



## Australian Government

### Defence Honours and Awards Appeals Tribunal

#### **Allsopp and the Department of Defence Re: Allsopp [2016] DHAAT 31 (25 August 2016)**

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| File Number(s)      | 2015/029  |
| Re                  | <b>Dr Patrick Allsopp</b> on behalf of <b>Captain Raymond Allsopp (deceased)</b><br>Applicant |
| And                 | <b>The Australian Army</b> on behalf of <b>the Department of Defence</b><br>Respondent        |
| <b>Tribunal</b>     | Brigadier Mark Bornholt, AM (Retd) (Presiding Member)<br>Brigadier Kevin O'Brien, CSC (Retd)  |
| <b>Hearing Date</b> | 15 July 2016  |

#### **DECISION**

On 25 August 2016 the Tribunal decided to recommend to the Minister that:

- the decision by the Chief of Army to recommend that no further action be taken to upgrade Captain Raymond Allsopp's Mention in Despatches to a Victoria Cross for his actions on 1 July 1945 at Balikpapan be set aside, and
- the Minister recommend to the Governor-General that Captain Raymond Allsopp be posthumously awarded the Star of Gallantry for acts of heroism in action in circumstances of great peril as the Regimental Medical Officer of 2/5<sup>th</sup> Cavalry Commando Squadron at Balikpapan on 1 July 1945.

#### **CATCHWORDS**

DEFENCE HONOUR – *Victoria Cross – Mention in Despatches – Gallantry Decorations – World War Two – South West Pacific - Balikpapan*

#### **LEGISLATION**

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

# REASONS FOR DECISION

## Introduction

1. The applicant, Dr Patrick Allsopp (Dr Allsopp) seeks review of a decision by the Chief of Army (CA) to recommend to the Parliamentary Secretary to the Minister for Defence that no further action be taken to upgrade his uncle, Captain Raymond Allsopp's award for gallantry. Captain Allsopp was the medical officer attached to 2/5<sup>th</sup> Australian Cavalry Commando Squadron and was killed in action on 1 July 1945 near Balikpapan whilst tending wounded. He was recommended for a posthumous Victoria Cross (VC) by his Squadron Commander on 24 July 1945. For his actions he was awarded the Mention in Despatches (MID) posthumously on 6 March 1947.

2. On 2 October 2012, Dr Allsopp made a submission to the Tribunal's *Inquiry into unresolved recognition for past acts of naval and military gallantry and valour* (the Valour Inquiry).<sup>1</sup> His submission sought that Captain Allsopp be awarded the VC, 'a decoration that he was recommended for.'<sup>2</sup> On 3 October 2012, Mr Bruce Poulter on behalf of the Australian Commando Association made a submission to the Valour Inquiry also seeking that Captain Allsopp be awarded the VC 'in confirmation of the original recommendation' and to be 'consistent with more recent awards for similar behaviour by members of the special forces'.<sup>3</sup> Both submissions outlined the action and provided the original citation, supporting witness statements and contemporaneous historical accounts of the action.

3. On 14 March 2013 the Australian Government referred the submissions to the CA through the Chief of the Defence Force for consideration. In April 2015 Army undertook an individual review of Dr Allsopp's submission. This review confirmed that Captain Allsopp had been originally nominated for the VC however it was 'not possible to ascertain why the award was changed from a VC to a MID'. The CA informed Dr Allsopp that 'Army could not locate any evidence that Captain Allsopp's actions were not appropriately considered or that the recommendation was obstructed or unfairly treated'. Therefore, 'in the absence of a failure in due process or provision of new evidence', the CA recommended that no further action be taken to upgrade the award.<sup>4</sup> On 3 June 2015 Dr Allsopp made application to the Tribunal for review of the CA decision.<sup>5</sup>

## Tribunal Jurisdiction

4. 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 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

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<sup>1</sup> Defence Honours and Awards Appeals Tribunal, *Inquiry Into Unresolved Recognition for Past Acts of Naval and Military Gallantry and Valour* dated 21 January 2013

<sup>2</sup> Dr Patrick Allsopp Valour Inquiry Submission Number 265 – dated 2 October 2012

<sup>3</sup> Mr Bruce Poulter Valour Inquiry Submission Number 267 – dated 3 October 2012

<sup>4</sup> Letter Chief of Army to Dr Allsopp OCA/OUT/2015/R21083186 dated 27 April 2015

<sup>5</sup> Dr Allsopp's Application for Review of Decision dated 3 June 2015

defence honour as being those awards set out in Part 1 of Schedule 3. Included in the defence honours set out in Part 1 is the VC.

5. The Tribunal considered that Dr Allsopp's submission to the Valour Inquiry and subsequent application for review of decision constituted an application as defined in s110V(1)(c) of the Defence Act. The CA's recommendation to the Parliamentary Secretary that no further action be taken to upgrade the award constituted a refusal to recommend Captain Allsopp for the VC.<sup>6</sup> Both of these documents satisfy 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 CA in 2015 and accordingly, the Tribunal will be bound by the eligibility criteria that governed the making of that decision as required by s110VB(6) of the Defence Act.

6. In accordance with s110VB(1) of the Defence Act, as the matter under review is 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**

7. In accordance with its *Procedural Rules 2011*, on 6 August 2015, the Tribunal wrote to the Secretary of the Department of Defence informing him of Dr Allsopp's submission on behalf of Captain Allsopp and requested a report on the material questions of fact and the reasons for the decision made in relation to Captain Allsopp's eligibility for the VC.<sup>7</sup> The Tribunal also requested that the Secretary provide copies of documentation relevant to the reviewable decision and that he provide a copy of the relevant service record.

8. On 21 October 2015, the Director General Personnel – Army provided a response which included a review of Captain Allsopp's recognition prepared by the Army History Unit (the Army Submission).<sup>8</sup> The submission concluded that:

*'... there is little evidence upon which to come to a conclusion as to why Captain Allsopp's recommendation for a VC was struck out, or that it was a result of a failure in due process or maladministration or that his actions were not properly considered.'*

9. On 26 October 2015 the Tribunal provided the Army Submission to Dr Allsopp for comment.<sup>9</sup> On 18 November 2015 the Tribunal received Dr Allsopp's comments.<sup>10</sup>

10. The Tribunal met on 12 April 2016 and considered the material provided by Army, Dr Allsopp and Mr Poulter. The Tribunal confirmed the scope of the review, the decision under review and jurisdiction, and determined that it would require

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<sup>6</sup> Letter Chief of Army to Dr Allsopp OCA/OUT/2015/R21083186 dated 27 April 2015

<sup>7</sup> Letter Chair of the Tribunal to the Secretary Department of Defence DHAAT/OUT/2015/467 dated 6 August 2015

<sup>8</sup> Army Submission into Review of Recognition for Captain R.J. Allsopp, dated 21 October 2015

<sup>9</sup> Letter Tribunal Secretariat to Dr Allsopp, DHAAT/OUT/2015/654 dated 26 October 2015

<sup>10</sup> Dr Allsopp Letter received 18 November 2015

further research material before proceeding. In particular unit war diaries, comparisons of other similar nominations through the parent brigade and division; and the administrative arrangements for, and compilation of, the End of Hostilities List (EOHL) for the South West Pacific theatre of operations. This material was subsequently provided by the Tribunal Secretariat and where relevant, extracts were forwarded to Dr Allsopp, Mr Poulter and Defence on 30 June 2016.

11. The Tribunal noted that the Valour Inquiry had addressed the issue of retrospective honours and awards.<sup>11</sup> The Valour Inquiry developed guidelines that would be able to be applied in any later reviews and the Tribunal noted that the CA had used this guidance in reaching the recommendation and decision on eligibility for Captain Allsopp.

