards and eligibility for repatriation benefits should recognise this. These recommendations were based largely on the change in the ROE applicable to No. 79 Squadron by the removal of the requirement that engagement only be permitted against aircraft 'attacking with weapons'. The recommendations were accepted by the Government which resulted in the upgrade of the ASM 1945-75 with Clasp 'THAILAND' awarded following the CIDA Report to an Australian Active Service Medal (AASM) 1945-75 with Clasp 'THAILAND' for service during the period specified.

98. The *Report of the Review of Veterans' Entitlements*, 2003, (Clarke Review) recommended against extending eligibility for repatriation benefits to persons who served at Ubon in the period prior to 25 June 1965. Such service could not be classified as 'warlike'. The Government accepted this recommendation.

99. The *Report by the Independent Review Panel on Vietnam Campaign Recognition for RAAF Service at Ubon, Thailand 25 June 1965 to 31 August 1968, 2004*, (Riding Report) recommended that the Vietnam Medal be awarded to the personnel who served at Ubon during the period referred to. The Government did not accept this recommendation.

100. The Ministerial direction to the Panel required it to consider 'whether additional information presented by the RAAF Ubon Recognition Group provided sufficient evidence for amending the regulations governing the award of the VLSM to cover Ubon service during the period 25 June 1965 to 31 August 1968'.<sup>62</sup> The Panel recommended that the Vietnam Medal be awarded. This was technically outside the Panel's Ministerial direction which had directed it to the VLSM only. This was alluded to in the Minister's statement rejecting the Panel's recommendation.

101. The *Review of Service Recognition for RAAF Ubon (1965-68)*, 2008, (Abigail Report) recommended that no action be taken to offer further recognition, including by way of the VLSM, for service of RAAF personnel stationed at Ubon. The Government accepted this recommendation.

102. Primarily because of the conflicting outcomes of the Riding Report and the Abigail Report, the Government referred this matter to the old Tribunal which conducted an Inquiry in 2010.<sup>63</sup>

103. The old Tribunal considered that the conflict between the reports turned on the difference between adhering closely to the formal legal status of No. 79 Squadron at Ubon (the approach taken by the Abigail Review panel), and endeavouring to go behind that formal status in order to determine what No. 79 Squadron's tasks

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<sup>62</sup> Air Marshal Riding advised the Tribunal that he was not given formal TORs, but merely a letter from the Minister to undertake the review.

<sup>63</sup> On 16 July 2010, when the Parliamentary Secretary gave the direction to inquire into and report on the *Unresolved recognition issues for Royal Australian Air Force (RAAF) personnel who served at Ubon (Thailand) between 1965 and 1968*, the Defence Honours and Awards Tribunal operated administratively. On 5 January 2011, on the commencement of the provisions in Schedule 1 of the *Defence Legislation Amendment Act 2010* (the Defence Amendment Act), the Defence Honours and Awards Tribunal (the old Tribunal) became the Defence Honours and Awards Appeals Tribunal (the new Tribunal, or the Tribunal). Part 1 of Schedule 1 of the Defence Amendment Act inserted a new Part VIIIIC into the *Defence Act 1903* (the Defence Act), which contained the provisions for the establishment of the new Tribunal, its members and its powers and functions. The transitional provisions in Part 2 of Schedule 1 of the Defence Amendment Act provides that any inquiry commenced by the old Tribunal is to be completed by the new Tribunal in accordance with the provisions in Part VIIIIC of the Defence Act.

actually were at Ubon (the approach taken by the Riding Review panel). In 2011 the Tribunal made the following recommendations:

**Recommendation 1** RAAF personnel who served at Ubon air base in Thailand from 25 June 1965 until 31 August 1968 be awarded the Vietnam Logistic and Support Medal.

**Recommendation 2** The Vietnam Logistic and Support Medal Regulations be amended to give effect to this recommendation.

