



Australian Government

Defence Honours and Awards Appeals Tribunal

Farthing, Ray, Bell and the Department of Defence re: Perry [2017] DHAAT 006 (6 March 2017)

File Number(s) 2015/028, 2015/031, 2015/034

Re **Commodore David Farthing DSC, RAN (Retd), Captain Robert Ray MBE, RAN (Retd) and Commander Edward Bell, RAN (Retd)**, on behalf of **Sub Lieutenant Andrew Perry, RAN**
Applicants

And **The Royal Australian Navy** on behalf of **the Department of Defence**
Respondent

Tribunal Mr Mark Sullivan, AO (Presiding Member)
Brigadier Mark Bornholt, AM (Retd)
Air Vice-Marshal John Quaipe, AM (Retd)

Hearing Date 6 February 2017

DECISION

On 6 March 2017 the Tribunal decided to recommend to the Minister that:

- a. the decision by the Chief of Navy to refuse to recommend a higher gallantry award for Sub-Lieutenant Andrew Perry for his actions on 18 May 1970 with the Royal Australian Navy Helicopter Flight Vietnam be set aside; and
- b. the Minister recommend to the Governor-General that Sub-Lieutenant Andrew Perry be awarded the Medal for Gallantry for acts of gallantry in action in hazardous circumstances as a Flight Leader at Binh Dai, South Vietnam on 18 May 1970.

CATCHWORDS

DEFENCE HONOUR – *Mention in Despatches* – *Gallantry Decorations* – *Vietnam* – *Royal Australian Navy* – *Navy Helicopter Flight Vietnam*

LEGISLATION

Defence Act 1903 – ss 110V(1), 110VA, and 110VB(1)
Defence Force Regulations 1952 – Reg 93B Sch 3
Commonwealth of Australia Gazette No. S25, Gallantry Decoration Regulations dated 4 February 1991

REASONS FOR DECISION

Introduction

1. On 21 February 2011, the Government requested that the Tribunal inquire into and report on *unresolved recognition for past acts of naval and military gallantry and valour* (the Valour Inquiry). As part of the Terms of Reference for the Inquiry, the Tribunal was directed to receive submissions from the public supporting recognition for those they felt worthy of higher recognition. In June and July 2011 individual submissions were received from Commodore David Farthing, Captain Robert Ray and Commander Edward Bell (the Applicants). Their submissions sought higher recognition for Sub-Lieutenant Andrew Perry (SBLT Perry) who served as a pilot with the Royal Australian Navy Helicopter Flight Vietnam (RANHFV) from December 1969 to October 1970. He was awarded the Mention in Despatches (MID) for his service in Vietnam on 17 December 1970 and received the United States Silver Star for his actions on 18 May 1970, and it is this latter action that is the subject of this review.

2. Commodore Farthing and Captain Ray requested that SBLT Perry receive the Distinguished Flying Cross (DFC) and Commander Bell believes that he should receive the Victoria Cross for Australia (VC) for ‘his night of outstanding bravery’.

3. On 14 March 2013 the Australian Government referred the Applicants’ submissions to the Chief of Navy (CN) through the Chief of the Defence Force for consideration. On 23 September 2014 CN, acting on advice contained in a review conducted by Doctor David Stevens of the Sea Power Centre – Australia (the Stevens’ Review), referred the submissions to the Parliamentary Secretary to the Minister for Defence (the Parliamentary Secretary) recommending that he ‘consider directing the Tribunal to review the nominations for SBLT Perry (RANHFV)’.¹ The Stevens Review indicated that ‘an initial desktop review of naval submissions has been completed and that the conclusion of the review team is that none [including SBLT Perry] contain new or compelling evidence that would warrant a merits review’.²

4. On 5 March 2015 the Parliamentary Secretary asked the Tribunal to conduct a ‘further review of the submissions for SBLT Perry’.³ On 30 June 2015, the Tribunal wrote to the Applicants regarding the Parliamentary Secretary’s advice and asked whether they would like to proceed with a review of recognition and invited them to submit further information.⁴ The Applicants separately advised that they would like the review to proceed.

Tribunal Jurisdiction

5. Pursuant to s110VB(1) of the *Defence Act 1903* (the Defence Act) the Tribunal has jurisdiction to review a reviewable decision if an application is properly made to the Tribunal. The term *reviewable decision* is defined in s110V(1) and includes a decision made by a person within the Department of Defence or the

¹ CN/OUT/2014/1259 dated 23 September 2014

² Decision Brief for CN dated 9 April 2014, Paragraph (ii)

³ Parliamentary Secretary to the Minister for Defence MA14-001989 dated 5 March 2015

⁴ DHAAT OUT/2015/350, 354 and 355 dated 30 June 2015

Minister to refuse to recommend a person for an honour or award in response to an application. Regulation 93B of the *Defence Force Regulations 1952* defines a defence honour as being those awards set out in Part 1 of Schedule 3.⁵ Included in the defence honours set out in Part 1 are the DFC and the VC.

6. The Tribunal was satisfied that the Applicants' submissions to the Valour Inquiry constituted an application as defined in s110V(1)(c) of the Defence Act. The Tribunal also considered that the CN's referral of the matter back to the Tribunal via the Parliamentary Secretary for 'further review' on 23 September 2014 constituted a refusal to recommend SBLT Perry for a higher gallantry award, satisfying the requirements of s110V(1)(a) and (b) of the Defence Act. The Tribunal therefore has jurisdiction to conduct the review and was satisfied that the *reviewable decision* is the decision by the CN in 2014 to refuse to recommend a higher gallantry award for SBLT Perry. The Tribunal is also therefore bound by the eligibility criteria that governed the making of that decision in 2014 as required by s110VB(6) of the Defence Act.

7. In accordance with s110VB(1) of the Defence Act, as the Applicants seek a defence honour, the Tribunal does not have the power to affirm or set aside the decision but may make recommendations regarding the decision to the Minister.

Conduct of the review

8. In accordance with its *Procedural Rules 2011*, on 19 August 2015, the Tribunal wrote to the Secretary of the Department of Defence informing him of the Applicants' submissions and requested a report on the material questions of fact and the reasons for the decision made in relation to the request for a higher level of recognition for SBLT Perry for his service with the RANHFV.⁶ The Tribunal also requested that the Secretary provide copies of documentation relevant to the reviewable decision and that he provide a copy of SBLT Perry's service record.

9. Rather than provide a report or the service record as requested, Navy provided the material relied upon by the CN in making his 2014 decision. The material included the Stevens Review and supporting briefing papers. Less than one page of the Stevens Review related to SBLT Perry and no evidence was produced to support the findings.

10. On 11 November 2015 the Tribunal provided the Navy sourced material to the Applicants for comment.⁷ The Applicants subsequently acknowledged receipt of the material.

11. The Tribunal met on 5 August 2016 and considered the material provided by Navy, the Applicants and the Tribunal's own research. The Tribunal confirmed the scope of the review, the decision under review and jurisdiction, witness lists and drafted questions for the subsequent hearing.

⁵ Under Section 85 of the *Defence Regulation 2016*, the *Defence Force Regulations 1952* continue to apply to an application made under those regulations before their repeal on 1 October 2016.

⁶ DHAAT/OUT/2015/487 dated 19 August 2015

⁷ DHAAT/OUT/2015/681, 677 and 676 dated 11 November 2015

12. The Tribunal noted that in accordance with its *Procedural Rules 2011* the hearing into this matter would need to be conducted in public and accordingly, the Applicants were invited to provide evidence at a hearing held in Canberra on 6 February 2017. Navy was represented at the hearing by Commodore Jonathan Sadlier, AM supported by Mr John Perryman and Commander Paul Fothergill. The Directorate of Honours and Awards in the Department of Defence was not represented. The subject of the review, SBLT Perry also attended the hearing but did not provide evidence.

The History of the RANHFV

13. In July 1967 the Australian Government announced that a detachment of Royal Australian Navy Fleet Air Arm personnel would join a United States Army aviation company to provide airborne support for allied forces operating in South Vietnam. This new flight, known as RANHFV was integrated with the US Army 135th Assault Helicopter Company (AHC) flying helicopters in both utility and gunship configurations.⁸

14. Following an eight-week period of training the first contingent arrived in Vietnam on 16 October 1967 and was quickly integrated with the 330 personnel of the 135th AHC. As a result of the unique relationship between the Navy and the US Army, the unit was officially designated 'EMU', for Experimental Military Unit.