12. The guidelines suggest that the first step in examining retrospective honours should be the conduct of a review to determine whether due process had been followed. This step should include ‘an attempt to determine whether there is a case of maladministration and whether new evidence has come to light’. The guidelines suggest that if due process had been followed, there was no maladministration, and if there was no new evidence, the original decision should remain unchanged.

13. Notwithstanding this guidance, it should be noted that s110VB of the Defence Act requires the Tribunal to undertake a merits review of all reviewable decisions, where an application for review has been properly made. The Tribunal therefore decided to conduct a process review of Dr Allsopp’s claims and, even if a case of maladministration could not be proven, the Tribunal would also conduct a merits review of Captain Allsopp’s eligibility for the VC for his actions on 1 July 1945, noting that in accordance with the law, the review would be bound by the eligibility criteria that governed the making of the reviewable decision – that being the criteria that was in place in April 2015.

14. 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, Dr Allsopp and Mr Poulter were invited to provide evidence at a hearing held in Sydney on 15 July 2016. Defence was also invited to attend the hearing but indicated that there was no ‘suitable Army representative’ available. Army provided written responses to questions asked by the Tribunal prior to the hearing and these were passed to Dr Allsopp.<sup>12</sup>

### **Background to Captain Allsopp’s Actions at Balikpapan**

15. Captain Allsopp was born in Parramatta on 25 June 1915. He studied medicine at the University of Sydney and completed clinical training at the Royal Prince Alfred Hospital. He commenced private medical practice in Wollongong before enlisting in the Citizen Military Forces on 1 July 1941. On 4 August 1942 he was seconded for duty as a Regimental Medical Officer (RMO) with the Second Australian Imperial Force. On 17 August 1943 Captain Allsopp was appointed as the

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<sup>11</sup> Defence Honours and Awards Appeals Tribunal, *Inquiry Into Unresolved Recognition for Past Acts of Naval and Military Gallantry and Valour* dated 21 January 2013

<sup>12</sup> Letter from Director General Personnel - Army to Chair of the Tribunal, DGPERS-A/OUT/2016/R26558753 dated 13 July 2016

RMO of 2/5<sup>th</sup> Independent Company.<sup>13</sup> In the lead up to deployment, this unit was re-tasked as a light infantry commando unit, retitled the 2/5<sup>th</sup> Cavalry Commando Squadron and placed under the command of 2/7<sup>th</sup> Cavalry Commando Regiment. The Regiment was stationed in the Atherton Tablelands where it remained training until 31 May 1945 when it deployed to Moratai to prepare for operations in Borneo.<sup>14</sup>

16. In the last months of the Second World War, General MacArthur ordered the 1<sup>st</sup> Australian Corps to conduct three operations to capture the Borneo oilfields. The third of these operations was conducted by the Australian 7<sup>th</sup> Division to capture the oil port of Balikpapan from the sea. The amphibious assault on 1 July 1945 was supported by a three-week aerial bombing campaign and naval gunfire. Two formations, the 18<sup>th</sup> and 21<sup>st</sup> Infantry Brigades, landed side by side and advanced inland supported by tanks and flame throwers. The 21<sup>st</sup> Infantry Brigade commanded by Brigadier Ivan Dougherty was tasked to move along the coast and secure the airfields.<sup>15</sup> 2/7<sup>th</sup> Cavalry Commando Regiment was placed under command of the 21<sup>st</sup> Infantry Brigade for the operation and participated in the assault onto the beach. The Brigade landed 2/14<sup>th</sup> and 2/16<sup>th</sup> Battalions who fought to establish the beachhead. By late afternoon they had established a perimeter with the loss of the leading platoon commander from the 2/16<sup>th</sup> Battalion, Lieutenant Armstrong and five other soldiers.

17. After consolidation on the beach, 2/5<sup>th</sup> Cavalry Commando Squadron passed through the 2/14<sup>th</sup> Battalion heading eastwards and as they moved into the foothills, the lead section (1 Section, D Troop) came across a group of Japanese and opened fire, killing two. The third enemy soldier escaped and the section gave pursuit. They had just crested a ridgeline when they came under intense and accurate fire from Japanese soldiers concealed in pillboxes and amongst the heavily wooded area to their front. Four soldiers were killed and Lieutenant Pearson from the leading section and six others were wounded. The official history states that:

*‘The medical officer of the squadron, Captain Allsopp, went forward under heavy fire and attended to the wounded. While dragging a trooper towards safety Allsopp was himself hit in the thigh and the trooper whom he was helping was mortally wounded. Allsopp continued to look after the wounded and dying men until he was hit again, this time fatally.’<sup>16</sup>*

18. *Commando Double Black*, the history of the 2/5<sup>th</sup> Independent Company - 2/5<sup>th</sup> Commando Squadron states:

*‘... there was a loud explosion ...’*“Doc” Allsopp had been hit. This courageous doctor had gone forward under heavy fire and received a flesh wound in the thigh himself whilst dragging the wounded Steve Usher out of the line of fire. After tending to the dead and wounded, he made his way back and joined Lieutenant MacLeod. “Doc” had just begun to converse with George, when a hand grenade – thrown by a Japanese – exploded beside them. After

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<sup>13</sup> Extracts from ‘A Brief History of Captain Raymond Jesse Allsopp’, Dr Allsopp’s Application for Review of Decision dated 3 June 2015

<sup>14</sup> Army Submission into Review of Recognition for Captain R.J. Allsopp, dated 21 October 2015 p. 9

<sup>15</sup> Long, Gavin, *The Final Campaigns, Australians in the War 1939-1945*, Series 1 Army – Volume VII, Canberra, Australian War Memorial, 1963, Chapter 21

<sup>16</sup> *Ibid.*, p515

*the explosion, Dr Allsopp was moaning loudly, and holding one hand to his temple. A large fragment of the grenade had entered his temple, and inflicted a fatal wound in his head.*<sup>17</sup>

19. Captain Allsopp was carried back to safety by Lieutenant MacLeod but died soon afterwards. Captain Allsopp, along with other casualties of this battle were initially buried in the field close to where they had fallen. On 3 September 1945, Captain Allsopp was reinterred at the Balikpapan War Cemetery.<sup>18</sup>

20. On 24 July 1945, the Officer Commanding 2/5<sup>th</sup> Cavalry Commando Squadron, Major Ian Kerr, raised Army Form W.3121 recommending Captain Allsopp be awarded the VC (Posthumously).<sup>19</sup> The form with an appropriate citation and six witness statements (including one by Major Kerr) was endorsed by the Commanding Officer of 2/7<sup>th</sup> Cavalry Commando Regiment, Lieutenant Colonel Norman Fleay on 24 July 1945. The nomination was then presumably forwarded to the Commander of the 21<sup>st</sup> Infantry Brigade, Brigadier Dougherty whose signature block was completed by Major Kerr on the form ready for Dougherty's signature. There is no evidence as to what happened to the form after it was signed by Lieutenant Colonel Fleay.

21. For his service during the war, Captain Allsopp was awarded the:

- 1939-45 Star,
- Pacific Star, and
- Australia Service Medal 1939-45.