The Government accepted these recommendations and the Regulations were duly amended.<sup>64</sup>

104. **Arguments for the award of the RVCM.** Submissions to the Tribunal argued that members of the RAAF who served at Ubon for periods of six months or more should be eligible for the RVCM for several reasons. The arguments are summarised below:

105. **VLSM.** It was argued that the award of the VLSM to members who served at Ubon recognises that they served in the Vietnam War. The original area of operations was an artificial construction which does not take into account the nature of air operations. It was argued that if it was possible to change the conditions for the award of the VLSM for members who served at Ubon it should also be possible to change the conditions of the award of the RVCM. The Tribunal noted that the VLSM is a campaign medal awarded by the Australian Government to recognise service of Australian personnel who were in support roles in the Vietnam War but did not qualify for the Vietnam Medal. Because the VLSM is an Australian award the Australian Government can determine the eligibility criteria and can amend them as it sees fit. By contrast the RVCM is a foreign medal with eligibility criteria laid down by the Government of the Republic of Vietnam. The Tribunal concluded that this argument based on changes to the VLSM eligibility criteria does not constitute grounds for change to the criteria for the RVCM.

106. **Direct Combat Support.** Submitters argued that the ground crews maintained the RAAF Sabre fighters operating out of Ubon. In turn the Sabre fighters supported the Vietnam War because in defending Thailand they allowed the USAF aircraft squadrons based at Ubon to use their scarce resources for the bombing of North Vietnam and Laos. Hence, it was argued, the RAAF ground crews were providing direct combat support to the RVNAF. The Tribunal took particular note of the advice from the Australian Embassy in Saigon, repeated in the memorandum from the Secretary of Defence in September 1966, that the United States did not interpret the amendment to Article 3 as providing eligibility for the RVCM for

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<sup>64</sup> The Tribunal's Report of the *Inquiry into Unresolved recognition issues of Royal Australian Air Force personnel who served at Ubon between 1965 and 1968* dated 18 February 2011, was formally accepted by Government on 19 June 2012. The Vietnam Logistic and Support Medal Regulations were amended on 18 January 2013.

ground support staff in Thailand and Guam. Further, the Tribunal noted that for members of the United States forces to receive the RVCN they needed to have been awarded either the Vietnam Service Medal (VSM) or the Armed Forces Expeditionary Medal (AFEM). These latter medals required at least one day's service or one aerial sortie into the Vietnam operational area. The Tribunal concluded that RAAF members who served at Ubon were not eligible because they were not providing direct combat support to the RVNAF.

107. **Equity.** Submitters argued that USAF ground crew who served at Ubon have received the RVCN. The RAAF ground crew who served at Ubon endured exactly the same conditions as the USAF ground crew, and hence as a matter of equity the RAAF ground crew should receive the RVCN if they served at Ubon for at least six months. The Tribunal did not receive any evidence that the USAF ground crew had indeed received the RVCN without having also become eligible for the VSM or AFEM.<sup>65</sup> However, even if US personnel had received the RVCN without having met the requirement to qualify for the VSM or AFEM, it is up to each country to determine how it interprets the conditions laid down by the Government of the Republic of Vietnam. The Tribunal concluded that this equity argument does not provide grounds for the Australian Government to change the criteria for the award of the RVCN.

### **Civilian Surgical and Medical Teams**

108. Civilian doctors and nurses worked in Vietnam under arrangements made by the Department of External Affairs (now the Department of Foreign Affairs and Trade) between 1964 and 1972. In 1998 members of these teams were awarded the AASM 1945-75 with Clasp 'VIETNAM' and the VLMS as 'designated civilians' on the basis that they were employed in Vietnam and were integrated in the ADF for extended periods of time, performing like functions with their ADF counterparts'.<sup>66</sup> The Tribunal received submissions that members of these teams should receive the RVCN because:

- They have received the AASM 1945-75 with Clasp 'VIETNAM' and the VLMS.
- They assisted the Australian Army and at times the RVNAF and should be considered as military personnel.