15. Assault helicopter companies comprised several platoons of Iroquois UH-1D troop carrier aircraft supported by a platoon of UH-1C gunships. These gunships carried forward firing mini-guns and rocket pods fixed to the aircraft skids. Each aircraft also carried M60 machine guns fired by hand from the side doors. AHCs generally flew three types of mission: troop lift, combat assault and general support. During troop insertions and extractions, the gunships generally provided direct aerial fire support to the troop carriers before and as they landed. A helicopter crew consisted of an aircraft pilot who commanded the aircraft, a co-pilot, a crew chief or load-master (who was also a door-gunner) and a second door-gunner.

16. During its tenure of almost four years, over 200 Fleet Air Arm personnel rotated through the RANHFV in four contingents of approximately one year's duration. Five Navy personnel died whilst serving with the RANHFV and 22 were wounded in action. Forty-two individuals were decorated for their service with 25 of these sailors receiving the MID.⁹ The RANHFV was the most decorated RAN unit during the Vietnam War receiving 42 of the 69 awards.

Sub Lieutenant Perry's Service and Vietnam Deployment

17. SBLT Andrew Perry was born on 3 March 1949. He joined the Royal Australian Navy as an Aircrew Officer on 26 February 1967. After completing flying training with the Navy and the Royal Australian Air Force he was posted to the RANHFV and deployed to Vietnam in December 1969 to join Contingent Three.

⁸ Defence Honours and Awards Appeals Tribunal Report of the *Inquiry into unresolved recognition for past acts of naval and military gallantry and valour*, p.18-5 to 18-8

⁹ Ibid.p.18-26

18. SBLT Perry was awarded the US Silver Star for gallantry in action on 18 May 1970.¹⁰ Approval to accept and wear the award was given on 9 August 1995.¹¹ The citation for the award states:

Sub Lieutenant Perry distinguished himself by gallantry in action on 18 May 1970 while serving as a pilot on a UH-1H Helicopter, 135th Aviation Company, Royal Australian Navy. On that date Sub Lieutenant Perry monitored a radio call stating that his unit was engaged in night combat assaults against a strong hostile force and that several aircraft had been knocked out of action. Without thought to his own safety or the arduous hours of flying he had already accomplished that day, he contacted the Command and Control aircraft and offered his assistance. Sub Lieutenant Perry joined the flight as lead aircraft and carried one lift of Vietnamese troops into the landing zone. On approach, the flight was raked by heavy fire, causing damage to several aircraft. Sub Lieutenant Perry's aircraft was struck repeatedly, knocking out both chin bubbles, several important instruments, the side window and his pedal controls. The second aircraft in the flight was knocked out of action and could not continue to fly. Grasping the situation, Sub Lieutenant Perry announced that he would continue as lead. Despite the damage to his aircraft and the fact that he was bleeding from the face and had lost feeling in his right foot from the impact of enemy bullets, he led the flight back to the pickup zone and then into the same landing zone two more times. Each time, heavy enemy fire was received, but by his courage, flying ability and cool commands of leadership, the flight of aircraft never faltered and the insertions were completed. Sub Lieutenant Perry's conspicuous gallantry in action was in keeping with the highest traditions of the Royal Australian Navy and reflects great credit upon himself and the military service.

19. SBLT Perry was also awarded the Mention in Despatches on 17 December 1970.¹² The citation for the award states:

... Sub Lieutenant Perry showed exceptional enthusiasm as a lift helicopter pilot in this unit. Although he was required to fly well in excess of one hundred hours every month, he was always the first to volunteer for any extra missions, with the result that his monthly total of hours flown was always the highest in the flight.

On 14 April 1970, Sub Lieutenant Perry was instrumental in saving the life of an American soldier critically injured in a vehicle accident. Although the landing area was extremely marginal for a UH-1H helicopter, Sub Lieutenant Perry demonstrated skill and good judgement in landing his helicopter alongside the wrecked vehicle, thereby ensuring that the injured man reached the hospital in the shortest possible time.

¹⁰ TC 439 'Award of the Silver Star – Perry, Andrew C. 02877 SBLT RAN

¹¹ Government House Min No 34396 dated 9 August 1995

¹² *Commonwealth of Australia Gazette* dated 17 December 1970, p8299, Posn 8

*Sub Lieutenant Perry was frequently required to lead a flight of troop carrying helicopters into defended landing zones. He has remained calm and clear thinking under fire at all times.*¹³

20. SBLT Perry completed his deployment and returned to Australia on 8 October 1970. He remained in the Navy until 15 October 1971.

21. SBLT Perry's Service Record states that he received the following awards for his service:¹⁴

- Australian Active Service Medal 1945-75 with Clasp 'VIETNAM';
- Vietnam Medal;
- Republic of Vietnam Campaign Medal;
- US Silver Star; and
- Mention in Despatches¹⁵

Official Accounts of the Action on 18 May 1970

22. The Royal Australian Navy's online history of the RANHFV¹⁶ records that:

... shortly after the Allies had declared a twenty-four hour Buddha's birthday truce on 18 May 1970, 135 AHC took part in an intensive action in Kien Hoa province. A regional force outpost in the Binh Dai district had been overrun and then heavily fortified by a Viet Cong battalion. Three battalions of the 10th Regiment, 7th ARVN Division were inserted around the outpost by 135 AHC aircraft supported by a platoon of the US Army 7th Battalion, 1st Air Cavalry. The combined flight with LCDR David Farthing as mission commander, received heavy fire from small arms and machine guns throughout the six-hour long operation. The lead helicopter received multiple hits and was forced to break off and return to base. SBLT Andy Perry, RAN, who was airborne on another mission then, volunteered to lead the assault landings.

Leading the assault Perry's Huey was badly damaged during the first insertion but made flyable in the landing zone under heavy fire. SBLT Perry then took off and led two more lifts of troops into the bitterly contested landing zone taking further enemy fire that came through the helicopter's windshield. A piece of shrapnel came off the pedals of the aircraft and hit Perry on the foot. Fortunately, his injuries were superficial and later that night he took part in three more landings despite the fact that his cockpit lights and instruments were no longer functioning. The brand new helicopter, which SBLT Perry was flying on this day, was so badly

¹³ Recommendation for Honours and Awards *SBLT Perry* dated 1 June 1970

¹⁴ The Tribunal also notes that Mr Perry has been awarded the US Silver Star, and heard evidence that he has also been awarded the Republic of Vietnam Cross of Gallantry for his service in Vietnam.

¹⁵ Service Record Andrew Charles Perry printed 25 August 2015

¹⁶ <http://www.navy.gov.au/history/squadron-histories/ran-helicopter-flight-vietnam-history> accessed 13 September 2016

damaged that it never flew again. The 21-year old SBLT was later awarded the United States 'Silver Star' for his part in the action.

23. SBLT Perry's actions are also described in the Official History of the Royal Australian Navy in the Vietnam War.¹⁷ The action is described as:

Working in support of the 7th ARVN Division once again, the 135th supported a large operation in the Bien Hai district of Kien Hoa province. The helicopters were brought under intense automatic fire from the ground, and Lieutenant R.K. Marum's aircraft received multiple hits and was forced out of action. Sub-Lieutenant A.C. Perry, who was returning to base from another mission, volunteered to lead the flight for the remaining insertions, and his aircraft, too, sustained heavy damage in the remaining course of the action. He was subsequently mentioned in despatches, recommended for the American Silver Star and awarded the Cross of Gallantry by the South Vietnamese.

24. The RANHFV Report of Proceedings (ROP) for the month of May 1970 describes the action and SBLT Perry's contribution.¹⁸ The ROP states:

... LEUT R.K. Marum, RAN, received multiple hits to his aircraft whilst leading the flight and had to return to base just before dark. SBLT A.C. Perry, RAN, who had been released from another mission and was on his way home then volunteered to lead the Flight for the remaining insertions. His aircraft was severely damaged by enemy fire on the first night insertion, receiving multiple hits in the cockpit area ... despite the damage to his aircraft SBLT Perry continued to lead the Flight for the two further insertions required to complete the mission. For his part in the operation SBLT Perry has been recommended for the American Silver Star and several other Australians have also been recommended for gallantry awards.¹⁹

Sub-Lieutenant Perry's Account of the Action

25. In an exchange of emails in early 2016, SBLT Perry provided his personal recollections of the action.²⁰ The following is a compilation of those e-mails cut into chronological order but using SBLT Perry's words:

... LCDR Farthing was Charlie and when I called he asked me to hasten to Ben Tre to take over flight lead as Dick Marum's ship was too damaged to continue. ... I was the only available qualified flight lead to be had. We had 8 ships, 4 EMUs and 4 from a sister company.