22. On 6 March 1947 Captain Allsopp was awarded the MID (Posthumous) 'for exceptional service in the field in the South West Pacific Area'.<sup>20</sup>

### **The Citation**

23. The citation supporting Captain Allsopp's nomination for the VC dated 24 July 1945 states:

*'On the afternoon of 1 July 1945 in open country to the north east of Balikpapan, a section of 2/5<sup>th</sup> Australian Cavalry Commando Squadron was trapped in an enemy ambush. Shortly after the commencement of the action the Officer Commanding the section and a trooper were wounded. Although their position was in the open on a low spur which was swept by fire of at least six enemy LMG's and one HMG, Captain Allsopp, the Squadron Medical Officer with total disregard for his personal safety, went forward to them and dressed the wounds of both. The officer was sent back as walking wounded and Captain Allsopp, endeavouring to carry the wounded trooper to safety,*

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<sup>17</sup> Pirie, AA *Commando Double Black: An Historical Narrative of the 2/5 Independent Company – 2/5 Commando Squadron*, published by the 2/5<sup>th</sup> Commando Trust, Sydney, 1993, P. 422

<sup>18</sup> Allsopp, Raymond Jesse, Service Record NAA B883 NX104023, Item Barcode 5662423

<sup>19</sup> Army Form W.3121, Captain R.J. Allsopp dated 24 July 1945, Army Submission, Annex E and also in Allsopp, Raymond Jesse, Service Record NAA B883 NX104023, Item Barcode 5662423

<sup>20</sup> *Supplement to The London Gazette No. 37898* dated Thursday 6 March 1947

*had proceeded only thirty yards when the wounded man was again hit, and Captain Allsopp was wounded in the left thigh himself.*

*In spite of his own wound, as this trooper was dying, Captain Allsopp crawled to another trooper who was wounded, dressed his wounds and then carried water to the dying man. He then proceeded to the assistance of another wounded trooper who was unable to extricate himself, dressed the soldier's wounds, and then carried him to safety. When returning to bring out another badly wounded man, Captain Allsopp was fatally wounded by fragments from a mortar bomb.*

*Captain Allsopp was exposed to incessant enemy machine-gun and rifle fire, tending the wounded, for a whole hour. His actions throughout were cool and deliberate and though wounded, he remained at his post of mercy even after the return to safety of the troopers who had been harmed. His action undoubtedly saved the lives of at least three badly wounded men at the cost of his own for which he showed not the slightest consideration.*

*The extreme courage, fortitude and devotion to duty displayed by this officer in the face of such odds will ever remain as an inspiration to the men of his unit.*<sup>21</sup>

24. The citation was supported by six witness statements. The first of these was from Corporal Edward Fitzgerald who was a member of 1 Section (the contacted section).<sup>22</sup> His statement confirms that Captain Allsopp was forward tending the wounded and that the area he was in was under continuous fire. He states that Captain Allsopp tended the wounded for approximately one hour and that at 'no time did he show concern at his own danger'.

25. The second witness statement was from Trooper James Burgess also of 1 Section.<sup>23</sup> He states that he saw Captain Allsopp receive a gunshot wound in the left thigh whilst attempting to drag Trooper Usher to a safe position. He also saw a wounded Captain Allsopp crawl to another soldier – Trooper McKeown and dress his wounds. He also confirms that the position was under fire throughout and Captain Allsopp showed no concern for his own safety.

26. The third witness, Trooper Wallace Dudley confirms the account of the other witnesses.<sup>24</sup> The fourth witness Trooper Francis Hartnett also confirms the account and adds that when he offered to help Captain Allsopp he was told to '...get out yourself this position is under fire'.<sup>25</sup>

27. The fifth witness was Lieutenant George MacLeod, the Officer Commanding 2 Section.<sup>26</sup> His section provided covering fire in an attempt to facilitate the

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<sup>21</sup> Army Form W.3121, Captain R.J. Allsopp dated 24 July 1945, Service Record NAA B883 NX104023, Item Barcode 5662423

<sup>22</sup> Mr Bruce Poulter Valour Inquiry Submission Number 267 – dated 3 October 2012

<sup>23</sup> Ibid.

<sup>24</sup> Ibid.

<sup>25</sup> Ibid.

<sup>26</sup> Ibid.

extraction of 1 Section. He states that he saw Captain Allsopp go forward under fire and that he saw a mortar bomb land beside him, wounding him in the head and rendering him unconscious. He stated that he and Trooper Dudley carried Captain Allsopp back to a safe position where he subsequently died of his wounds. He confirms that the ground where Captain Allsopp tended the wounded was under constant fire from all sides.

28. Major Kerr was not a witness to the action but records in a witness statement that he subsequently examined the ground where the section was ambushed and considered that 'there is nowhere on the spur which would not be under the fire of at least three enemy positions.'<sup>27</sup>

### **Dr Allsopp's Submissions**

29. Dr Allsopp's submission to the Valour Inquiry contained a brief history of Captain Allsopp including his upbringing, education and an account of the action on 1 July 1945.<sup>28</sup> The account is largely consistent with that provided in the official history and in the citation and witness statements which he also attached to his submission. He concludes his submission by stating that:

*'... after the war, the family was told for a doctor killed-in-action, he only qualified for two decorations, the VC or Mention in Despatches. He was awarded a Mention in Despatches (post.) I believe that Captain Allsopp deserves the Victoria Cross, a decoration that he was recommended for.'*

30. Dr Allsopp's submission in support of his application for review indicates that the family had not been originally aware that Captain Allsopp had been recommended for the VC.<sup>29</sup> In his submission Dr Allsopp repeats the account he had previously provided and emphasises that Captain Allsopp was a non-combatant during the action as he was 'barred from carrying any weapons'. He states that:

*'... in spite of being wounded and unarmed, Captain Allsopp thought only of the well-being of the members of his unit'.*

31. In this submission Dr Allsopp also contrasts Captain Allsopp's actions with contemporary VC winner's citations implying that their actions could be seen to be similar to Captain Allsopp's but with each of them being exposed to the enemy for considerably less time and, in contrast to Captain Allsopp, each of them was armed.

32. Dr Allsopp also states that the Commando Association made a separate submission and having evaluated the information, they concluded that Captain Allsopp:

*'acted with the greatest valour and duty to his unit and deserved a VC'.*

33. Dr Allsopp asserts that Captain Allsopp's actions were considered by:

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<sup>27</sup> Ibid.

<sup>28</sup> Dr Patrick Allsopp Valour Inquiry Submission Number 265 – dated 2 October 2012

<sup>29</sup> Dr Allsopp's Application for Review of Decision dated 3 June 2015



*'a committee formed to evaluate the actions of different personnel and award decorations accordingly'.<sup>30</sup>*

34. He asserts that the committee of three, the Brigadier, Lieutenant Colonel and Major sat on 24 July 1945 and:

*'heard evidence from the six witnesses ... they all testified to the valour, courage and effectiveness of Captain Allsopp in the ambush'.*

35. Dr Allsopp concludes his submission by stating that:

*'...three and a half weeks after his death, a committee of senior officers recommended him for a VC. No evidence could be found to overturn this recommendation, therefore, the recommendation should stand and Captain Allsopp, after 70 years should be given justice'.*

36. During the hearing Dr Allsopp reiterated his assertions that 'the Government had dictated that only those who were alive could be given the VC'. The Tribunal discussed this assertion with Dr Allsopp and noted that he was in fact quoting from an Administrative Instruction from the 8<sup>th</sup> Division which was included in the Army submission. The Tribunal pointed out to Dr Allsopp that this document was not Government policy and did not relate to Captain Allsopp's situation.<sup>31</sup> Both Dr Allsopp and Mr Poulter accepted this explanation at the hearing.