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<sup>65</sup> At a public hearing in Melbourne on 6 September 2013 Mr Michael Morrissey provided evidence that a particular member of the USAF ground crew at Ubon received the RVCN, but the individual's records showed that he also received the VSM. To receive the VSM, US regulations required that he 'actually participated as a crew member in one or more aerial flights directly supporting military operations'.

<sup>66</sup> Major General Robert Mohr, *The Review of Service Entitlement Anomalies in Respect of South-East Asian Service, 1955-1975*, Commonwealth of Australia, Defence Publishing Service, 2000, pp. 7-1, 7-2, 7-7.



- The criteria should be reduced to three months in this instance because specialist doctors could not afford the time to spend six months in Vietnam and they did important humanitarian work.<sup>67</sup>

109. In his evidence, Mr Tony Sillcock advised that the civilian doctors and nurses were declared 'designated civilians' for the purposes of determining eligibility for the AASM 1945-75 with Clasp 'VIETNAM'. The eligibility criteria for the RVCN made no mention of 'designated civilians'; it was to be awarded specifically to 'foreign military personnel'. The Tribunal noted that the civilian teams sometimes worked with Australian military personnel and supported the Australian military effort, but concluded that the civilian doctors and nurses were not military personnel and hence were not eligible for the RVCN. In that case the question of whether they served six months was irrelevant. In any case, the Tribunal was mindful of its view, expressed earlier, that it should not recommend changes to the requirement of six months unless there was a very compelling case to do so. To change the criteria to allow civilian personnel who had served less than six months (even if they were considered to be eligible on other grounds) because of the humanitarian nature of their work would be extremely divisive when considered against many other military personnel who also were ineligible because they did not serve for six months in Vietnam.

### **National Servicemen**

110. National Servicemen serving with Australian Army units in Vietnam returned to Australia when their two-year period of service ended. If their service in Vietnam was less than six months they were not eligible for the RVCN. The Tribunal received submissions arguing that the period of time to be served in Vietnam to be eligible for the RVCN be reduced to less than six months, and in some submissions, that the period of service should be only one day. The following arguments were made:

- While in Vietnam, National Servicemen faced the same dangers as their Regular Army comrades and it is inequitable and embarrassing that they be denied the RVCN.
- They were required to return home at the direction of the Army; it was not their choice to return home after serving less than six months in Vietnam.
- Some National Servicemen were offered the opportunity to extend their service in Vietnam, but that opportunity was not offered to other groups of National Servicemen, and perhaps special consideration should be given to those who were not given this opportunity.<sup>68</sup>

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<sup>67</sup> Dr D. Angel, Submission 23.

<sup>68</sup> A National Serviceman could volunteer for an additional period of service at any time. (Sue Langford, 'Appendix: The national service scheme, 1964-72', in Peter Edwards, *A Nation at War*, Allen & Unwin, Sydney, 1997, p. 363.) From evidence from several submitters, not all National Servicemen serving in Vietnam were given this opportunity. For example, when

- Some former National Servicemen are now suffering from Post-Traumatic Stress Disorder (PTSD) and they are worthy of receiving the RVCM.

111. The Tribunal was mindful of its conclusion that the conditions set down by the Government of the Republic of Vietnam should not be changed unless there was a very compelling reason to do so. In a public hearing Mr Richard Barry argued passionately for the case of a soldier who fought in the battle of Long Tan, returned to Australia after 104 days service in Vietnam, and subsequently suffered from PTSD. 'Is there anyone out there shallow minded enough to face this war hero and tell him that he does not deserve the RVCM? Surely not.'<sup>69</sup> The Tribunal observed that the RVCM is awarded for specific criteria that are not related to the level or intensity of combat incurred by the recipient. Under the conditions specified by the South Vietnam Government, a soldier who served six months in a clerical role in a base area in Vietnam was eligible for the RVCM. Another soldier who served for, say, five days short of six months in an infantry platoon in Vietnam and was involved in numerous close-quarter battles was not eligible. Whether the soldier in the second circumstance subsequently suffered from PTSD is not relevant to whether he should now be considered eligible for the RVCM. This is not to trivialise the service of those who served for less than six months and especially not to trivialise the suffering and service of those who have suffered from PTSD.

