



Australian Government

Defence Honours and Awards Appeals Tribunal

Morrissey and the Department of Defence [2017] DHAAT 14 (22 June 2017)

File number (s) 2016/017

Re **Mr Michael Morrissey**
Applicant

And **Department of Defence**
Respondent

Tribunal Brigadier M. Bornholt, AM (Retd) (Presiding Member)
Mr R. Rowe, PSM

Hearing Date 15 May 2017

DECISION

On 22 June 2017, the Tribunal decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Mr Michael Morrissey is not eligible for the award of the Republic of Vietnam Campaign Medal.

CATCHWORDS

FOREIGN AWARDS – refusal to recommend the award of the Republic of Vietnam Campaign Medal

LEGISLATION

Defence Act 1903 – ss 110T, 110V(1), 110VB(2)

Joint General Staff of the Republic of Vietnam Armed Forces (RVNAF) Directive, Pertaining to awarding of Campaign Medal HT.655-430 – dated 1 September 1965

Republic of Vietnam Armed Forces (RVNAF) Order No. 183 Pertaining to the conferral of the Vietnamese Campaign Medal on Australian Military Forces – dated 31 August 1966

Air Board Orders - Issue No. 156, 'A5/30. Republic of Vietnam Campaign Medal for Service in South Vietnam Between 31 July 1962, and a date to be Determined'; dated 7 October 1968

REASONS FOR DECISION

Introduction

1 The applicant, Mr Michael Morrissey, seeks review of the decision of the Directorate of Honours and Awards of the Department of Defence (the Directorate) that he is not eligible for the award of the Republic of Vietnam Campaign Medal (RVCM).¹ Mr Morrissey served at the Royal Australian Air Force (RAAF) Base at Ubon, Thailand from 25 September 1963 to 31 January 1964 and from 29 July 1965 to 28 January 1966.

2. On 2 October 2015 Mr Morrissey made application to the Directorate for the RVCM for his service at ‘Ubon Thailand (184 days) from 29 July 1965 to 28 January 1966’.² On 29 February 2016, the Directorate advised Mr Morrissey that he was not eligible for the RVCM because ‘RAAF Base Ubon is outside the geographical limits of South Vietnam and was not in direct combat support of the battlefield ...’ and ‘eligibility of individuals for the award as determined by Australian authorities did not extend to cover ground support staff in Thailand ...’.³

Tribunal Jurisdiction

3. Pursuant to s110VB(2) 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) of the Defence Act and includes a decision made by a person within the Department of Defence to refuse to recommend a person for a defence or foreign award in response to an application. The term *foreign award* is defined in s110T of the Defence Act as an honour or award given by a government of a foreign country, or by an international organisation. The RVCM was instituted on 12 May 1964 by the Government of the Republic of Vietnam (GVM). On 24 June 1966, Her Majesty the Queen granted unrestricted approval for members of the Australian armed forces to accept and wear the RVCM.⁴ The RVCM is a foreign award and accordingly, the Tribunal has jurisdiction to review decisions in relation to this award.⁵

4. The Tribunal was satisfied that Mr Morrissey’s letter dated 12 September 2016⁶ constituted an ‘application properly made’ as required by s110VB(2) of the Defence Act and that his application to the Directorate for the RVCM dated 2 October 2015⁷ constituted an application as defined in s110V(1)(c) of the Defence Act. The Tribunal was also satisfied that the Directorate’s decision of 29 February 2016⁸

¹ Mr Morrissey Letter to the Tribunal dated 12 September 2016

² Application for Defence Medals by Mr Morrissey dated 2 October 2015

³ Directorate Letter to Mr Morrissey DHA – A314455/8186975 dated 29 February 2016

⁴ Cable, London to Canberra, 24 June 1966, NAA:3111, 1966/3374

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 Mr Morrissey Letter to the Tribunal dated 12 September 2016

⁷ Application for Defence Medals by Mr Morrissey dated 2 October 2015

⁸ Directorate Letter to Mr Morrissey DHA – A314455/8186975 dated 29 February 2016

constituted a refusal to recommend a person for a foreign award as defined in s110V(1)(a)(iii) of the Defence Act.