¹⁷ Jeffrey Grey, *Up top: the Royal Australian Navy and Southeast Asian Conflicts 1955-1972*, Allen and Unwin 1998 p 267

¹⁸ RANHFV Report of Proceedings for the Month of May 1970, RANHFV 08-01, dated 2 June 1970, p 3 Para 6

¹⁹ Ibid.

²⁰ E-mail from SBLT Perry to Commander Bell dated 12.24am 22 January 2016

My ship took its first hit on decent at 1000 feet and it just got worse all the way to the ground. The first burst of machine gun fire went into the battery compartment and my chin bubble. Immediately the next burst went through the windscreen. My reaction was to pull my feet away from the pedals and to duck my head which was lucky as the second burst would have taken my head off.

My landing point was beside a dyke, the other side of which and 25-30 metres to my front, were VC light machine gun positions. There was a lot of damage to the front of my ship. On the intercom I called hit but the co-pilot said he had been hit too. I think Mr Batista was getting ready to defend the ship from the ground when he heard on the intercom both pilots had been hit. It took seconds for me to realise my foot was OK and the blood on my face was a few cuts from flying plexiglass. Mr Batista was on the dyke top putting heavy suppression into the VC machine gun positions and it took me a few seconds to regroup. I gathered it up, got my crew chief on board ... and I put out a call to the flight to come up and climb out right and we were out of there.

The second and third lifts I was reduced to leading just the four EMUs as the other company didn't want to participate anymore. We changed the direction of approach, low level, along a water course to pop up and put the flight down in a rice paddy with a lot less hostile fire ... Time dims the memory but I think the last lift went in the same. I do remember being tired and very happy to get released back to Bearcat. We landed at about 0400 ...

26. In a letter written by SBLT Perry's wife in 2012, she stated that SBLT Perry said:

... I was flying back to base from west of the "parrot's beak" area when I called the Company Command and Control. You (Farthing) told me that Dick Marum had to return to base and you asked me to take up lead slick. I joined the flight, loaded the troops and headed for the LZ. I remember being really surprised at the amount of fire coming from the ground.

Somebody back of the flight turned on their landing lights and lit up the slicks in front. I landed and saw off to my left front a machine gun position. The ship took many hits, plexiglass and instruments hit. I remember taking a hit to my foot, which made me duck my head. At this point we took a lot of hits in the side from where the troops were disembarking.

I called "I'm hit" and Mr Hopper said that he had been hit too. I remember distinctly that I thought it was up to me to get us (my ship and my crew plus the rest of the flight) out of this.

I called the flight to come up to the right and as we were going out, Chalk Two (?) called that he couldn't pull pitch. I took the flight back to Ben Tre, and I think it was Cougar 6 who went in to rescue Chalk Two. At this time I remember being really pissed off when the slicks from Vinh Long called that

*they were going home, too hard they said. I lead what was left of the EMUs on two more insertions into the same LZ, to get the bloody job done.*²¹

The Applicants' Submissions

27. **Commodore Farthing.** Then Lieutenant Commander David Farthing commanded Contingent Three of the RANHFV from December 1969. In June 1970 he was awarded the Distinguished Service Cross (DSC) for his leadership of the Contingent and for his command of the May 1970 action in which SBLT Perry was involved.²² He was the Nominating Officer for SBLT Perry's MID.²³

28. Commodore Farthing's submission initially did not seek individual recognition for SBLT Perry. As the Officer in Charge (OIC) of the contingent, his submission was focused on group recognition.²⁴ Significantly, Commodore Farthing was the airborne aviation group commander during the operation which involved SBLT Perry. He drafted the ROP for the month of May 1970 which has been previously discussed and, in his 2012 submission to the Valour Inquiry he provided the following description of the action:

The operation commenced at about 1530 and proceeded routinely until, as it was becoming dark and the assault reached the walls of the outpost, it became apparent that the enemy had two captured .50 calibre heavy machine guns.

This was a critical point as the helicopters of that time, always vulnerable to ground fire from small arms, could not survive multiple hits from these heavier weapons.

At about 1700 LEUT Marum's aircraft was hit and could not continue to lead. The loss of this experienced officer was a serious problem and there was no one else in the Flight with the necessary experience to lead in this critical situation. SBLT Perry, on his way back to base after completing a number of supply missions in the western part of the Delta, had monitored the situation and immediately volunteered to take over the lead, an offer I gratefully accepted.

In the gathering gloom, Perry lead his first assault and in the process of unloading his troops, took hits to the front of his helicopter which inflicted minor injuries on both Perry and his American co-pilot, knocked out the chin bubble, cockpit lights and right hand rudder pedal. The Flight was under heavy fire, one helicopter was shot down within the outpost and the scene was chaotic for the ground commander and myself as Charlie, trying to control the operation from overhead.

At this point, the possibility of a catastrophe and a significant victory for the enemy was very real. However, Perry took charge of the remaining aircraft

²¹ Letter from Andy and Ginni Perry to Commodore Farthing dated 13 June 2012

²² Recommendation for Honours and Awards LCDR Farthing dated 15 June 1970

²³ Recommendation for Honours and Awards SBLT Perry dated 1 June 1969

²⁴ *Report of Operations Involving the RANHFV on 14 May 1970*, attachment to submission by David Farthing dated June 2012

(the Dutchmasters having departed by this time ...), collected two more loads of infantry and, after two more insertions the extra fire-power of the additional troops carried the day.

The significance of this action was immediately recognized by the US Army and a few days later an 'awards ceremony' was convened at our Company Headquarters...²⁵

29. In a subsequent letter to the Tribunal dated 13 July 2015 he stated his concerns with attempting to assess the merits of SBLT Perry against other members of his contingent of the RANHFV.²⁶ He had placed SBLT Perry at position four below Lieutenant (LEUT) Clark who received a DFC, LEUT Marum who also received a DFC and SBLT Cooper who like Perry, received a MID. In his comments he said of SBLT Perry:

...exceptionally brave – one remarkable instance of bravery which is known to the Tribunal - not a leader – and therefore overall contribution to the Company less than those above – less skilled as a pilot.

30. Commodore Farthing went on to describe his 'dilemma' in having to balance the merits of these individuals. He stated that:

...the US Silver Star is a high award and widely recognized as such... in the circumstances I cannot single out Perry for a higher award over the claims of others. It is unfortunate that political considerations at the time prevented consideration of the proper awards; this was in many cases a serious injustice. To single out Perry now, would in my view add to that injustice.

31. On 8 September 2015 Commodore Farthing recanted his earlier position stating that his uncertainty regarding SBLT Perry 'has been motivated by my desire to do "justice for all"; which now appears to be impossible'. He asked that the Tribunal:

...consider the award of the DFC to SBLT Perry. His remarkable conduct, in my view, strongly supports my recommendation for that award. I do not think that the conduct is of the supreme standard required to support a recommendation for the Victoria Cross.²⁷

32. Having received the Stevens Review and associated papers, Commodore Farthing again wrote to the Tribunal on 30 November 2015 confirming his recommendation that SBLT Perry be awarded the DFC.²⁸

33. During the hearing, Commodore Farthing stated that after Vietnam he struggled with the fact that 'nobody would accept what the RANHFV did – the fact was that everyone in those Flights behaved above and beyond the call of duty – it was an elite unit'.²⁹ He said that he went to see the Chief of Naval Staff – Vice Admiral

²⁵ Ibid.

²⁶ Farthing Letter to the Tribunal 13 July 2015

²⁷ Farthing Letter to the Tribunal dated 8 September 2015

²⁸ Farthing Letter to the Tribunal dated 30 November 2015

²⁹ Oral Evidence by Commodore Farthing 6 February 2017

Sir Victor Smith sometime after he returned ‘because the junior officers in my Flight were not properly recognised’. He said that Smith told him:

*they did what they were paid and trained to do*³⁰

34. Commodore Farthing said that his reason for bringing the matter forward was ‘justice’ and that ‘the MID means nothing to those in the civilian world’. He said that ‘if they had had any encouragement at all they would have written up citations for the people’, emphasising his views regarding what he perceived to be the ‘injustice’ of the awards system in place during his time as the Contingent Commander. He said that if the sailors had been allowed to accept foreign awards at the time of the conflict ‘it would have avoided the situation we are in now’.