112. The Tribunal recognised that many National Servicemen who did not receive the RVCM because they returned home early, served faithfully and with distinction on operations where they experienced intense levels of combat. Nevertheless, to reduce the eligibility period below six months, and particularly to 30 days as recommended by some, and even to one day, as recommended by others, would be contrary not only to the criteria laid down by the Republic of Vietnam, but also to the spirit in which the criteria were established. The Tribunal concluded that the period of service for eligibility of the RVCM should not be reduced below six months for those who returned to Australia to discharge their National Service obligation.

### Other Categories

113. In the course of its research the Tribunal found other cases in which military personnel might have had a case to be considered eligible for the RVCM.

114. **RAAF AME Nurses.** One such case involved the RAAF's Aeromedical Evacuation (AME) nurses. Members of the Royal Australian Air Force Nursing Service (RAAFNS) provided care for wounded Australian and New Zealand service personnel being transported by RAAF C130 aircraft from Vietnam to the RAAF Base at Butterworth, Malaysia. The RAAFNS also flew out of Clark Air Force Base in the Philippines with the USAF 902 Medical Evacuation Squadron. Between July 1966

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their term of service ended at about the same time as their unit returned to Australia they would have returned to Australia with their unit.

<sup>69</sup> Mr Richard Barry at the public hearing in Canberra on 11 September 2013.

and April 1971 a total of 32 RAAF nurses cared for wounded US personnel on flights from Vietnam to the Philippines. The RAAF nurses covered the length and breadth of Vietnam, picking up and caring for casualties from locations that included Saigon, Da Nang, Cam Ran Bay and Qui Nhon.<sup>70</sup>

115. The Tribunal received no submissions about RAAF nurses involved in aeromedical evacuation (AME). Considering this case against its understanding of the term direct combat support, the Tribunal concluded that in evacuating casualties from Vietnam the nurses were not eligible for the RVCMM as they were not involved in direct combat support.

## **Conclusions and Recommendations**

### **Summary of Conclusions**

116. The Tribunal came to a number of conclusions:
- The RVCMM is a foreign medal and is not an Australian campaign medal.
  - The RVCMM was accepted by the Australian Government because of the special circumstances of the Vietnam War. One key factor in the Government's decision was that the RVCMM was sufficiently different from the Australian Vietnam Medal in that it required six months' service rather than the shorter period required for eligibility for the Vietnam Medal.
  - To maintain the integrity of the Australian honours and awards system, to keep faith with the intentions of the Government of the Republic of Vietnam, and noting that the RVCMM was accepted specifically because it had an eligibility requirement of six months, the Tribunal concluded that the criteria for the medal should not be changed. In any case, under its terms of reference, the Tribunal was not directed to consider the actual criteria, but only the application of the criteria.
  - The Government in 1966 did not reject the amendment to Article 3 of the criteria, but it did not at the time believe that any Australian units met that requirement.
  - In considering cases where the amendment to Article 3 might have applied, the Tribunal concluded that to provide direct combat support it was necessary to provide combat support to combat units on the battlefield. The Tribunal concluded that this did not occur when HMAS *Sydney* was in Vung Tau harbour, or in the case of the RAAF ground personnel at Ubon.
  - The receipt of the VLSM does not indicate that the recipient met the eligibility criteria for the RVCMM.
  - The original criteria concerning wounded-in-action should remain unchanged, but Defence should be consistent in its assessment of psychological casualties caused by enemy action.

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<sup>70</sup> Albert Palazzo, *Australian Military Operations in Vietnam: Australian Army Campaign Series – 3*, Army History Unit, Trojan Press, Thomastown, Vic. 2009. pp 169-172.

## Recommendations

117. The Tribunal makes the following recommendations:

### **Recommendation 1**

No action be taken by the Australian Government to change the criteria for the award of the RVCМ.