5. Accordingly, the Tribunal was satisfied that the *reviewable decision* is the decision by the Directorate to refuse to recommend Mr Morrissey for the RVCM.⁹ The Tribunal is therefore bound by the eligibility criteria that governed the making of that decision in 2016 as required by s110VB(6) of the Defence Act. The role of the Tribunal is to determine whether the decision of the Directorate is the correct and preferred decision having regard to the applicable law and the relevant facts.

Steps taken in the conduct of the review

6. In accordance with the *Defence Honours and Awards Appeals Tribunal's Procedural Rules 2011* (as amended), on 22 September 2016 the Tribunal wrote to the Secretary of the Department of Defence advising him of Mr Morrissey's application for review and seeking a report on the reasons for the original decision and the provision of relevant material that was relied upon in reaching the decision.¹⁰ On 14 November 2016 the Directorate, on behalf of the Secretary, provided the Tribunal with the Defence submission in the form of a written report.¹¹ The Tribunal forwarded a copy of the Defence submission to Mr Morrissey on 17 November 2016.¹² On 5 January 2017 Mr Morrissey provided the Tribunal with comments on the Defence submission.¹³

7. The Tribunal noted that Mr Morrissey's application for the RVCM was made after the completion of the *Inquiry into Eligibility for the Republic of Vietnam Campaign Medal* (the first Inquiry)¹⁴ and the further inquiry into the *Feasibility of Amending the Eligibility Criteria for the Republic of Vietnam Campaign Medal* (the second Inquiry)¹⁵. The Tribunal further noted that Mr Morrissey made submissions to both Inquiries.

8. The Tribunal met on 28 March 2017 and considered the material provided by Mr Morrissey and the Directorate. Mr Morrissey was subsequently invited to give oral evidence (by telephone) to the Tribunal which he did on 15 May 2017. The Respondent did not attend the hearing. Mr Morrissey provided further submissions on 17 and 22 May 2017.

The Republic of Vietnam Campaign Medal

9. In May 1964, the GVM established its campaign medal for the Vietnam War.¹⁶ The medal was for all military personnel of the Republic of Vietnam Armed

⁹ Ibid.

¹⁰ Tribunal Letter to Secretary DHAAT/OUT/2016/386 dated 22 September 2016

¹¹ Directorate Letter to the Tribunal DH&A 2016/1206095/1 dated 14 November 2016

¹² Tribunal Letter to Mr Morrissey DHAAT/OUT/2016/469 dated 17 November 2016

¹³ Mr Morrissey Letter to the Tribunal dated 5 January 2017

¹⁴ Report of the *Inquiry into Eligibility for the Republic of Vietnam Campaign Medal* dated 24 March 2014

¹⁵ Report of the *Inquiry into the Feasibility of Amending the Eligibility Criteria for the Republic of Vietnam Campaign Medal* dated 25 June 2015

¹⁶ *GVM Decree* No.149/SL/CT dated May 12, 1964 creating 'Campaign Medal'

Forces (RVNAF) who had 12 months service in the field and for allied soldiers assigned to the Republic of Vietnam who had 6 months service.

10. In September 1965, the Joint General Staff of the RVNAF issued a Directive setting out the eligibility criteria for the medal known now in Australia as the RVCM (RVNAF Directive HT.655-430)¹⁷ The criteria states:

...

Chapter 1 : Eligibilities

Article 1: *All military personnel of the RVNAF who have 12 month service in the field during war time, may claim for Campaign Medal award.*

Article 2: *The RVNAF personnel, who don't possess the eligibilities prescribed in Art.1, but happen to be under one of the following circumstances, are qualified for Campaign Medal award:*

- *WIA (wounded-in-action)*
- *Captured in action by enemies or missing while performing his missions, but released later, or an escape has taken place.*
- *KIA or die while performing a mission entrusted*

The above anticipated cases must take place during the war.

Article 3: *Allied soldiers assigned to the Republic of Vietnam after six months in war time with mission to assist the Vietnamese Government and the RVNAF to fight against armed enemies, are eligible for Campaign Medal decorations*

...

Article 6: *... Awarding procedures for each individual who possesses appropriate eligibilities will be accordingly made by various military authorities from the respective country.*

...