35. Commodore Farthing provided an eye-witness account of the context of SBLT Perry’s action, the circumstances in the lead up to and during the operation, and the threat profile and risk. He also stated that in context, ‘the 18 May operation was not an unusual occurrence during the tour, we had lots of days like that, people in the EMUs were engaged in actions of a similar size to Long Tan every week’.

36. He confirmed that on 18 May 1970, the operation was an immediate emergency action requiring the rapid insertion of a large force with multiple aircraft into a defensive position which had been overrun by the enemy. He said the objective of the attack resembled a ‘medieval fort’. He described the first lift being inserted and that during this phase of the operation, the designated Flight Leader’s aircraft was damaged and he was forced to return to base.

37. Commodore Farthing confirmed that SBLT Perry contacted him enroute from a separate task at the end of a day’s work and the discussion that took place by radio was to the effect that:

I hear you have a bit a trouble, would you like me to come and help and I said yes Andy I’d be really thrilled if you’d come and help – come and take the Flight Lead – so it was entirely voluntary

38. Commodore Farthing said that he had no hesitation in accepting the offer. He said that SBLT Perry was eminently suitable as he had already proven himself to be a capable ‘combat pilot’ and ‘was born to go to war’. He said that he ‘needed a qualified Flight Leader because the landing zone was a very tight area, it was very dark and I knew, and had trained Andy, so I knew that by asking him it would be satisfactory’.

39. Commodore Farthing stated that the threat at the time that he tasked Perry was considerable. He described the surprise and chaos that eventuated during the first phase when the insertion was engaged by .50 calibre machine gun fire. He stated that when SBLT Perry took the lead, the threat and situation on the ground created the circumstances where both he and the ground force commander who was with him in his aircraft thought that there was:

³⁰ Ibid.

the possibility of a catastrophe and a significant victory for the enemy was very real

40. He said that SBLT Perry displayed 'exceptional leadership' in what he considered to be hazardous circumstances and that he repeated this on two further insertions throughout the night whilst slightly wounded and in command of a damaged aircraft. He also confirmed that SBLT Perry was the aircraft captain responsible for the aircraft itself and also the Flight Leader responsible for the other eight aircraft in the Flight. He emphasised that SBLT Perry did all of this at a very young age (21 years of age), with a foreign crew and having already flown in excess of ten hours during the day, before he commenced the action.

41. Commodore Farthing confirmed that he did not nominate SBLT Perry for an Australian gallantry award for the action at the time as he considered that the US Silver Star was 'a high-level award' and in the circumstances, as there was a lack of support for junior officer recognition, he felt that the US Silver Star was 'appropriate recognition'. He said that the Americans 'gave the lesser awards fairly liberally but they were very careful with the Silver Star'. Commodore Farthing said that as the Commander of the contingent he was not well prepared or trained on how to use the awards system and had a poor understanding of how it operated.

42. In relation to contemporary awards Commodore Farthing confirmed that in his view SBLT Perry's actions did not meet the threshold for the VC. He stated that he had decided that the DFC was appropriate recognition 'because his actions were distinguished' but acknowledged that Imperial awards were no longer available. He said that he was unaware of the eligibility criteria for contemporary awards for gallantry.

43. **Captain Ray.** Captain Ray served with the RANHFV as a staff officer from September 1968. He was appointed as a Member of the British Empire (MBE) for his service with the RANHFV in 1969.³¹ He did not serve with SBLT Perry in Vietnam. Captain Ray was also the co-author of a book published in February 2009 titled *A Bloody Job Done Well – The History of the Royal Australian Navy Helicopter Flight Vietnam 1967-1971*. Captain Ray's submission to the Valour Inquiry was largely focussed on upgrading an award for another officer from the RANHFV - SBLT Perrott, for an action on 2 February 1969.³² Towards the end of this submission, in a section titled 'the Case for Perry', Captain Ray repeated the citation for SBLT Perry's MID and stated:

AC Perry was awarded the US Army Silver Star and approval for him to accept and wear this decoration has been approved he was also awarded as were many other young (at the time) pilots the South Vietnamese Cross of gallantry. It seems right and proper that Australia should give equal recognition to this man for his service to the nation and it is requested the tribunal give consideration to recommending he be awarded the Distinguished Flying Cross.

³¹ Recommendation for Honours and Awards *LEUT Ray* dated 9 June 1969

³² *A Case for Considering the Upgrading of the Mention in Despatches Awarded MA Perrott and AC Perry for gallant action during the Vietnam conflict whilst serving with the RANHFV*, undated and authored by Robert G. Ray

44. In a subsequent letter to the Tribunal dated 1 December 2015 Captain Ray stated that in his opinion:

*... the awards system in place at the time was inadequate and no formal briefing was given to lower levels within the command on how to assess and evaluate appropriate recognition.*³³

45. During the hearing, Captain Ray said that his primary reason for appearing was to 'try to get some justice for the people who served with the RANHFV'.³⁴ He said 'the Navy wasn't ready for the RANHFV' and that the period of gestation was short. He indicated that although 200 people deployed with the RANHFV:

few were recognised due to a system that was not compatible with the task that was being undertaken.

46. He said that there 'were several shortcomings in the process that was set up to ensure that acts of heroism and outstanding service were recognised during the Vietnam conflict'. He said that the most significant of these was that 'there was a directive that there was to be no immediate recommendations for valour raised' and that accordingly commanders had to wait for rotations to occur before awards were raised.³⁵

47. Captain Ray asserted that waiting disadvantaged the RANHFV as the deployment dates and periodic processing dates were offset and therefore 'restricted the number of awards that were available'. He said that this was unfair and placed the commander in an insidious position. He did not produce evidence to support this claim but stated that it was common practice. After the hearing Captain Ray emailed the Tribunal stating that 'I have been unable to establish why LCDR Rohrsheim [OIC RANHFV Contingent Two] was of the belief that immediate awards were not to be submitted'.³⁶

48. He said that he 'discussed the issue of DFC/DSC with then Captain and later Admiral Sir Anthony Synnot' during a visit to Vietnam as 'the story I was getting was that the Naval hierarchy were not happy with the idea of Sub-Lieutenants wearing the DSC'. Captain Ray noted that 'at that time very few senior officers had medals at all and only limited combat experience'. He said that after his discussions with Captain Synnot, 'DFCs became the order of the day and in my opinion, every pilot in my Flight was entitled to a DFC but you can't overkill these things – you have to make limits'.

³³ Letter from Captain Ray to the Tribunal dated 1 December 2015

³⁴ Oral Evidence by Captain Ray 6 February 2017

³⁵ The Navy Historian subsequent to the hearing provided 'Department of the Navy Administrative Arrangements and Conditions of Service for the RANHFV' dated 11 Oct 67 which states in relation to the processing of honours and awards that 'recommendations for honours and awards for both gallantry and distinguished service are to be forwarded to the COMAFV in accordance with such instructions as he may give.' There was no evidence available as to what if any instructions were given.

³⁶ E-mail from Captain Ray to the Tribunal dated 1844 hours 27 February 2017

49. He said that the ‘restricted understanding of the medals system was vague to him and those in command positions in the RANHFV’ and that ‘they didn’t understand’. He said that despite SBLT Perry being awarded the US Silver Star, it was in his opinion ‘only right and proper that his own country should recognise him with the DFC as a courtesy’. He said that:

the most important issue was that the quality and standing of an award must not be downgraded.

50. Captain Ray confirmed that he had not considered the eligibility criteria for gallantry awards in arriving at the recommendation that SBLT Perry be awarded the DFC because it was:

a clear case of distinguished flying, it was very brave, it was in a hostile environment, he had a substantially damaged aircraft – not a lot of people could have pulled it off – that’s what is distinguished flying – clearly he met that criteria.

51. **Commander Bell.** Commander Bell’s submission to the Valour Inquiry is encapsulated in an e-mail to the Tribunal dated 14 June 2012.³⁷ Commander Bell stated that:

... there is another pilot (SBLT Andy Perry) who, in my opinion carried out a series of acts of absolutely outstanding bravery during a course of one night, and involving a series of flights into exceptionally dangerous situations

52. Commander Bell’s submission sought that SBLT Perry be awarded the VC for ‘his night of outstanding bravery’. In support of his submission Commander Bell included an article from *Wartime*, the Australian War Memorial magazine.³⁸ The article written by Elizabeth Stewart featured the RANHFV with the introduction describing the action involving SBLT Perry – the brief introduction to the article is consistent with the description of the action given previously in this report.