### **Recommendation 2**

The Department of Defence amend its interpretation of 'wounded-in-action' to include psychological injury under the following conditions:

- the injury would need to be incurred as a result of enemy action;
- the injury would need to be noted on the member's medical records at the time; and
- the casualty would need to be evacuated from the operational theatre as a result of this particular injury.

### **Recommendation 3**

The Department of Defence continue to assess applications for the RVCМ using the present criteria with the recommended change to the interpretation of wounded-in-action, see Recommendation 2.

## APPENDICES

### APPENDIX 1 - INDIVIDUALS AND ORGANISATIONS WHO PROVIDED SUBMISSIONS TO THE INQUIRY

In response to advertisements placed in the media giving notice of the Inquiry and calling for submissions, the Tribunal received 76 submissions from the following individuals and organisations. Some individuals and organisations provided more than one submission.

#### Name and organisation (as applicable)

Adams, Mr Paul

Aitchison, Mr Brian C

Alexander, Mr Tony, President Veterans' Support & Advocacy Service

Angell, Dr Dorothy, OAM, President, Australian Civilian Medical/Surgical Teams

Archer, Mr William L.

Atkinson, Mr Michael, on behalf of his father Raymond William Atkinson

Ball, Mr M. J., National Vice, President Vietnam Veterans' Association of Australia Inc

Barnes, Mr Malcolm, Founder, RAAF Ubon Recognition Group

Barnes, Mr Alan R.

Barry, Mr Richard J., Organiser The 10th Intake, supported also by letters from the following:

Barlow, Mr Fred, Honorary Secretary, The National Servicemen's Association Australia NT Inc

Butler, Major General D.M. AO, DSO (Retd)

Cosgrove, General Peter AC, MC (Retd)

Coulton, Mr Mark MP, NSW Member for Parkes

Dominello, the Hon Victor, NSW Minister for Citizenship and Communities and Minister for Aboriginal Affairs

Fairbairn, Mr Stuart, Honorary Secretary, The National Servicemen's Association Australia, WA Branch Inc

Feeney, Senator the Hon David, Parliamentary Secretary for Defence <sup>71</sup>

Francis, the Hon Joe MLA, WA Minister for Emergency Services; Corrective Services; and Veterans

Heffernan, Senator the Hon Bill, Senator for New South Wales

Humphries, Mr Kevin MP, NSW Member for Barwon

Jennings, Major Earle AM, RFD, Ed (Retd), National President, The National Servicemen's Association of Australia Inc

Neervoort, Mr John

Newman, the Hon Campbell MP, Premier of Queensland

Newman, Captain Barrie M., RFD, ED (Retd) with Laurie, Major Geoffrey S.,

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<sup>71</sup> Although the letter from Senator the Hon David Feeney was included with Mr Richard Barry's Submission 24, Senator Feeney did not specifically support Mr Barry's submission. Senator Feeney directed the Tribunal to conduct this Inquiry.

RFD (Retd)  
Rogers, Mr Mike  
Ronaldson, Senator the Hon Michael, Senator for Victoria  
Sabben, Mr Dave MG  
Williams, Senator John, Senator for New South Wales  
Windsor, Mr Tony, MP, Federal Member for New England  
Wright, Senator Penny, Senator for South Australia  
Baulch, Mr Robert C., OAM  
Beattie, Mr William  
Benton, Mr Ross  
Berridge, Mr Maxwell J.  
Billington, Mr Brian E., PSM  
Blackley, Mr Colin, spokesperson on behalf of himself, Mr Peter J. Fryers and  
Mr Vincent Pezzano  
Blake, Mr Peter  
Boneham, Mr Leigh  
Calway, Mr Brian  
Carroll, Dr John  
Coble, Mr Michael E.  
Collins, Mr Peter T.  
Connell, Mr John  
Cowardrey, Warrant Officer David  
Department of Defence  
Department of Prime Minister and Cabinet  
de Pierres, Mr Paul R. G.  
Donnelly, Mr Ronald B.  
Doolan, Rear Admiral Ken AO, RAN (Retd), National President, the Returned and  
Services League of Australia  
Dwyer, Mr David, Secretary, HMAS Sydney & Vietnam and Logistic Support  
Veterans' Association Vic  
Everitt, Mr Gary R., Member, Vietnam Veterans' Association of Australia, NSW  
Branch  
Gee, Mr Robin F., President, No 9 Squadron RAAF Assoc  
Gratwick, Mr A.B. (Barry)  
Hall, Warrant Officer Peter (Retd),  
Hartney, Mr Mick  
Hawkins, Mr Thomas J. (Jim)  
Hunter, Mr John  
Ignatiew, Mr Paul  
Jacobsen, Group Captain John (Retd)  
Jarvis, Mr Michael A.  
Johnston, Mr Garry G.  
Larcombe, Mr Rob  
Lawrence, Mr Trevor, President, Vietnam Veterans' Association of Australia,  
NSW Branch Inc  
Leahy, Mr Timothy