### **Mr Poulter's Submission**

37. Mr Poulter's submission on behalf of the Australian Commando Association is similar to that provided by Dr Allsopp. The submission suggests that the Association believes that Captain Allsopp should be retrospectively awarded the VC to be:

*'consistent with more recent awards for similar behaviour by members of the special forces'.<sup>32</sup>*

38. The submission includes the citation and witness statements and also quotes extensively from *Commando Double Black*.<sup>33</sup> This book contains a four-page account of the action in which Captain Allsopp was killed and introduces largely irrelevant opinions about what may have motivated Captain Allsopp to act as he did on the day. The account of the action is similar to that in the citation and witness statements, with differences being immaterial such as whether or not Captain Allsopp's fatal injury was inflicted by a grenade or a mortar round.

39. During the hearing Mr Poulter pressed that this case was a clear example of valour, that Captain Allsopp had a choice to either go forward unarmed and tend to the wounded or remain at his relatively safe post to the rear. Because he acted as he

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<sup>30</sup> Ibid.

<sup>31</sup> Army Submission into Review of Recognition for Captain R.J. Allsopp, dated 21 October 2015 Annex G

<sup>32</sup> Mr Bruce Poulter Valour Inquiry Submission Number 267 – dated 3 October 2012

<sup>33</sup> Pirie, AA *Commando Double Black: An Historical Narrative of the 2/5 Independent Company – 2/5 Commando Squadron*, published by the 2/5<sup>th</sup> Commando Trust, Sydney, 1993, P. 422

did, Mr Poulter claimed that this was in stark contrast to others who have received gallantry awards as they were armed. In his view, Captain Allsopp ‘had a choice and gallantly elected to proceed despite all of the risks’. For this reason, he asserts that Captain Allsopp should receive the award he was nominated for – the VC.

### **The Army Submission**

40. On 21 October 2015, the Director General Personnel – Army wrote to the Tribunal and indicated that Army:

*‘does not consider it equitable or sustainable to conduct a merit (sic) review in the first instance ...’<sup>34</sup>*

41. The response indicated that in relation to the award being downgraded from a VC and the absence of evidence as to why the original nomination was not successful:

*‘... it was reasonably concluded that the nomination was struck out as it progressed through the chain of command ...’*

42. The Army submission indicates that they had reviewed several relevant files related to honours and awards for the Cavalry Commando Squadron and files maintained by the Governor-General. Army concluded that:

*‘the recommendation submitted for the award of the VC to Captain Allsopp was raised and processed in accordance with extant policies and regulations of the period ... it was completed on the correct form and contained an accurate description of Captain Allsopp’s actions ... the recommendation was submitted and processed in a timely manner’.*

43. The submission suggests that the recommendation ‘was rejected at a higher command ... however in the absence of evidence which reflects such a decision, this cannot be definitively concluded’. The submission further opines that the original recommendation for the VC may have been retained and subsequently, Captain Allsopp’s name may have been ‘put forward for inclusion in the End of Hostilities List’. The submission states that:

*‘... a review of the records was unable locate a nomination specifically for the MID so it is unclear how this nomination came about’.*

44. The Army submission suggests that the MID nomination would not have been generated at any level below Division ‘due to instructions given in the 8<sup>th</sup> Division Administrative Instruction Number 2/45 (Admin Instr 2/45)’. This instruction provided guidance to the 8<sup>th</sup> Australian Division for the provision of recommendations for the EOHL.

45. The submission indicates that a colleague of Captain Allsopp’s, Sergeant Richard McLaughlin, also of the 2/5th Cavalry Commando Squadron, was recommended for a Distinguished Conduct Medal (DCM) on the same day as Captain

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<sup>34</sup> Army Submission into Review of Recognition for Captain R.J. Allsopp, dated 21 October 2015

Allsopp for an action on 4 July 1945.<sup>35</sup> This nomination was raised by Major Kerr, recommended by Lieutenant Colonel Fleay and also had the Brigade Commander's signature block prepared on the form. As in the Allsopp case, there is no evidence of the recommendation process at and beyond 21<sup>st</sup> Brigade however Sergeant McLaughlin's nomination was approved and gazetted nine weeks after the action.<sup>36</sup>

46. The question of quota was also addressed in the Army submission and it was concluded that impositions of quotas for the Borneo campaign had no bearing on Captain Allsopp's nomination for the VC. In fact, the records indicate that the quotas for the period ending 15 August 1945 were not reached.<sup>37</sup>

47. The Army submission addresses the compilation of the EOHL stating that the 8<sup>th</sup> Australian Division released Admin Instr 2/45 for the provision of nominations for the preparation of this list in August 1945. There was no evidence that a similar instruction had been released by 7<sup>th</sup> Division (Captain Allsopp's superior headquarters), however Army concluded that it was reasonable to assume that it may have been the case. The submission indicates that the EOHL was established in October 1945 and contained a final list of names not submitted during operations for gallantry and meritorious service.

48. The Army concludes its submission by stating that:

*'... Captain Allsopp's MID was not awarded as a "downgrade" from the VC, but as part of the End of Hostilities List ...'*

### **The Contemporary Australian Honours System and the Victoria Cross**

49. Australian service personnel received honours and awards including the VC under the Imperial system until February 1975 when the Government introduced the Australian 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:<sup>38</sup>

*Her Majesty The Queen has indicated her view that it is appropriate that Australian citizens should be recognised exclusively by the Australian system of honours ... accordingly I have consulted with the Premiers of States and we have agreed that Australian Governments, both State and Commonwealth, will henceforth cease to make recommendations for British honours...*

50. Prior to 1991, Australians were considered for the VC under the auspices of the Imperial Royal Warrant originally made on 29 January 1856. Ninety-six Australians were awarded the medal, twenty of these during the Second World War.<sup>39</sup>

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<sup>35</sup> Ibid. p. 27

<sup>36</sup> Ibid. p. 28

<sup>37</sup> Military Secretary MS1/FD – *Certificate Showing Quota of Periodical Awards and Mentions in Despatches for the Period Ending 15<sup>th</sup> August 1945* dated 15 March 1946, *Army Periodical Operational Awards 1 April to 15 August 1945* NAA A816, 66/301/284, BC 171734

<sup>38</sup> Prime Minister of Australia Media Release 111/92 dated 5 October 1992

<sup>39</sup> [www.itsanhonour.gov.au/honours/awards/medals/victoria\\_cross.cfm](http://www.itsanhonour.gov.au/honours/awards/medals/victoria_cross.cfm), accessed on 10 August 2016

As the Tribunal is unable to make recommendations relating to Imperial honours, it may only review eligibility for contemporary gallantry awards for Captain Allsopp.

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

*'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 pre-eminent acts of valour or self-sacrifice or display extreme devotion to duty'*.<sup>40</sup>

52. 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 pre-eminent act of valour or self-sacrifice or extreme devotion to duty in the presence of the enemy.*

4. *Each decoration may be awarded posthumously.*

...