53. Commander Bell’s submission gives a description of the action as follows:

... SBLT Perry had been on a separate mission, flying for most of the day ... for some time, Viet Cong troops had merely “blazed away” at helicopters. Now, they had been trained so that all of their fire was to be directed at the lead helicopter. On this occasion their concentrated fire was successful and the leader’s helicopter was shot down.

It was at almost the same time, SBLT Perry changed his radio over to the Company’s frequency preparatory to making his approach to land, and end his long day of flying. The other helicopters were also on the same frequency but, with their leader missing, were milling about, making radio calls to try and sort the situation out, and to allow them to get on with the mission. Hearing all of the chatter, SBLT Perry ascertained where the extraction

³⁷ E-mail from Ed Bell dated 5.49pm 14 June 2012

³⁸ *Wartime*, Issue 21 p24

mission was to be carried out, flew to the location, and with great skill and power of command, managed to get the helicopters formed up on him.

He was now the leader, and as he lead his flight of helicopters into the LZ to recover the ARVN troops, his helicopter came under heavy fire. One armour-piercing round came into the cabin through the right nose bubble, blew off his left rudder pedal, the heel of his left boot, and lodged in the fire-wall behind him ... despite the heavy damage inflicted on his helicopter on that first approach, SBLT Perry continued on for three more approaches, with his helicopter receiving numerous hits each time, and suffering more and more serious damage.

For his outstanding skill, bravery and devotion to duty well above that expected, and from one who was only 21 years of age, SBLT Perry was given the immediate award of the Silver Star, the highest award which can be awarded to a non-American, and also the immediate award of the Vietnamese Cross of Gallantry. To our shame, SBLT Perry was not permitted to receive either of those awards. Neither did he receive any Australian awards.

54. At the hearing Commander Bell said that he was a senior Naval Officer and served as a watchkeeper on HMAS *Brisbane* during the Vietnam War. He said that he did not know of SBLT Perry's actions at the time they occurred and had not met SBLT Perry until many years later after he had 'heard all these stories from junior officers who were staggered by Perry's actions and courage'. Commander Bell said that he was a qualified pilot involved in training helicopter pilots before and after the period in question. Commodore Farthing confirmed that Commander Bell was 'the most highly qualified helicopter pilot in the Navy at the time and was deeply respected'.³⁹

55. Commander Bell stated that he 'helped train people like Andy Perry and others and like every pilot and officer in the Navy, we did not initially understand what we had sent our young men to'.⁴⁰ He said that 'we did not understand the number of hours that they flew and several of them were shot down three or four times, in the incident with SBLT Perry he flew something like 14 hours'. He said that after being tasked by the mission commander after the Fight Leader was shot down, 'as a young lad probably only 19 or so and at night, he organised the rest of the flight behind him and led them into the insertion'. Commander Bell then reiterated his written account of the action which he said he drew from various eye witness accounts.

56. He said that 'I cannot envisage what it would have been like to make one approach in the situation that Perry found himself'. He said that Perry demonstrated a very strong sense of duty and courage'. He said that Commodore Farthing had told him that 'Perry was fearless'. Commander Bell said:

³⁹ Oral Evidence by Commander Bell on 6 February 2017

⁴⁰ Ibid.

I think he was fearless – you don't fly an aircraft into action three times with it literally falling apart around your ears – the courage to do that and repeat it was I believe almost beyond most mortal's capabilities.⁴¹

57. Commander Bell said that after the action 'the Americans recognised the valour that was shown with the Silver Star - that was the highest decoration a foreigner could receive, and the Vietnamese Cross of Gallantry, and Perry got a Mention in Despatches'. He said 'there have been several incidents where the MID has been awarded as the next level beneath a VC'. He said 'Perry got his for picking up a wounded soldier at night after a traffic accident'. He stated that 'comparisons had been made about McNamara⁴² and Rutherford' however he noted that in these cases 'the enemy were never closer than two or three miles'.

58. Commander Bell was able to corroborate Commodore Farthing's evidence that the senior officers of the Navy at the time were negative towards junior officers being decorated. He described being 'summonsed to Canberra' sometime after Vietnam where he was rebuked by an Admiral for his 'attitude towards awards for gallantry'. He said that in his opinion the senior officers of the Navy were 'ignorant of what their people had done'. He opined that many of these senior officers at the time 'had served with gallantry in the Second World War and I think in their hearts they didn't want to see junior officers get the sort of awards they had'. He said that he believed that 'favouritism came into the selection process'. He said the Admiral 'did not understand what was happening' and that the Admiral said to him:

We can't have all these junior officers running around with DFCs.⁴³

59. In concluding, Commander Bell said that he had considered recommending the DFC for Perry but felt that:

his devotion to duty, courage and airmanship on that night was way above what would be expected of the recipient of the DFC and was a conspicuous piece of gallantry.

60. He said that he had not consulted the eligibility criteria for awards in arriving at his conclusion to recommend the VC for SBLT Perry but was basing his claim on the account of the action being at least comparable to other aviators who had been decorated in the First World War.

61. **Other Witness Accounts.** Commander Bell provided an account of the action from Crew Chief Geoff Carr, an American who was in another aircraft in the flight during the action.⁴⁴ Carr recalled:

... I had only been in the 135th AHC for about two weeks and May 18th was my eighth day of flying as a gunner on slicks ... I was to become Andy's assigned

⁴¹ Ibid.

⁴² Lieutenant Frank Hubert McNamara VC, awarded the VC for the rescue of Captain David Rutherford in Gaza, March 1917

⁴³ Oral Evidence by Commander Bell on 6 February 2017

⁴⁴ E-mail from Geoff Carr to Ed Bell and Andy Perry 'The letter with Attachment', dated 11.17am 17 February 2016

crewchief/gunner about a month later ... I believe Dick Marum initially took over as lead pilot of the flight before Andy came on the scene ... a radio call went out for a qualified EMU to take over in mid to late afternoon.

I remember to this day all of us in the flight chuckling a bit when Andy responded by radio from a routine mission quite far away, expressing his oft displayed enthusiasm to get in on a fight ... once Andy joined us we continued to insert ARVN infantry ... but it was the last few insertions that night which are seared in my memory and led to Andy's Silver Star.

...it was decided that the flight would fly low level up a small creek coming from the south that led directly to the suspected position of the VC ... everything went pretty much as planned, about this time, Andy's ship received a solid burst of automatic weapons fire from immediately in his front, which hit the windscreen and chin bubble. This slightly wounded Andy with plexiglass shards and a bullet that struck his boot, momentarily preventing his and our departure from the LZ.

Soon Andy got his aircraft going ... about this time, the American adviser on the radio was heard to say something to the effect that our little manoeuvre was the craziest thing he had ever seen ...

The Defence Submission

62. Navy considered the Applicants' submissions to the Valour Inquiry as part of a package of eight other applications. The material relied upon by the CN in making his decision was the Stevens Review.⁴⁵ The Stevens Review indicated that the Tribunal's own assessment guidelines from the Valour Inquiry had been used in the conduct of the review of the submissions. Doctor Stevens also relied upon archival material held in the Sea Power Centre and his personal knowledge of naval history and secondary published materials. No attempt was made by Navy to seek supplementary information from the Applicants.

63. Doctor Stevens summarised the material provided by the Applicants and stated that:

Commodore Farthing's recollections contained some negative comments on the manner in which awards were allocated at the time of his RANHFV command, but yet again neither submission offered evidence that the recommendations process was flawed or included evidence to suggest maladministration by Australian authorities in deciding to award SBLT Perry a MID.