Lees, Mr Allan J.  
Lister-Best, Mr John  
Long, Mr Robert  
Martin, Dr John  
McCombe, Mr Timothy, OAM, President, Vietnam Veterans' Federation  
McDonald, Mr Donald J.  
McGurgan, Mr Brian P.  
McKenzie, Mr Colin  
McLeod-Dryden, Mr Frederick, Navy Vietnam Sub-Section, Naval Association of Australia  
Moran, Mr Kerry  
Morley, Mr Allen, President, 131 Locators Association Inc  
Morrissett, Mr Michael T.  
Parsons, Warrant Officer II George (Retd)  
Pell, George, Archbishop of Sydney  
Pender, Mr Brian  
Potts, Mr Denys  
Prowse, Mr Michael, Member, Vietnam and Logistic Support Veterans' Association  
(Qld) Inc  
Ratcliffe, Mr Dennis  
Reilly, Mr John R.  
Richards, Mr Joseph D.  
Sherlock, Mr Michael P., BM  
Smith, Mr Michael F.  
Smith, Lieutenant Colonel Terence J. (Retd)  
Snowden, Mr John  
Stewart, Mr George  
Taplin, Mrs Helen M.  
Tonich, Mr Andie P.  
Wain, Major James (Retd)  
Wells, Mr John, OAM  
Zappia, Mr Tony, MP, Federal Member for Makin

## **APPENDIX 2 - TRIBUNAL HEARING DATES AND WITNESSES**

### **TRIBUNAL MEMBERS**

Presiding Member: Mr John Jones, AM

Members: Mr Adam Bodzioch  
Professor David Horner, AM

### **HEARING DAYS**

**26 July 2013 - Canberra**

#### **Submitter**

- Mr Michael Prowse

**5 September 2013 - Adelaide, South Australia**

#### **Submitters**

- Mr Allan Lees
- Mr Donald McDonald
- Mr Michael Jarvis
- Mrs Helen Taplin
- Mr Warwick Archer

**6 September 2013 - Melbourne, Victoria**

#### **Submitters**

- Mr Frederick McLeod-Dryden
- Dr John Carroll and Dr Linda Carroll
- Mr Michael Morrissey
- Mr Denys Potts
- Mr Brian McGurgan
- Dr Dorothy Angell OAM and Dr David Brownbill AM

**10 September 2013 - Canberra**

#### **Submitter**

- Dr John Martin (via telephone conference)

**11 September 2013 - Canberra**

#### **Submitters**

- Department of Defence, represented by Mr Tony Sillcock, Directorate of Honours and Awards
- Group Captain John Jacobsen (Retd)
- Rear Admiral Ken Doolan AO, RAN (Retd), National President, the Returned and Services League of Australia
- Mr Ken Foster OAM, Vietnam Veterans Association of Australia
- Mr Bruce Collins, Vietnam Veterans Federation of Australia
- Mr Richard Barry



## **SITTING DAYS**

The Tribunal (as constituted) sat on the following days:

- 25 June 2013
- 10 September 2013
- 15 October 2013
- 16 October 2013
- 4 December 2013
- 13 February 2014
- 12 March 2014