***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....*<sup>41</sup>

**The Process Review**

53. **The Policy Regarding Nominations for Gallantry in 1945.** The Tribunal noted that the Army Submission states that the policy for the processing of recommendations for honours and awards in 1945 when Captain Allsopp was nominated for the VC was General Routine Order 281/44 (GRO 281/44) dated 31 July 1944.<sup>42</sup> The Order was not included in the Army submission however the Tribunal subsequently sourced the document and during the hearing, provided Dr Allsopp with a copy. The Order states that recommendations for 'Special' awards including the VC are to be forwarded within the shortest possible time after the act of gallantry. The Order also specifies that with the exception of the VC and MID, 'recommendations may only be submitted in respect of persons living at the time the recommendations are made'. Further, in relation to the MID the Order states that recommendations will not be submitted on form AF W.3121 'but will be compiled in order of priority within units and forwarded through the usual channels'.<sup>43</sup>

54. The Tribunal noted that the issue of whether or not the Army had the lawful power to issue orders had been addressed in the *Inquiry Into the Refusal to Issue*

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<sup>40</sup> *Commonwealth of Australia Gazette No. S25 – Victoria Cross Regulations*– dated 4 February 1991

<sup>41</sup> *Ibid.*

<sup>42</sup> *Allied Land Forces in South West Pacific Area (Land Headquarters) – General Routine Order MS 281* dated 31 July 1944, Army Submission p. 19

<sup>43</sup> *Ibid.*

*Entitlements to, Withholding and Forfeiture of Defence Honours and Awards.* The report of this Inquiry stated:

*The Australian Parliament had the power to make laws for the Armed Forces, which it did by passing the Defence Act. The Defence Act set up the Military Board and the Naval Board and authorised the Governor-General to make regulations for the discipline and good government of the Army and the Navy. Later similar provisions were made for the Air Force. The regulations (the AMRs, Naval Regulations and the AFRs) authorised the Military Board, the Naval Board and the Air Force Board to make orders for the governance of the Army, Navy and Air Force respectively. The Military Board made orders in the form of Instructions for the administration of the Army and the Naval and Air Force Boards made Orders for the Navy and Air Force. ... All these laws including the subordinate legislation were valid.*<sup>44</sup>

55. The Tribunal was satisfied that GRO 281/44 was the appropriate order detailing the policy and processes for nominations for gallantry to the Australian Military Forces from July 1944, up to and including the end of the Second World War. The Order requires that nominations be passed from the unit ‘up through brigade, division and higher headquarters to Land Headquarters ... for approval’. Respective commanders of subordinate units and formations are empowered by the order to recommend or reject nominations as they progress. The Tribunal noted that importantly, the Order does not stipulate a requirement to articulate reasons for rejection of nominations at any stage in the process.

56. **Victoria Cross Nomination for Captain Allsopp.** As previously stated, Captain Allsopp was initially nominated for the VC on 24 July 1945 by his Sub-unit Commander on Army Form W.3121. The Tribunal was satisfied that the nomination was appropriately raised in accordance with the policy articulated in GRO 281/44 and recommended by the Sub-Unit Commander’s immediate superior in the chain of command, Lieutenant Colonel Fleay. The Tribunal was of the view that it appeared that the form was made ready for the endorsement of the next officer in the chain of command, Brigadier Dougherty by inserting his signature block. There is however no evidence that Brigadier Dougherty recommended or rejected the nomination or that it was considered at a higher level. In fact, no copy of the citation with Dougherty’s signature has been found and for reasons explained later in the report, the Tribunal was satisfied that many similar nominations were also not signed by him but were subsequently actioned.

57. The Tribunal did not accept Dr Allsopp’s assertion that the nomination was considered by a ‘committee’ or that the committee ‘heard’ the six witnesses. The Tribunal considered that it was entirely appropriate that a recommendation would be raised by the Sub-Unit Commander, quite probably in consultation with his Commanding Officer who would in this instance have been possibly co-located. There is no evidence to support the assertion that a committee was formed to consider the nomination and Dr Allsopp when asked during the hearing was unable to provide evidence to support his assertion. In the absence of evidence to the contrary, the

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<sup>44</sup> Defence Honours and Awards Appeals Tribunal, Report of the *Inquiry Into the Refusal to Issue Entitlements to, Withholding and Forfeiture of Defence Honours and Awards* dated 7 September 2015 – p. 4, [para 88]

Tribunal was satisfied that the nomination was appropriately raised and made ready for endorsement by the Brigade Commander, however it remains unclear as to what happened to the nomination form after it was recommended by the Commanding Officer on 24 July 1945.

58. **Mention in Despatches Nomination.** The Tribunal noted the Army view in its submission that in relation to Captain Allsopp's MID it was 'unable to locate a nomination specifically for the MID so it is unclear how this nomination came about' and that any 'MID nomination would not have been generated at any level below Division'. The Tribunal's research discovered a Department of the Army file titled '*Recommendations for awards not approved – received from 1 Corp and 7<sup>th</sup> Division and Prisoners-of-War etc*'.<sup>45</sup> This file contains a Minute from Commander 7<sup>th</sup> Division to Land Headquarters dated 4 October 1945 titled '*Recommendations for Periodical Awards*' and is in response to a request from 1<sup>st</sup> Australian Corps dated 14 September 1945.<sup>46</sup> The Minute contains three annexures with recommendations for periodical awards for 'officers, other ranks and mentions in despatches'. Annexure C is a list of '*Recommendations for Mentions in Despatches – In Order of Priority*'.<sup>47</sup> The Annexure is a total of five pages and was spread between two files.<sup>48</sup> The Tribunal was unable to find page three of the document however this page was considered to be immaterial to the outcome. The list of approximately 250 names has Captain Allsopp at position number one and Lieutenant Armstrong (the 2/16<sup>th</sup> Battalion officer killed in the initial landing) at position number two in the order of priority for the Division.<sup>49</sup> Both officers are recommended for posthumous recognition.

59. The Tribunal was therefore satisfied that evidence did exist that points to the fact that Captain Allsopp was nominated as the first in the order of priority of approximately 250 individuals from the 7<sup>th</sup> Division to be awarded the MID on 4 October 1945.<sup>50</sup>

60. There is no evidence that individual citations were used to support this list of nominations for the MID by the 7<sup>th</sup> Division. Noting the guidance in GRO 281/44 that recommendations would not be submitted on form AF W.3121 'but will be compiled in order of priority within units and forwarded through the usual channels'; the Tribunal was satisfied that the 7<sup>th</sup> Division process for these nominations was correct and accorded with the relevant policy.

61. The Tribunal noted that the list of nominations from the 7<sup>th</sup> Division was consolidated by the 1<sup>st</sup> Australian Corps into a list which was submitted through the Prime Minister and Governor-General to the King 'in recognition of services rendered

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<sup>45</sup> *Recommendations for awards not approved – received from 1 Corp and 7<sup>th</sup> Division and Prisoners-of-War etc* AWM 119, 261 B/C 5177661

<sup>46</sup> Ibid. - HQ 7 Div AG6483 *Recommendations for Periodical Awards* dated 4 October 1945 AWM 119, 261 B/C 5177661

<sup>47</sup> Annexure C to Commander 7 Division AG6483 '*Recommendations for Periodical Awards*' dated 4 October 1945 AWM 119, 261 B/C 5177661

<sup>48</sup> AWM 119, 261 B/C 5177661 and AWM 119, 151 Pt12 B/C5192627

<sup>49</sup> As the document is missing page 3, the Tribunal has made an estimate of the total number of names on the list.

<sup>50</sup> Annexure C to Commander 7 Division AG6483 '*Recommendations for Periodical Awards*' dated 4 October 1945 AWM 119, 261 B/C 5177661

in the South-West Pacific Area during the period 1<sup>st</sup> April, 1945 to 15<sup>th</sup> August, 1945'.<sup>51</sup> This list contains a section titled 'Mention in Despatches (Posthumous)' and is for 'distinguished services in the Southwest Pacific Area'.<sup>52</sup> It contains 29 names in rank order including Captain Allsopp. The list also contains Lieutenant Armstrong and Private Justin Evans from the 2/16<sup>th</sup> Battalion who were both killed on the same day as Captain Allsopp and were part of the same Brigade. The total list with only very minor amendment was approved by the King and advised to the Governor-General on 22 February 1947.<sup>53</sup> The list of awards including Captain Allsopp's, was gazetted on 6 March 1947.<sup>54</sup> Now anecdotally referred to as the EOHL, the Gazette does not specify a period but is for 'service in the South West Pacific'. It contains 249 decorations, 231 awards and a total of 1893 MID's.