*There was also no new or compelling evidence in the documentation provided that was not available at the time of the original decision...*⁴⁶

⁴⁵ CN/OUT/2014/1259 dated 23 September 2014

⁴⁶ Review by Dr Stevens dated May 2015, p4

64. In reaching the decision to recommend to the Parliamentary Secretary that he consider directing the Tribunal to review the submissions, the CN noted the recommendations of a Decision Brief that:

*... none of the received submissions warrant a merits review on the basis of either maladministration or compelling new evidence.*⁴⁷

65. During the hearing, Commodore Sadlier, reiterated the Navy view that the Tribunal is ‘best placed to look at retrospectivity’ and ‘as an impartial body was best placed to judge the relative merits of SBLT Perry’s actions and whether or not they deserved recognition’.⁴⁸ He said that ‘there was nothing that was obvious to the CN that maladministration had occurred and it therefore became a case of reviewing the historical and contextual circumstances of the case and to give that review due process and to get all the facts on the table, that the Tribunal is best placed and best informed to be able to do that.’⁴⁹

66. In relation to the merits of the matter and having heard the evidence, Commodore Sadlier stated that the Navy position was unchanged – ‘there was no evidence of maladministration and whilst the CN was sensitive to the merits of this case – the reason he has put it before the Tribunal is to allow impartiality and to achieve the right outcome’.

67. Commodore Sadlier said that the thing that struck him as pertinent from the oral evidence was ‘the mindset of those who were involved in the process at the time’. He indicated that ‘the culture which prevailed at that time amongst the senior leadership should be considered critically during the review’.

68. The Navy Historian, Mr John Perryman stated that he was unaware of any other US Silver Stars being awarded to the Navy.⁵⁰ In response to questions from the Tribunal he said that he did not believe that the decisions made during the Vietnam War in relation to gallantry and recognition were influenced by the Admiralty.

69. Mr Perryman said that he thought that at the time, ‘culturally Navy were between a senior hierarchy of officers who had served in World War Two and were now faced with a dynamic helicopter war that was fast moving and quite different to previous encounters that the Navy had experienced.’ He said that all of this ‘was quite new’. He said that in his view ‘there didn’t seem to be a deep appreciation throughout Navy as to what these men were doing’.⁵¹

70. Mr Perryman indicated that SBLT Perry’s ‘contact with the Mission Commander was a watershed moment’. He said that ‘the commander was faced with a dilemma and contact was made with Perry at the age of 21 and already having had a long flying day, he volunteered and the Commander had sufficient confidence in him to give him the job’. He pointed out that there were ‘other American helicopters who could have been called upon but were not’. He asked the Tribunal to note the

⁴⁷ Decision Brief for CN dated 9 April 2014, p.8

⁴⁸ Oral Submissions by Commodore Jonathan Sadlier on 6 February 2017

⁴⁹ Ibid.

⁵⁰ Oral Evidence by Mr Perryman on 6 February 2017

⁵¹ Ibid.

complexity of the task and the fatigue that the pilots would have been under at the end of a long day. He said the flying that day ‘was something special and stands out [in comparison to other researched cases]’. He said that he was surprised that SBLT Perry’s MID citation ‘was a bit light on’ and that if the 18 May action had been included in the citation ‘he may have received further consideration’.

71. In relation to the Tribunal’s questions relating to the Navy view of whether or not a foreign award, in this case the US Silver Star, would preclude consideration for an Australian award for the same action, Navy pointed to advice provided by the Acting CN on 30 May 2016.⁵² The advice concluded that in relation to the legal standing of decisions and rules made by the Australian Government regarding the granting and acceptance of foreign awards and the Navy policy for such matters, ‘acceptance of foreign awards would not preclude the granting of an Imperial award’.

Tribunal Consideration

72. **General.** The Tribunal is required to review decisions ‘on the merits’. This requires an examination of the merits of the matter in dispute rather than the lawfulness of the decision under review.⁵³ The merits review revolves around the evidence and accordingly, the Tribunal conducts an independent review, with values, expertise, methods and procedures of its own, and not those of the decision-maker.

73. The facts, law and policy aspects of the decision are all considered afresh and a new decision made.⁵⁴ The Tribunal reviews the decision, and not the reasons for the decision. In doing so, there is no legal onus of proof, and there is no presumption that the decision was correct.⁵⁵ The Tribunal is bound to make what it regards as the ‘correct or preferable’ decision and must reach a decision that is legally and factually correct.

74. **SBLT Perry’s Service Record.** There is no dispute that SBLT Perry deployed with the Third Contingent of the RANHFV in December 1969 as a pilot. There is no dispute that he was awarded the US Silver Star for gallantry in action on 18 May 1970 and there is also no dispute that SBLT Perry was awarded the MID on 17 December 1970.

75. **Why Was SBLT Perry Awarded the Mention in Despatches.** The Tribunal noted that the citation for SBLT Perry’s MID focuses on his overall ability as a pilot for the duration of his deployment and his flying skill in a motor vehicle accident rescue. The citation makes no specific mention of his role in the action on 18 May 1970.

76. The Tribunal noted and gave significant weight to Commodore Farthing’s evidence that at the time of the 18 May action he ‘did not nominate SBLT Perry for an

⁵² Acting Chief of Navy Letter, CN/OUT/2016/524 dated 30 May 2016 and cited in *Wilkins and the Department of Defence Re: Band [2016] DHAAT 29 (12 August 2016)* – para 30-31.

⁵³ *Council of Australian Tribunals Practice Manual* dated 7 April 2006 p.1.3.1.2

⁵⁴ Pearson, Linda, “Merit Review Tribunals”, in Creyke, Robin and McMillan, John, *Administrative Law – the Essentials*, AIAL 2002, p. 68

⁵⁵ *McDonald v Director-General of Social Security* (1984) 1 FCR 354

Australian gallantry award as he considered that the US Silver Star was a high-level award and that he considered it appropriate recognition' of Perry's actions.

77. The Tribunal accepted and gave some weight to the evidence of the Applicants and particularly the Respondent that there may have been a general culture of non-support for junior officer recognition within the senior ranks of the Navy at the time of the action. The Tribunal was reasonably satisfied that the perceived existence of this culture impacted on Commodore Farthing's decision not to recommend SBLT Perry for an Australian gallantry award despite his stated desire that he be recognised.

78. The Tribunal noted that there was no evidence to support the assertion that commanders had been directed not to submit 'immediate' nominations for gallantry and in any case, Commodore Farthing said that he did not consider SBLT Perry's actions met 'the threshold for the VC'. The Tribunal considered it therefore unlikely that Commodore Farthing as the OIC of the contingent would have submitted an immediate nomination even if the alleged direction had not been in place.

79. Noting the content of the citation for the MID and Commodore Farthing's evidence, the Tribunal was reasonably satisfied that the award of the MID to SBLT Perry was appropriate recognition for his 'exceptional enthusiasm' and skill as a pilot during his entire deployment. The Tribunal was reasonably satisfied that the award was recognition of his continuous good work over a long period, being the entire tour. Accordingly, the Tribunal finds that SBLT Perry was not nominated for an Australian award for his actions on 18 May 1970.

80. **Is the United States Silver Star Appropriate Recognition for SBLT Perry?** The Tribunal noted that the US Silver Star 'is the highest U.S. Military valor decoration that may be awarded to members of the armed forces of friendly foreign nations' and is 'the third highest U.S. military valor decoration that can be awarded to a person serving in any capacity'.⁵⁶ The Tribunal also noted that a number of renowned Australian servicemen also received the US Silver Star during the Vietnam War including Keith Payne VC and Peter Badcoe VC. The Tribunal was therefore reasonably satisfied that the award of the US Silver Star to SBLT Perry was significant recognition of his gallantry in action on 18 May 1970. The Tribunal acknowledged that despite the Silver Star being awarded, it was several years (1995) before the Australian Government agreed that individuals could accept the award and be allowed to wear it. The Tribunal also noted that in some instances, citations for foreign awards were used to inform potential Imperial awards by local Australian commanders however there was no evidence that this had occurred in SBLT Perry's case.

81. The Tribunal noted the advice provided by Navy that their policy was that 'acceptance of foreign awards would not preclude the granting of an Imperial award'.⁵⁷ In light of this advice, the Tribunal was reasonably satisfied that the receipt of the foreign award by SBLT Perry did not preclude him from consideration for an Australian award.

⁵⁶ United States Department of Defense Manual 1348.33 Volume 3 (November 23, 2010)

⁵⁷ Acting Chief of Navy Letter, CN/OUT/2016/524 dated 30 May 2016 and cited in *Wilkins and the Department of Defence Re: Band [2016] [DHAAT 29 (12 August 2016) – para 30-31.*

82. The Tribunal noted that whilst the evidence suggested that Commodore Farthing and others considered at the time that the US Silver Star was ‘appropriate recognition’ of his actions, SBLT Perry had to wait 25 years to receive agreement to accept the award. The Tribunal was sympathetic to Commodore Farthing’s evidence that this could be viewed as an ‘injustice’.