### **APPENDIX 3 - LIST OF PERSONS FROM WHOM INFORMATION WAS SOUGHT**

- General David Hurley, AC, DSC, Chief of the Defence Force, Department of Defence.
- Dr Ian Watt, Secretary, Department of the Prime Minister and Cabinet.
- Rear Admiral Ken Doolan RAN, AO (Retd), National President, Returned and Services League of Australia.
- Mr Ron Coxon OAM, National President, Vietnam Veterans Association of Australia.
- Mr Tim McCombe OAM, President, Vietnam Veterans Federation of Australia.
- Mr Graham Harris RFD, President, Navy League of Australia.\*
- Mr Russell Pettis, National President, Naval Association of Australia.\*
- Mr Michael Prowse
- Mr Donald McDonald
- Mr Richard Simpson
- Mr Timothy Leahy

\* No response received

## **APPENDIX 4 - ADDITIONAL MATERIAL EXAMINED BY THE TRIBUNAL**

### **AUSTRALIAN COMMONWEALTH GOVERNMENT PUBLICATIONS**

#### **Acts**

*Acts Interpretation Act 1901*

*Defence Act 1903 as amended*

*Defence Legislation Amendment Act 2010 (the Defence Amendment Act)*

*Repatriation (Special Overseas Service) Act 1962*

*Veterans' Entitlement Act 1986*

#### **Commonwealth of Australia Gazettes**

Commonwealth of Australia Gazette, No S 79, 10 March 1993.

#### **Reports**

The Defence Honours and Appeals Awards Tribunal Report of the *Inquiry into Unresolved recognition issues of Royal Australian Air Force personnel who served at Ubon between 1965 and 1968*, dated 18 February 2011.

### **UNPUBLISHED AUSTRALIAN GOVERNMENT RECORDS**

#### **National Archives of Australia**

A1813 38/201/32 B/C 4027065-Vietnam Medal – Policy 1965-66

A1838 696/8/6/6 PART 1-B/C 1559517-Vietnamese campaign medal & gallantry awards 1965-67

A1838 696/8/6/6 PART 2-B/C 1559518-Vietnamese campaign medal & gallantry awards 1967-68

A1838 3014/10/1 PART 20 B/C 548813-South Vietnam-Australian relations-ministerial correspondence 1970

A1838 3014/10/1 PART 21 B/C 548815-South Vietnam-Australian relations-ministerial correspondence 1970-71

A1838 3014/10/1 PART 22 B/C 548817-South Vietnam-Australian relations-ministerial correspondence 1971-73

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A1838 3014/10/1 PART 26 B/C 548826-South Vietnam-Australian relations-ministerial correspondence 1974-75

A1838 3014/10/1 PART 27 B/C 548828-South Vietnam-Australian relations-ministerial correspondence 1973-75

A1838 3014/10/1/1 PART 1 B/C 581783-South Vietnam-Australian relations-ministerial correspondence 1964

A1838 3014/10/1/1 PART 2 B/C 581785-South Vietnam-Australian relations-ministerial correspondence 1964-65

A1838 3014/10/1/1 PART 3 B/C 581787-South Vietnam-Australian relations-ministerial correspondence 1965

A1838 3014/10/1/1 PART 4 B/C 581790-South Vietnam-Australian relations-ministerial correspondence 1965

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A1838 3014/10/1/1 PART 7 B/C 581795-South Vietnam-Australian relations-ministerial correspondence 1966

A1838 3014/10/1/1 PART 8 B/C 581798-South Vietnam-Australian relations-ministerial correspondence 1966

A1838 3014/10/1/1 PART 9 B/C 581800-South Vietnam-Australian relations-ministerial correspondence 1966

A1838 3014/10/1/1 PART 10 B/C 581801-South Vietnam-Australian relations-ministerial correspondence 1966

A1838 3014/10/1/1 PART 11 B/C 581803-South Vietnam-Australian relations-ministerial correspondence 1966-67