62. From the original 7<sup>th</sup> Division list of approximately 250 MID nominations, the priority order appears to have been cut off at position 227 as all names below that position were not recognised in the 1947 Gazette or subsequently.

63. **Other Nominations.** The Tribunal noted that several other individuals were nominated for their actions at Balikpapan in 1945. The case of Sergeant McLaughlin (discussed in the Army submission), also of the 2/5<sup>th</sup> Cavalry Commando Squadron, who was recommended on the same day as Captain Allsopp and received the award for which he was nominated nine weeks later, demonstrates that the chain of command exercised discretion in recommending him whilst possibly not recommending Captain Allsopp.<sup>55</sup> Lieutenant Armstrong and Private Evans, killed on the same day as Captain Allsopp were also recognised with posthumous MID on the same lists as Captain Allsopp.<sup>56</sup> Corporal Colin McGorman of the 2/6<sup>th</sup> Commando Squadron was nominated by his Sub-Unit Commander for a Military Medal for actions which occurred on 15 July 1945.<sup>57</sup> This nomination was recommended by Lieutenant Colonel Fleay on 22 July 1945, however like Captain Allsopp he received an MID on 6 March 1947.<sup>58</sup>

64. The Tribunal's research found several similar circumstances within the 1<sup>st</sup> Australian Corps and particularly noted the recommendation for Sergeant Allan Drury who was Captain Allsopp's Regimental Aid Post Sergeant. He was recommended for the British Empire Medal (BEM) by Lieutenant Colonel Fleay for his actions at Balikpapan on 1 July 1945 after Captain Allsopp was killed when 'he moved up to take his place'.<sup>59</sup> Sergeant Drury's BEM was approved by the Commander-in-Chief on 30 November 1945 but was not gazetted until 6 March 1947 on the same schedule as Captain Allsopp.<sup>60</sup>

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<sup>51</sup> Governor General Despatch No.122 of 24 June 1946 NAA A816, 66/301/284 B/C 171734

<sup>52</sup> Ibid. p22

<sup>53</sup> The Secretary of State for Dominion Affairs Cablegram No. 6 received Canberra 22 February 1947 – AWM 88, O/A41(2) AMF B/C 876951

<sup>54</sup> *Supplement to the London Gazette No 37898* dated Thursday 6 March 1947

<sup>55</sup> Army Form W.3121 – *Nomination for Sergeant R.O. McLaughlin, 2/5<sup>th</sup> Aust Cav Commando Sqn – DCM* dated 24 July 1945, *Honours and Rewards - Cavalry*, AWM54 391/5/6 B/C 462170

<sup>56</sup> *Supplement to the London Gazette No. 37898* dated 6 March 1947, p1095 and p1100

<sup>57</sup> *Honours and Rewards –Cavalry*, AWM54, 391/5/6, BC 462170

<sup>58</sup> *Supplement to the London Gazette No. 37898* dated 6 March 1947, p1099

<sup>59</sup> Army Form W.3121 – *Nomination for Sergeant A. Drury, 2/3rd Aust Cdo Sqn – BEM, Honours and Rewards - Cavalry* AWM54, 391/5/6 B/C462170 dated 8 September 1945

<sup>60</sup> *Supplement to the London Gazette No. 37898* dated 6 March 1947, p1088

65. The Tribunal examined several files to attempt to determine if there was any reason why Brigadier Dougherty had not signed Captain Allsopp's citation. A review of many similar nominations revealed that it appeared that he rarely signed any citations. This did not however lead to refusal of awards as evidenced by Sergeant McLaughlin's nomination, discussed above, which was also prepared for Brigadier Dougherty's signature but remained unsigned. Interestingly, the Tribunal found examples where Dougherty did sign some citations including Major Russell<sup>61</sup> and Sergeant McMahon<sup>62</sup>. The Tribunal was therefore satisfied that the fact that Brigadier Dougherty had not signed the Allsopp citation was in all likelihood not particularly detrimental to his consideration.

66. The Tribunal also noted that after the War, the Chief of the General Staff was personally involved in making representations regarding the 'downgrading' of awards, specifically for an officer he nominated for the Distinguished Service Order which was downgraded to an MID. In a Minute to the Secretary dated 28 May 1946 he made the point that:

*'...in the file ... there are about 100 citations recommending various awards that the Commander in Chief (the Corps Commander) downgraded to MID, so this case is far from an isolated one ... I doubt whether anything can be done especially as the officer was awarded the MID so we could not claim that his case was overlooked or mislaid.'*<sup>63</sup>

67. The Tribunal was therefore satisfied that the chain of command above unit level had made discretionary decisions to either progress awards or substitute other awards where it was considered necessary. The Tribunal considered that these discretionary decisions were actions open to the chain of command at the time and there was no reason to question the validity of such decisions.

68. **'MID Posthumous Gap'**. The Tribunal noted that the Valour Inquiry had considered the 'posthumous gap' whereby under the Imperial system in place during the Second World War, only two posthumous awards could be made: the VC and the MID.<sup>64</sup> The policy also articulated in GRO 281/44 stated '... except where it is indicated in the last column of the tables in para 2 (VC, George Cross and MID), recommendations may only be submitted in respect of persons living at the time recommendations are made'.<sup>65</sup> Effectively this meant that if it was considered that the action did not warrant a posthumous VC, the only alternative was the award of a posthumous MID. The Valour Inquiry stated that the shortcomings of the Imperial system in this regard were recognised at the time but a considered decision was made

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<sup>61</sup> *Recommendations for Awards Not Approved*, AWM119, 261, BC 5177661

<sup>62</sup> *Completed List of MIDs and Citations Downgraded – Period 1 April – 15 August 1945* AWM119, 151 Part 10, BC 5192624

<sup>63</sup> Chief of the General Staff 81/1/1211 Minute to the Secretary – *Major B. Fairfax-Ross*, dated 28 May 1946 *Completed List of MIDs and Citations Downgraded – Period 1 April – 15 August 1945* AWM119, 151 Part 11, BC 5192625

<sup>64</sup> Defence Honours and Awards Appeals Tribunal, *Inquiry Into Unresolved Recognition for Past Acts of Naval and Military Gallantry and Valour* dated 21 January 2013 [8-18]

<sup>65</sup> Allied Land Forces in South West Pacific Area (Land Headquarters) – *General Routine Order MS 281* dated 31 July 1944, p.11



not to change the system. The Valour Inquiry decided that it was not reasonable for it to reconsider the cases of Australian personnel who were awarded a posthumous MID, and now to decide, had they lived, whether they would have been awarded anything other than an MID. The Valour Inquiry stated that to attempt such a review would introduce an anomalous precedent that would create an injustice for every other posthumous MID recipient and pose considerable risk to the standing of the Australian honours and awards system.

69. The Tribunal noted that the Valour Inquiry was conducted under s110W of the Defence Act and, whilst the posthumous gap issue was discussed, no recommendations were made to address the perceived inequities when dealing with future retrospective claims for recognition. The Tribunal noted that the Defence Act required it to conduct reviews such as this one for Captain Allsopp under s110V, binding the review to the 2015 reviewable decision and therefore a merits review of the actions against contemporary eligibility criteria. The Tribunal notes that all gallantry awards under the contemporary criteria are able to be awarded posthumously.