11. In May 1966, the GVM raised the possibility of awarding the RVCM to Australian servicemen. The Australian Government was initially inclined to reject the offer on the basis that it was about to award its own campaign medal (the Vietnam Medal). It did not wish to award two campaign medals and at the time there were restrictions on the acceptance of foreign awards.¹⁸ The Australian Ambassador in Saigon however, advised that it would be 'undesirable to reject a Vietnamese offer of this kind'.¹⁹

12. After consideration of the offer by the Department of Defence Chiefs of Staff Committee, on 24 June 1966 the Prime Minister wrote to the Governor-General advising that he had given the matter of the offer of the RVCM 'careful consideration' and that there were 'exceptional grounds justifying acceptance of the Vietnamese

¹⁷ *Joint General Staff of the RVNAF Directive, Pertaining to awarding of Campaign Medal HT.655-430 – dated 1 September 1965*

¹⁸ Cable 557, Canberra to Saigon, 5 May 1966, NAA:A1838, 696/8/6 Part 1

¹⁹ Cable 568, Saigon to Canberra, 10 May 1966, NAA:A1838, 696/8/6 Part 1

offer'.²⁰ He recommended that Her Majesty's approval be sought to accept the RVCM.²¹ Her Majesty granted unrestricted approval for members of the Australian armed forces to accept and wear the RVCM on 24 June 1966.²²

13. Unbeknown to Australia at the time of the consideration, it was subsequently discovered that on 22 March 1966 the GVM had amended Article 3 of the original Directive for the award of the RVCM.²³ The amendment, at the request of the United States authorities, changed Article 3 to provide eligibility to foreign personnel:

... serving outside the geographic limits of South Vietnam and contributing direct combat support to the RVNAF ...

14. Advice of this amendment was not provided to Australian authorities until 13 July 1966, after the approval had been granted by the Queen to accept the award under the auspices of the September 1965 eligibility criteria.²⁴

15. The amendment to Article 3 was formally declared in RVNAF Order No. 183 dated 31 August 1966.²⁵ The relevant clauses of this Order that relate to the amendment provide that:

*...
ARTICLE 1. The Vietnam Campaign Medal' with device 1960- is awarded to all Australian Military personnel eligible as prescribed in Directive NrHT-655-430 dated 1 September 1965 as changed by amendment dated 22 March 1966 ...*

***ARTICLE 2.** Eligibility of individuals for the award will be determined by Royal Australian authorities ...*

... Foreign authorities will determine eligibility of their personnel for this award, ...

16. Noting the conditions imposed by the amendment '*foreign authorities will determine eligibility of their personnel for this award*', on 16 September 1966, the Secretary of the Department of Defence wrote to the Secretaries of the Departments of the Navy, Army and Air Force setting out the criteria for the award of the RVCM.²⁶ The Secretary stated that the amendment to Article 3 had been specifically requested by United States authorities to cover the US Seventh Fleet in Thailand and Guam 'as well as the aircrews of aircraft operating out of Thailand ...'. He stated that:

²⁰ Letter Prime Minister Harold Holt to the Governor-General dated 24 June 1966, NAA:A1838, 696/8/6 Part 1

²¹ Defence Honours and Awards Appeals Tribunal, Report of the *Inquiry into eligibility for the Republic of Vietnam Campaign Medal*, Canberra, 2014.

²² Cable, London to Canberra, 24 June 1966, NAA:3111, 1966/3374

²³ The actual amendment dated 22 March 1966 has not been found despite comprehensive searches of files and archives.

²⁴ Cable 882, Australian Embassy, Saigon, to Canberra, 13 July 1966

²⁵ *RVNAF Order No. 183 Pertaining to the conferral of the Vietnamese Campaign Medal on Australian Military Forces – dated 31 August 1966*

²⁶ Memo, Secretary, Department of Defence '*Vietnamese Campaign Medal*' dated 16 September 1966

... the Americans do not interpret the amendment to cover ground support staff in Thailand ... our interpretation is the same as that of the United States.

At present no Australians serving with Australian units outside the Vietnamese theatre would be eligible for this award ...