A1838 3014/10/1/1 PART 12 B/C 581805-South Vietnam-Australian relations-ministerial correspondence 1967

A1838 3014/10/1/1 PART 13 B/C 581807-South Vietnam-Australian relations-ministerial correspondence 1967

A1838 3014/10/1/1 PART 14 B/C 581809-South Vietnam-Australian relations-ministerial correspondence 1967-68

A1838 3014/10/1/1 PART 15 B/C 581810-South Vietnam-Australian relations-ministerial correspondence 1967-68

A1838 3014/10/1/1 PART 16 B/C 581811-South Vietnam-Australian relations-ministerial correspondence 1968

A1838 3014/10/1/1 PART 21 B/C 581812-South Vietnam-Australian relations-ministerial correspondence 1969

A1838 3014/10/1/1 PART 25 B/C 557592-South Vietnam-Australian relations-ministerial correspondence 1971-72

A1838 3014/10/1/5 PART 1 B/C 575780-South Vietnam-Relations with Australian - general-Parliamentary questions 1965-68

A1838 3014/10/3 PART 1 B/C 548862-South Vietnam - Relations with Australian - Australian information policy 1967-75

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A1838 TS696/1/1/2 B/C 1728515-Cabinet & ministerial papers on SE Asian Defence & additional forces for Vietnam, Sep-Oct 1967

A1838 TS3014/10/1 PART 1 B/C 681416-South Vietnam-Relations with Australia - general 1964-71

A1945 133/3/14 B/C 3349625 Awards to RAAF personnel serving with RAF procedure for approval

A1945 133/3/26 B/C 3350026 Recommendations for H & A for Army personnel serving in Vietnam 1965-67

A1945 133/4/13 B/C 3343791 Proposal by Vietnamese Government to confer an award on Colonel Serong

A2880 5/5/4 B/C 1371864 Honours and Awards - Gallantry Awards (Operational)

A3211 1966/3374 B/C 5105224 Campaign Medal offered by Vietnamese Authorities 1966

A4531 101/9/1 B/C 8159582 Saigon Vietnamese campaign medal 1967

A6913 2 B/C 5111359 Military Board Instructions-Volume of instructions 90 to 149

A7854 5 B/C 4982079 Personal papers of PM Holt-correspondence from PM Vietnam Air Vice Marshal Ky Mar 1966 to 28 Aug 1967

A7976 11 B/C 12295954 PM Holt-Correspondence with Harold Wilson President Johnson concerning Vietnam & SE Asian Defence Jan-July 1966

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AWM 78/329/11/12/13 Report of the Proceedings, *HMAS Sydney*, 1965-1872

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AWM103 R445/1/3/1 B/C 852564 HQ 1st Australian Task Force H & A General-Vietnamese Campaign Medal 1966-68

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AWM121 161/A/4 PART 1 B/C 713479 Defence Chiefs of Staff Committee - South Vietnam

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Mohr, Robert, Major-General, *The Review of Service Entitlement Anomalies in Respect of South-East Asian Service, 1955-1975*, Commonwealth of Australia, Defence Publishing Service, 2000 (Mohr Review)

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### **The Royal Australian Air Force**

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## **United States of America**

US Department of the Navy, SECNAV Instruction 1650.1H

*US Campaign Medals for Vietnam-Vietnam Service Medal and/or Armed Forces Expeditionary Medal (Vietnam).*

Letter from US Department of the Army LTCOL L C Counts, USAF, Chief Recog & Special Programs Div, Directorate, Personnel Program Management to Mr Lees of HMAS Sydney & Vietnam Logistics Support Veteran's Assoc dated 11 July 1993.

Letter from US Department of the Army LTCOL P A Sigle, US Army Chief, Military Awards Branch to Mr Lees of HMAS Sydney & Vietnam Logistics Support Veteran's Assoc dated 26 August 1994.

The National Archives of the United States, Code of Federal Regulations, Title 32, Part 45.5, *Vietnam Service Medal*, 1 January 1967

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