70. **The Decision Not to Proceed with a VC Recommendation and Substitute the Nomination for a MID.** As previously stated, the Tribunal was satisfied that Captain Allsopp was correctly recommended for the VC by his Sub-unit and Unit Commander on 24 July 1945 and subsequently nine weeks later, nominated for an MID on 4 October 1945 by his Divisional Commander. Giving great weight to the fact that Captain Allsopp was first in the order of priority for the MID, the Tribunal was reasonably satisfied that either the Brigade Commander or in all likelihood, the Divisional Commander had deliberated as to the level of award that should be given to recognise his actions on 1 July 1945. On the balance of probabilities, the Tribunal considered that the Divisional Commander may have determined that the actions, whilst undeniably gallant, did not quite meet the exceptionally high standards required for the VC and, precluded by policy to recommend a lower gallantry award such as the DCM or Military Cross (MC), decided to nominate Captain Allsopp as the first in the order of priority to be awarded the MID.

71. The Tribunal considered this to be an appropriate use of the Commander's delegated authority and discretion.

### **Finding in Relation to the Process Review**

72. The Tribunal finds that the process used to cite and consider Captain Allsopp's actions on 1 July 1945 was appropriate and lawful and that the decision to not recommend him for a VC and substitute the award of the MID was a valid determination made by an appropriately authorised officer in the chain of command. The Tribunal was satisfied that no maladministration had occurred in the processing of the recommendation for the VC, rather a discretionary decision was taken - in all likelihood by the Commander 7<sup>th</sup> Division, in October 1945.

## The Merits Review

73. **Background.** The Tribunal noted that suggested guidance for merits review is detailed in the Valour Inquiry.<sup>66</sup> This guidance states that the Tribunal, in the conduct of a merits review, is being asked to ‘place itself in the shoes of the original decision-maker’ and where the original decision-maker made a conscious decision not to make an award, the Tribunal ‘was being asked to overturn that decision’. The guidance suggests that:

*‘...if the evidence was exactly the same as that available to the original decision-maker, and if the Tribunal wished to recommend a revised award, it would need to overturn the original decision ...’*

74. The suggested guidance concludes that the merits review revolves around the evidence and, if the Tribunal was persuaded that new evidence was valid, it then needed to ‘consider whether the evidence warranted a new or revised award, judged against the criteria applying at the time’.

75. The Tribunal agreed that this suggested guidance was applicable for the Valour Inquiry which was conducted under the auspices of s110W of the Defence Act, utilising the Tribunal’s inquiry function (s.110UA(b)). However, as previously stated, individual applications for review rely on the existence of a reviewable decision and are conducted under the Tribunal’s review function (s.110UA(a)). This requires the Tribunal to conduct an independent review, with values, expertise, methods and procedures of its own, and not those of the original decision-maker.

76. The facts, law and policy aspects of the original decision are all considered afresh and a new decision made.<sup>67</sup> The Tribunal reviews the original 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 original decision was correct.<sup>68</sup> 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.

77. The Tribunal decided to conduct the merits review conscious of the guidance from the Valour Inquiry, but consistent with the principles set out in the preceding paragraphs.

78. **The Applicant’s Case.** Dr Allsopp contends that Captain Allsopp should be awarded the VC as this was the honour he was originally recommended for and there is no actual evidence that the recommendation was refused. His contention is supported by the Australian Commando Association who opine that the VC should be awarded for consistency with contemporary Special Force recipients.

79. **The Original Nomination and Consideration.** There is no dispute that Captain Allsopp was correctly nominated for the VC. The Tribunal was also

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<sup>66</sup> Ibid. [8-46]

<sup>67</sup> Pearson, Linda, “Merit Review Tribunals”, in Creyke, Robin and McMillan, John, *Administrative Law – the Essentials*, AIAL 2002, p. 68

<sup>68</sup> *McDonald v Director-General of Social Security* (1984) 1 FCR 354

reasonably satisfied that the evidence available to the chain of command when the decision to deny the VC and nominate Captain Allsopp for the MID was made, included the citation and witness statements dated 24 July 1945. The decision maker would also have had available to him the Nominating Officer and witnesses should he have considered they were necessary. As previously stated, the process review finds that the nomination was correctly processed and appropriately considered on its merits by the Divisional Commander. Major General Milford decided that it did not meet the threshold for the VC as evidenced by his decision to make Captain Allsopp first in the order of priority for approximately 250 MIDs (the next available posthumous honour) at the end of the war.

80. The Tribunal notes that Major General Milford was an experienced senior officer having commanded the 5<sup>th</sup> Division in New Guinea in 1943 before assuming command of the 7<sup>th</sup> Division in 1945. The Tribunal considered that given his extensive command experience he was well equipped to make a determination on the relative merits of Captain Allsopp's actions and his eligibility for the VC.

81. Giving significant weight to the citation and witness statements, and great weight to the fact that Captain Allsopp was first in the priority order for the MID, the Tribunal was reasonably satisfied that the original decision-maker had sufficient evidence and the requisite experience to make a discretionary decision to deny Captain Allsopp the VC for his actions on 1 July 1945.

82. **Precedent.** The Tribunal noted that both Mr Poulter and Dr Allsopp contended that Captain Allsopp's actions should be compared with contemporary VC winner's citations, implying in Dr Allsopp's case that their actions could be seen to be similar to Captain Allsopp's; and in Mr Poulter's case that the award of the VC would be 'consistent with more recent awards for similar behaviour by members of the special forces'.<sup>69</sup>

83. The Tribunal did not accept that precedent was a justifiable factor in determining eligibility for defence honours and awards. Eligibility is determined by 'the conditions for the award of the decorations' as declared in the Instruments, Regulations and Determinations for each particular honour or award. Eligibility is determined in each matter according to its own facts and in the case of gallantry, decisions to grant awards are discretionary. The Tribunal noted that neither Dr Allsopp or Mr Poulter supplied new evidence in relation to Captain Allsopp's actions. In relation to precedent and consistency, the Tribunal dismissed both of their contentions as each nomination for gallantry must be considered on its individual merits - precedent is not a relevant consideration.

84. **Evidence of Refusal.** The Tribunal noted Dr Allsopp's contention that if no evidence could be found that the recommendation had been formally 'overturned', then the original recommendation should stand. As previously stated, the Tribunal found that a discretionary decision was made to not support the award of the VC to Captain Allsopp. A separate decision was made to nominate him for the MID as evidenced by the fact that Captain Allsopp was placed first in the order of priority for the MID. The Tribunal was satisfied that whilst there was no 'evidence' to support

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<sup>69</sup> Mr Bruce Poulter Valour Inquiry Submission Number 267 – dated 3 October 2012

the denial of the award of the VC, clearly Captain Allsopp's actions had been considered with the final decision being to place him first in the order of priority for the next available award – the MID. Accordingly, the Tribunal was not persuaded by Dr Allsopp's contention and found that it could not be sustained.

85. **New Evidence.** During the hearing, the Tribunal asked for the submission of any new evidence which described Captain Allsopp's actions - none was presented. Therefore, the Tribunal determined that as there was no new evidence, it could only reach its decision based on the evidence available at the time of the CA's decision in 2015.

86. **The 2015 Consideration by Army.** The Tribunal noted that Army 'does not consider it equitable or sustainable to conduct a merit (sic) review in the first instance ...'<sup>70</sup>, and that at the time the recommendation to not upgrade was made, they were unaware that Captain Allsopp had been nominated first in the order of priority for the MID. Whether this information would have influenced the decision by CA is unknown however, it is clear that in the absence of a merits review, his decision relied upon the finding that no maladministration had occurred in the processing of the nomination and accordingly, he found no reason to overturn the original decision maker's determination.