17. The memorandum to the Services stated that conditions for the grant of the award of the RVCMB would require:

(a) 'Special service' (as defined by the Repatriation (Special Overseas Service) Act) of a minimum of six months duration, either continuous or aggregated, in Vietnam with retrospective effect to 31 July 1962;

(b) 'Special service' in Vietnam of less than six months duration since 31 July 1962 if:

- (i) killed on active service or wounded-in-action and evacuated,*
- (ii) captured and later released or escaped.*

18. The issue of whether or not the Services had the lawful power to issue Military/Naval/Air Board Instructions was addressed by the Tribunal in the *Inquiry into the Refusal to Issue 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 in 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 (Australian Military Regulations), Naval Regulations and the AFRs (Air Force Regulations) 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 the Air Force...All these laws including the subordinate legislation were valid.²⁷

19. Therefore, having received the Secretary's memorandum of 16 September 1966, it now remained for each of the Services to determine and promulgate their respective instructions and orders regarding the conditions for the award of the RVCMB to their personnel. The eligibility criteria for the RVCMB for Australian airmen was declared in Air Board Order (ABO) A5/30.²⁸ The Order states:

²⁷ 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, p44(4)

²⁸ Air Board Orders - Issue No. 156, 'A5/30. Republic of Vietnam Campaign Medal for Service in South Vietnam Between 31 July 1962, and a date to be Determined'; dated 7 October 1968

...

Qualifying Service

6. *Qualifying service for the award is completion of a minimum of six months, either continuous or aggregated, while on the posted strength of a unit or formation in SOUTH VIETNAM for the purpose of assisting the South Vietnamese and the RVNAF to fight against armed aggression.*

7. *The requirement for six months service may be waived where a member's period of qualifying service is curtailed because of being killed in action, wounded in action and evacuated, or captured and later released or escaped.*

...

20. A subsequent review by the Department of Defence in 1997 established the cut-off date for the award of the RVCMM to be 28 March 1973.²⁹ The GVM ceased to exist in 1975.

21. The Tribunal has completed two Inquiries into the eligibility for the RVCMM. The first Inquiry was commenced in 2013 to report on the application of the eligibility criteria for the RVCMM over time; identify unresolved issues with the application of the criteria and review how future claims for the award should be administered. The Inquiry recommended that no action be taken to change the criteria, that Defence amend its interpretation of 'wounded-in-action' to include psychological injury and that assessments of claims for the award continue, cognisant of the first two recommendations. In regard to the application of the amended Article 3 in the eligibility criteria for the RVCMM, it was noted that:

While it was open to the Department of Defence to apply the provisions of the amended Article 3, it did not do so ..., and

*The Australian Government was not bound to apply the provisions of the amended Article 3 ...*³⁰

22. The Government accepted the recommendation regarding definition of wounded-in-action and agreed that assessments of claims for the RVCMM should continue. In relation to the Tribunal's recommendation that no action be taken to change the criteria, the Government directed that a second Inquiry be conducted to determine if it had the legal authority to amend the eligibility criteria for the RVCMM given the GVM had ceased to exist in 1975. The second Inquiry was completed in September 2015 and recommended that the eligibility criteria not be amended as the Australian Government did not have the legal authority to do so.³¹ This recommendation was accepted by Government.

²⁹ HQ ADF PPP486/97 'Extension of Eligibility for the RVCMM Campaign Medal' dated 11 March 1997

³⁰ Report of the Inquiry into Eligibility for the Republic of Vietnam Campaign Medal dated 24 March 2014, p. 48

³¹ Report of the Inquiry into the Feasibility of Amending the Eligibility for the Republic of Vietnam Campaign Medal dated 25 June 2015

23. Therefore, the eligibility criteria for the RVCM for Australian servicemen and women is as declared in respective Service Orders and Instructions – in this case ABO A5/30 dated 7 October 1968.³²

Mr Morrissey's Service Record

24. Mr Morrissey enlisted in the Permanent Air Force on 5 March 1958 and qualified as an Armament Mechanic on 23 December 1958. He re-mustered to Radio Mechanic and then to Radio Technician on 4 October 1962. His service record indicates he was promoted to Substantive Corporal on 1 June 1964. Mr Morrissey discharged on 4 March 1970 'at the termination of his period of enlistment'.³³ He served in the Air Force General Reserve from 5 March 1970 to 4 March 1975 and then in the Active Citizen Air Force until 13 June 1978 when he was transferred to the RAAF General Reserves.

25. Mr Morrissey's service record indicates that he was attached to Base Squadron Ubon from 25 September 1963 to 31 January 1964 and from 29 July 1965 to 28 January 1966.³⁴ There is no indication in his records of service in South Vietnam. During the hearing Mr Morrissey confirmed that he had not served in South Vietnam and that at the time of his deployment to Ubon he was a Radio Technician.