83. The Tribunal finds that the US Silver Star did provide recognition of SBLT Perry’s actions on 18 May 1970 however this should not have precluded him for consideration for an Australian gallantry award which may have occurred if not for the culture and practices of the time.

84. **The Reviewable Decision.** The Tribunal noted that the 2014 decision by the CN to refer the Applicants’ submissions to the Parliamentary Secretary and recommend that he ‘consider directing the Tribunal to review the nominations for SBLT Perry’ was based upon the Stevens Review.⁵⁸ The Tribunal considered that the reason given by Doctor Stevens that none of the material presented contained ‘new or compelling evidence that would warrant a merits review’, was inadequate. The Tribunal also considered that the Stevens Review itself was superficial as evidenced by the fact that a cursory review of SBLT Perry’s MID citation would have revealed that it made no specific mention of the action on 18 May 1970.

85. However, the Tribunal noted the Navy representative’s submissions at the hearing that the CN considered that in dealing with retrospectivity and honours, the Tribunal, as an impartial body was best placed to judge the relative merits of SBLT Perry’s actions and whether or not he deserved recognition. The Tribunal also noted the advice that ‘the CN was sensitive to the merits of individual cases’.

86. In any case, the Tribunal was satisfied that in this matter, whether or not there was maladministration or bias in the nomination and approval process for awards in Vietnam, is largely irrelevant as the Tribunal is bound by legislation to conduct a merits review of SBLT Perry’s actions. Accordingly, the Tribunal turned to an assessment of the merits of his actions against the eligibility criteria for gallantry decorations.

Eligibility Criteria for Australian Gallantry Awards

87. Until February 1975, when the Government introduced the Australian honours and awards system, Australian service personnel received honours and awards under the Imperial system. The two systems – the Imperial and the Australian - then operated in parallel until October 1992 when the Government announced that Australia would no longer make recommendations for Imperial awards.⁵⁹ As the Tribunal is unable to make recommendations relating to Imperial honours, it may only review eligibility for contemporary gallantry awards for SBLT Perry.

88. **The Victoria Cross for Australia.** The Victoria Cross for Australia was established by Letters Patent on 15 January 1991 to be:

⁵⁸ Decision Brief for CN dated 9 April 2014, Paragraph (ii)

⁵⁹ Prime Minister of Australia Media Release 111/92 dated 5 October 1992

'the highest decoration for according recognition to persons who, in the presence of the enemy, perform acts of the most conspicuous gallantry, or daring or per-eminent acts of valour or self-sacrifice or display extreme devotion to duty'.⁶⁰

89. The honour is governed by Regulations set out in the Schedule:

...

Conditions for award of the decoration

3. *The decoration shall only be awarded for the most conspicuous gallantry, or a daring or per-eminent act of valour or self-sacrifice or extreme devotion to duty in the presence of the enemy.*

...

Making of awards

7. *Awards of the decoration shall be made, with the approval of the Sovereign, by Instrument signed by the Governor-General on the recommendation of the Minister.*

...⁶¹

90. **Gallantry Decorations.** The Star of Gallantry, the Medal for Gallantry and the Commendation for Gallantry were established as Gallantry Decorations by Letters Patent on 15 January 1991 for the purpose of:

'according recognition to members of the Defence Force and certain other persons who perform acts of gallantry in action'.⁶²

91. The honours are governed by Regulations set out in the Schedule:

...

Conditions for award of the decorations

3. (1) *The Star of Gallantry shall be awarded only for acts of great heroism or conspicuous gallantry in action in circumstances of great peril.*
(2) *The Medal for Gallantry shall be awarded only for acts of gallantry in action in hazardous circumstances.*
(3) *The Commendation for Gallantry may be awarded for other acts of gallantry in action which are considered worthy of recognition.*

...

Making of awards

7. *Awards of a decoration shall be made by the Governor-General on the recommendation of the Minister.*

...⁶³

⁶⁰ Commonwealth of Australia Gazette No. S25 – Victoria Cross Regulations– dated 4 February 1991

⁶¹ Ibid.

⁶² Commonwealth of Australia Gazette No. S25 – Gallantry Decorations Regulations - dated 4 February 1991

Evidence and Findings from the Accounts of the Action

92. **Summary of the Action.** Relying on SBLT Perry's written account, Commodore Farthing's evidence and the citation for the US Silver Star, the Tribunal was reasonably satisfied that on 18 May 1970 an emergency airmobile operation was mounted by 135 AHC to insert ARVN troops into a heavily fortified Viet Cong defensive position. The first group to be inserted came under heavy fire from small arms and machine guns including .50 calibre weapons. The lead helicopter received multiple hits and was forced to break off and return to base. SBLT Perry, who was not a part of the operation and was airborne on his way back to base after a full day of flying was monitoring the radio net. He took the initiative and volunteered to take over the Flight Lead, an offer that, in the absence of many other options and with the first group of infantry already on the ground, was immediately accepted by the Mission Commander.

93. SBLT Perry took command of the eight troop-carrying aircraft and commenced to lead them into the second troop pick up and then the insertion into the landing zone. As they closed on the landing zone his aircraft was hit by fire and suffered superficial but potentially serious damage. Once on the ground the aircraft disembarked the troops whilst continuing to receive fire which required the crew chief to exit the aircraft and return fire. Around this time or shortly beforehand, SBLT Perry was slightly wounded. Despite the wounds and damage, SBLT Perry maintained command of both his own aircraft crew, and the other aircraft, and coordinated the complete Flight's extraction out of the landing zone. He repeated the insertion on two more occasions, each time changing the direction of approach and flying profile to provide maximum protection to the embarked troops.

94. **Assessment of the Witness Accounts and Evidence.** The Tribunal noted that Commodore Farthing was the Mission Commander and an eye witness to the action. The Tribunal considered his evidence and account of the action to be reliable and accurate and gave it great weight. The Tribunal also noted that Commodore Farthing had authored the ROP for the month of May 1970.⁶⁴ The Tribunal gave this report significant weight. The Tribunal particularly noted that the ROP concluded that:

Perry had been recommended for the US Silver Star and that 'several other Australians have also been recommended for gallantry awards'

95. The Tribunal considered that this was a clear indication that had SBLT Perry not been under consideration for the foreign award at the time, Commodore Farthing would have nominated him for an Australian gallantry award.

96. The Tribunal gave some weight to Crew Chief Carr's evidence noting that he was a participant in the action, albeit in a different aircraft to SBLT Perry. His comments relating to SBLT Perry's flying manoeuvres were accorded some weight by the Tribunal.

⁶³ Ibid.

⁶⁴ RANHFV Report of Proceedings for the Month of May 1970, RANHFV 08-01, dated 2 June 1970, p 3 Para 6

97. The Tribunal noted neither Commander Bell or Captain Ray were witnesses to SBLT Perry's actions and their respective submissions were either based upon existing citations or secondary sources, or provided their personal perspectives on the awards process. The Tribunal therefore determined that whilst their submissions and evidence provided useful context and credible opinions, they should be accorded limited weight in favour of eye witness accounts of the action.

98. The Tribunal noted that SBLT Perry had provided a useful account of the action which was consistent with the evidence provided by Commodore Farthing. Whilst the Tribunal was satisfied that SBLT Perry's account was reasonably accurate, it is the account of the individual who is the subject of the application and the Tribunal's preference is to give greater weight to independent reports of the actions.

99. **SBLT Perry's Actions and Findings of Fact.** Having reviewed the evidence and submissions, the Tribunal was reasonably satisfied that the following facts were established relating to SBLT Perry's actions on 18 May 1970 in that:

- a. he took the initiative and volunteered to lead the Flight of eight aircraft when the designated leader was immobilised;
- b. the threat at the time he volunteered to take command was significant with the enemy using .50 calibre machine guns in the anti-aircraft mode;
- c. the risk to the entire operation's success at the time he took command was extreme as evidenced by the mission commander's statement that 'the possibility of a catastrophe and a significant victory for the enemy was very real';
- d. despite being wounded SBLT Perry maintained command of his own aircraft and its crew as well as the other aircraft in the Flight;
- e. he repeated the insertion on two occasions despite the damage to his aircraft and in the full knowledge of the considerable threat on the ground;
- f. the airmanship shown by SBLT Perry in manoeuvring his aircraft on multiple approaches and reducing its threat profile required skill above and beyond the levels he had been trained to perform; and
- g. he had flown for at least ten hours before taking command and continued to fly for many more hours despite the threat and probable effects of fatigue.