87. **Captain Allsopp's Eligibility for the VC.** As previously stated, the Tribunal is bound by the eligibility criteria that governed the making of the reviewable decision, that is the eligibility criteria for the Victoria Cross for Australia as established by Letters Patent on 15 January 1991. The conditions for the award which also allow for it to be awarded posthumously state that:

*'... the decoration shall only be awarded for the most conspicuous gallantry, or a daring or pre-eminent act of valour or self-sacrifice or extreme devotion to duty in the presence of the enemy.'*<sup>71</sup>

88. The Tribunal turned to an assessment of Captain Allsopp's actions and noted that in the absence of new evidence, it could only rely on an analysis of the original citation and witness statements dated 24 July 1945. The Tribunal noted that the citation for the VC was crafted over 70 years ago. Accordingly, the Tribunal determined that any contemporary analysis should be moderated to reflect the fact that it is impossible to stand in the shoes of the original decision maker or to understand his motivation. The Tribunal therefore decided to weigh the analysis accordingly. The Tribunal also noted that Captain Allsopp's unit was relatively inexperienced and the action involving Captain Allsopp was its first taste of action. Both the Nominating Officer and the Commanding Officer were in all likelihood inexperienced in the raising and processing of gallantry nominations.

89. The relevant statements in the citation which are corroborated by witness accounts include:

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<sup>70</sup> Army Submission into Review of Recognition for Captain R.J. Allsopp, dated 21 October 2015

<sup>71</sup> *Commonwealth of Australia Gazette No. S25 – Victoria Cross Regulations*– dated 4 February 1991

*‘... their position was in the open on a low spur which was swept by fire of at least six enemy LMG’s and one HMG...’.* The Tribunal finds that this statement supports the contention that Captain Allsopp was in great peril and in the face of the enemy.

*‘... Captain Allsopp, endeavouring to carry the wounded trooper to safety... though wounded, he remained at his post of mercy ...’.* The Tribunal finds that this statement supports the contention that Captain Allsopp performed acts of heroism.

*‘... in spite of his own wound ... Captain Allsopp crawled to another trooper who was wounded, dressed his wounds and then ... proceeded to the assistance of another wounded trooper ... dressed the soldier’s wounds ...’.* The Tribunal finds that this statement supports the contention that Captain Allsopp displayed extreme devotion to duty.

*‘... when returning to bring out another badly wounded man, Captain Allsopp was fatally wounded ...’* The Tribunal finds that this statement supports the contention that Captain Allsopp’s sacrifice of his own life was selfless.

90. The Tribunal was satisfied that Captain Allsopp’s actions could be seen to have met the majority of conditions for the award of the VC. However, the Tribunal was not able to be completely satisfied that his actions met all of these conditions. In particular, the Tribunal could not accept that his gallantry could be defined as pre-eminent and, despite the experience of the panel members, the Tribunal determined that it was unable to replicate the experience of the original decision maker, Major General Milford who, when faced with the same evidence and almost identical criteria, determined that Captain Allsopp’s actions did not meet the exceptionally high threshold to be awarded the VC. The Tribunal gave significant weight to the fact that an experienced war-time commander had previously found that Captain Allsopp’s actions did not meet the threshold to be awarded the VC. As the citation was crafted over 70 years ago and by potentially inexperienced officers, the Tribunal gave less weight to the analysis of the citation against the eligibility criteria.

91. The Tribunal also considered the circumstances leading up to Captain Allsopp’s decision to ‘go forward to tend to the wounded’ and noted Mr Poulter’s assertions that Captain Allsopp ‘had a choice to either go forward unarmed and tend to the wounded or remain at his relatively safe post to the rear’. The Tribunal is unable to determine why Captain Allsopp elected to go forward to tend the wounded in the ambush area. Military doctrine for the treatment of casualties would normally lead to the expectation that casualties are evacuated out of the danger area by colleagues or orderlies and treated by the RMO in a rear area established for that purpose. The Tribunal, using its integral professional military experience, concluded that the RMO being so far forward was generally not in the best interests of the unit as a whole. However, this does not detract from Captain Allsopp’s individual gallantry on this occasion.

92. **Finding in Relation to Captain Allsopp’s Eligibility for the VC.** The Tribunal, relying heavily on the experience and judgement of the Divisional Commander and having analysed the action descriptions in the citation against the

eligibility criteria, finds that Captain Allsopp's actions did not satisfy the eligibility criteria for the VC.

93. The Tribunal further finds that despite his actions not meeting the threshold for the VC, Captain Allsopp's actions were undeniably gallant and, if the original decision maker had not been constrained by the posthumous gap policy, he would have in all likelihood nominated Captain Allsopp for an alternate gallantry award such as the DCM or MC. As these awards are no longer available, the Tribunal turned to an assessment of the actions against the eligibility criteria for contemporary gallantry awards.

94. **Contemporary Australian Honours for Gallantry.** As previously stated, the Tribunal is bound by the eligibility criteria that governed the making of the reviewable decision; that is the eligibility criteria for the Gallantry Decorations established 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.'*<sup>72</sup>

95. 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.*

4. *Each decoration may be awarded posthumously.*

...

***Making of awards***

7. *Awards of a decoration shall be made by the Governor-General on the recommendation of the Minister...*<sup>73</sup>

...

96. **Captain Allsopp's Eligibility for Contemporary Gallantry Awards.** The Tribunal's previous analysis of the citation for the VC for Captain Allsopp established that he was in great peril in the face of the enemy, performed acts of heroism, displayed extreme devotion to duty and that his sacrifice of his own life was selfless.

97. The Tribunal considered that the differentiation between the Star of Gallantry and the Medal for Gallantry in these circumstances was the environment – specifically the enemy threat. The Tribunal, relying on the witness statements supporting the original nomination and the citation, was satisfied that Captain Allsopp was

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<sup>72</sup> *Commonwealth of Australia Gazette No. S25 – Victoria Cross Regulations - dated 4 February 1991*

<sup>73</sup> *Ibid.*

undoubtedly in circumstances of great peril as the area where he was tending the wounded was 'exposed to incessant machine-gun and rifle fire', 'under fire throughout' and 'under the fire from at least three enemy positions'. Having therefore decided that Captain Allsopp's actions were in circumstances of great peril, the Tribunal was satisfied that his actions exceeded the threshold for the MG.

98. **Finding in Relation to Captain Allsopp's Eligibility for Contemporary Gallantry Awards.** The Tribunal, relying heavily on the experience and judgement of the Divisional Commander in placing Captain Allsopp first in the order of priority for the MID; and having analysed the descriptions in the citation and witness statements against the eligibility criteria, finds that Captain Allsopp's actions satisfy the eligibility criteria for the award of the Star of Gallantry.

### **Conclusion**

99. The Tribunal concluded that on process, the nomination was properly handled at the time, followed due process correctly and that on merits, Captain Allsopp's actions did not meet the standard required to be awarded the VC. The fact that he was placed first in the priority order for the MID in the end of war list for his Division, means that he was given very serious consideration for the VC and must have been very close to the threshold. The Tribunal was satisfied that if it were not for the policy of the time regarding 'the posthumous gap', Captain Allsopp would have been nominated for an alternate gallantry award. Having reviewed the contemporary eligibility criteria, the Tribunal finds that Captain Allsopp's actions on 1 July 1945 satisfy the conditions for the award of the Star of Gallantry.

### **TRIBUNAL DECISION**

100. The Tribunal decided to recommend to the Minister that:
- a. the decision by the Chief of Army to recommend that no further action be taken to upgrade Captain Raymond Allsopp's Mention in Despatches to a Victoria Cross for his actions on 1 July 1945 at Balikpapan be set aside, and
  - b. the Minister recommend to the Governor-General that Captain Raymond Allsopp be posthumously awarded the Star of Gallantry for acts of heroism in action in circumstances of great peril as the Regimental Medical Officer of 2/5<sup>th</sup> Cavalry Commando Squadron at Balikpapan on 1 July 1945.