26. For his service Mr Morrissey has been awarded the:

- Australian Active Service Medal 1945-75 with Clasp 'THAILAND' (AASM),
- Vietnam Logistic and Support Medal (VLSM),
- Australian Service Medal 1945-75 with Clasp 'THAILAND',
- Defence Force Service Medal,
- National Medal,
- Australian Defence Medal, and
- Returned from Active Service Badge

Mr Morrissey's Submissions

27. Mr Morrissey has made multiple submissions and representations over the past two decades to Defence, to Ministers and to various Inquiries regarding recognition of his service in Ubon. The two most recent submissions, in 2016 in support of his application for review, and in 2017 in response to the Defence reasons for decision encapsulate his written assertions.

28. **The 2016 Application for Review.** In his application for review, Mr Morrissey claims that he is entitled to the RVCM because of his 'warlike service in the Vietnam war and under the Articles of the GVM memorandum of 31 August 1966'.³⁵ He asserts that because he was awarded the AASM and VLSM for this

³² Air Board Orders - Issue No. 156, 'A5/30. Republic of Vietnam Campaign Medal for Service in South Vietnam Between 31 July 1962, and a date to be Determined'; dated 7 October 1968

³³ Personnel Record of Service Airmen-Airwomen – 314455 Morrissey Michael T.

³⁴ Ibid.

³⁵ Mr Morrissey Letter to the Tribunal dated 12 September 2016 p.1.0

‘active service’, by correlation he is also eligible for the RVCM.³⁶ He further asserts the GVM eligibility criteria for the RVCM includes service beyond the geographical limits of South Vietnam and that as his service ‘was contributing direct combat support to the RVNAF’ he ‘unequivocally satisfies the criteria’.³⁷

29. Mr Morrissey’s submission includes his own analysis of previous RVCM decisions made by the Tribunal including the Reverend George Ashworth.³⁸ He asserts in his analysis of the *Ashworth* decision that:

... the AFO (sic) [are] in error, and

*... [the AFO] does not relate to the RVCM eligibility criteria governing the award of RVCM for RAAF Ubon service.*³⁹

30. Mr Morrissey also claims that the September 1966 memorandum by the Secretary of Defence was now ‘incorrect and misleading’ and that the retrospective awards of the ‘AASM and the VLMSM to RAAF Contingent Ubon members by Australian Government legislation has rendered this document erroneous’. He also claimed that ‘reference to the Special Overseas Act is superfluous’ as the Ubon personnel came under the auspices of the Veterans’ Entitlement Act 1986 (the VEA).

31. Mr Morrissey’s submission includes his own assessment of the definition of ‘direct combat support’. He notes that it is not defined by the GVM and in his opinion, the Tribunal definitions expressed in various Inquiries and reviews:

*discriminates against all time eligible AASM, VLMSM awarded ground crew veterans from the RAAF Contingent Ubon*⁴⁰

32. Mr Morrissey also draws on the Regulations for US awards including the Vietnam Service Medal, the Republic of Vietnam Campaign Medal and the Armed Forces Expeditionary Medal to press his assertion that:

*combat support duties carried out in an operational area are classified as ‘direct combat support’*⁴¹

33. Mr Morrissey’s submissions refute contemporaneous definitions of combat support used by the Tribunal previously and notes the advice provided by the Chief of the Defence Force (CDF) on 31 August 2016 that:

*...during the period in question, the definition of contributed direct combat support was services being supplied to the combat forces in the area of operations by ground units, ships and aircraft provided it involves actually entering the designated area ...*⁴²

³⁶ Ibid.

³⁷ Ibid. p.2.0

³⁸ Ashworth and the Department of Defence [2015] DHAAT 49 (14 December 2015)

³⁹ Mr Morrissey Letter to the Tribunal dated 12 September 2016 p.3.0.2

⁴⁰ Ibid. Page 3 (C)

⁴¹ Ibid.