SBLT Perry's Eligibility for a Gallantry Award

100. **What is Gallantry.** The Tribunal noted that gallantry decorations accord recognition for individuals 'who perform acts of gallantry in action'. Whilst 'in action' is relatively easy to define, 'gallantry' is an abstract term, which is not defined

in the Regulations. Various dictionary definitions such as ‘dashing courage; heroic bravery’⁶⁵; and ‘courageous behaviour, especially in battle’⁶⁶, are largely circuitous and unhelpful. Some countries have attempted to differentiate between ‘bravery’ and ‘gallantry’; defining the later as recognition of military personnel who carry out acts which put their lives at risk while involved in operational service; whilst ‘bravery’ is defined as saving or attempting to save the life of another person in the course of which they place their own life at risk.⁶⁷ Again this is largely unhelpful in defining gallantry in the context of the Australian Honours and Awards system.

101. The Tribunal considered that all sailors, soldiers, airmen and women who do their expected duty in battle are brave and that duty and bravery rely on each other. The Tribunal considered that ‘gallantry’ required a higher standard than bravery and usually, includes a special element of courage, fearlessness, daring or heroism.

102. The Tribunal considered that what amounts to ‘acts of gallantry’, necessarily, varies according to the individual circumstances of each action, and depending on many factors, including the level of threat, the risk to the individual and or the group, and the consequences of the particular act.

103. The Tribunal considered that the concept of gallantry is greater than collective or individual acts of bravery and above and beyond what was expected of an individual or group who were bravely doing what they were trained to do or expected to do as part of a role, rank or responsibility.

104. **SBLT Perry’s Actions and the Eligibility Criteria.** To be eligible for an Australian gallantry award, SBLT Perry’s actions would need to demonstrate that he had performed ‘acts of gallantry in action’. There is no dispute that SBLT Perry was ‘in action’ – he was wounded, his aircraft was damaged and he was threatened by ground fire whilst in the air and on the ground.

105. In relation to his actions on the day, the Tribunal having reviewed all of the available evidence and submissions made the following observations:

- a. SBLT Perry had a choice when he volunteered to take the lead of the Flight. He could have continued to his base at the end of a long day and taken the attitude that it was not his direct responsibility or duty to offer his services and he was not a designated part of the operation.
- b. SBLT Perry’s decision to offer his support was instinctive and he seized the initiative at a time when there was a considerable danger that the operation would fail and the enemy would prevail.
- c. There was considerable risk to Perry, his crew and the aircraft when the enemy engaged them with a .50 calibre machine gun.

⁶⁵ The Macquarie Dictionary on-line accessed 20 February 2017

⁶⁶ The Oxford Dictionary on-line accessed 20 February 2017

⁶⁷ <http://medals.nzdf.mil.nz/category/d/index.html>

- d. Despite being wounded, and his aircraft potentially immobilised, SBLT Perry held his nerve and remained on the ground whilst the troops were disembarked and his crew returned fire.
- e. SBLT Perry remained calm and in command of not only his own aircraft and crew, but also the other aircraft he was responsible for when he directed the extraction from the landing zone.
- f. With the full knowledge of the considerable threat, and despite being wounded and in a damaged aircraft, SBLT Perry repeated the insertion of the remaining troops in two more phases.
- g. Commodore Farthing, an experienced combat commander at the time of the action and the Mission Commander reported that SBLT Perry 'showed exceptional leadership' during the action.
- h. SBLT Perry demonstrated airmanship above the level expected despite being under fire and clearly threatened.

106. Having made these observations, the Tribunal considered that SBLT Perry was exposed to a significant threat, in a complex and challenging environment with great risk and that the consequences of him not taking the actions he took may have resulted in an overwhelming victory by the enemy and considerable loss of life.

107. The Tribunal considered that SBLT Perry demonstrated a special element of courage, fearlessness, sound leadership and exceptional airmanship in circumstances of significant risk. In the Tribunal's view his actions were well above what was expected of a young and relatively inexperienced pilot. For these reasons the Tribunal finds that SBLT Perry did perform 'acts of gallantry in action'.

108. **The Level of Award.** Having found that SBLT Perry's actions were gallant, the Tribunal turned to an assessment of his actions against the eligibility criteria for Australian gallantry awards starting with the VC. The Tribunal noted that Commodore Farthing had stated that in his view, and as the OIC of the contingent, he did not consider that SBLT Perry's actions warranted the VC. The Tribunal considered this statement by the officer who would have been the nominating officer for such an award to be significant and gave it great weight.

109. The Tribunal noted that the VC required 'the most conspicuous gallantry or a daring or pre-eminent act of valour or self-sacrifice or extreme devotion to duty'. The Tribunal did not consider that SBLT Perry's gallantry could be considered to be conspicuous, pre-eminent or an act of self-sacrifice and, giving great weight to the recommendation by Commodore Farthing, finds that the actions do not meet the threshold for the VC.

110. The Tribunal noted that Commodore Farthing and Captain Ray had not considered the eligibility criteria for gallantry decorations when submitting their applications but had decided for various reasons that the DFC was an appropriate level of recognition. The Tribunal noted that the DFC was a Level 3 Gallantry Award

considered in the Imperial system to be equivalent to the DSC for the Navy and in the contemporary Australian system to be the equivalent of the MG.⁶⁸

111. However, the Tribunal decided that a merits review should not rely on a simple 'equivalency' matrix and so turned to an assessment of SBLT Perry's actions against the eligibility criteria for the SG, MG and Commendation for Gallantry.

112. The Tribunal noted that the SG 'shall be awarded only for acts of great heroism or conspicuous gallantry in action in circumstances of great peril'. The Tribunal did not consider that SBLT Perry demonstrated 'great heroism' and that despite the environment being dangerous and risky, he was not in 'circumstances of great peril' as there were already a number of troops on the ground in contact with the enemy at the time he landed. Accordingly, the Tribunal finds that SBLT Perry's actions do not satisfy the conditions for the award of the SG.

113. The Tribunal noted that the MG 'shall be awarded only for acts of gallantry in action in hazardous circumstances. Having found that SBLT Perry did perform acts of gallantry in action, the Tribunal reviewed the threat, risk and challenging circumstances of the action and was reasonably satisfied that his actions were performed in 'hazardous circumstances'. For completeness, the Tribunal also reviewed the conditions for the Commendation for Gallantry which could be awarded for 'other acts of gallantry in action which are considered worthy of recognition'. The Tribunal considered that the phrase 'worthy of recognition' seriously understated the actions of SBLT Perry.

Conclusion and Findings

114. The Tribunal was reasonably satisfied that if SBLT Perry had not been recommended for the US Silver Star in 1970, he would have in all likelihood been recommended and considered for an Australian gallantry award. Based on the evidence of the OIC of the contingent, it is improbable that this would have been a VC nomination. The fact that he was not able to receive the US Silver Star until 25 years after the action was in the view of the Tribunal manifestly unfair. Having reviewed the citation for the MID which was awarded to SBLT Perry and relying on Commodore Farthing's evidence, the Tribunal finds that the award of the MID on 17 December 1970 was not related to SBLT Perry's actions on 18 May 1970.

115. Noting the Navy's position that receipt of a foreign award would not preclude consideration for an Australian award, and having assessed the evidence and accounts of the action against the eligibility criteria for gallantry awards, the Tribunal finds that SBLT Perry's actions as a Flight Leader at Binh Dai on 18 May 1970 meet the conditions for the award of the Medal for Gallantry.

⁶⁸ Valour Inquiry Report, A6-3

TRIBUNAL DECISION

116. The Tribunal decided to recommend to the Minister that:
- a. the decision by the Chief of Navy to refuse to recommend a higher gallantry award for Sub-Lieutenant Andrew Perry for his actions on 18 May 1970 with the Royal Australian Navy Helicopter Flight Vietnam be set aside; and
 - b. the Minister recommend to the Governor-General that Sub-Lieutenant Andrew Perry be awarded the Medal for Gallantry for acts of gallantry in action in hazardous circumstances as a Flight Leader at Binh Dai, South Vietnam on 18 May 1970.