⁴² CDF Letter to Mr M Barnes, CDF/OUT2016/756 dated 31 August 2016

34. Mr Morrissey makes several other claims in support of his submission including precedent of individuals and units; the contemporaneous award of the Air Force Ground Combat Badge and employment of the ‘RAAF Combat Support Group’; the bestowing of battle honours; a historical perspective on what defines the ‘area of operations’ for a campaign, and contentions regarding the definition of ‘warlike service’ as it relates to the VEA and the award of the AASM. He opines that the AASM was awarded to RAAF Contingent Ubon:

solely for their service in the Vietnam war, and that service was solely for the purpose of contributing direct combat support to the RVNAF ... and

*we were awarded the VLSM as an Australian Campaign Medal to define the area of operations of that warlike service ...*⁴³

35. **The 2017 Comments in Response to the Defence Reasons for Decision.** In his letter of 5 January 2017 to the Tribunal in response to the Defence reasons for decision, Mr Morrissey continues to press the claims presented in his 2016 submission.⁴⁴ He also poses a number of questions, implying that there may be other directives or orders that would support his arguments. He does not produce any evidence to support this position or upon which to base his questions.

36. Mr Morrissey introduces further analysis of previous Tribunal considerations including the matter of Mr McLeod-Dryden and a Federal Court of Australia judgement in relation to this matter where-in Justice Tracey J. stated:

*... it is common ground that the conditions in the 1966 memorandum did not constitute ‘eligibility criteria’ for the RVCM*⁴⁵

37. Mr Morrissey also notes that ‘Judge Tracey raises a number of queries regarding the term “direct combat support”’.⁴⁶

38. Further, Mr Morrissey asserts that the arguments put forward by Defence in submissions to previous Inquires and other individual reviews, are contradictory to the intent of the Defence Honours and Awards Manual and evidence provided by the previous CDF – General Hurley.⁴⁷

39. Mr Morrissey also restates his assertions regarding the linkage between the award of the AASM, warlike service and the VEA stating that:

*I assert that the term ‘direct combat support’ is included in the all inclusive ADF term ‘warlike service’ ...*⁴⁸

⁴³ Mr Morrissey Letter to the Tribunal dated 12 September 2016 p.8.6

⁴⁴ Mr Morrissey Letter to the Tribunal dated 5 January 2017

⁴⁵ *Federal Court of Australia – McLeod-Dryden v Defence Honours and Awards Appeals Tribunal [2016] Reasons for Judgement* dated 23 September 2016 p.32

⁴⁶ Mr Morrissey Letter to the Tribunal dated 5 January 2017 page 5

⁴⁷ Ibid. page 3

⁴⁸ Ibid. page 5

40. Mr Morrissey concludes this submission by stating that:

I submit that I and all members of the RAAF Contingent, Ubon, who were awarded the AASM and VLSM and have 6 months service with that unit should be awarded the RVC⁴⁹

41. **Evidence at Hearing.** On 11 May 2017 Mr Morrissey sent an email to the Tribunal with a ten page ‘opening address’ that he said he wished to ‘present to the review’.⁵⁰ At the hearing the Tribunal advised Mr Morrissey that it would table the statement as submitted and add it to the remainder of his submissions. The Tribunal then asked Mr Morrissey to summarise the key elements of his claims which he did by way of a two-page summary.⁵¹ He agreed that the Tribunal should table both documents as additional evidence.

42. Mr Morrissey submitted in his summary that there were six areas that he wished the Tribunal to ‘give attention to’ in its deliberations:

- the relevance of warlike operations applicable to 79 Squadron,
- examination of the amendment of Article 3 of GVM Directive,
- direct combat support,
- the definition of the ‘theatre of operations’,
- failure to apply the advice of the Australian Government Solicitor (AGS), and
- equity in relation to the award of the RVC⁵² to United States personnel.

43. Mr Morrissey said at the hearing that the key issue supporting his contention was the advice provided by the AGS in February 2015 regarding the legal ability to amend the eligibility criteria for the RVC.⁵² Mr Morrissey stated that the advice at paragraph 16 in his view:

does not give the power to change the eligibility criteria for the RVC but rather provides for the Government to determine eligibility for their personnel

44. Mr Morrissey stated that ABO A5/30 does not apply to him as it does not include service at Ubon – he said that ‘it is for service in South Vietnam’. He stated that the legally correct eligibility criteria for the RVC is RVNAF Directive HT.655-430 as amended by RVNAF Order No. 183 which includes the 22 March 1966 amendment to include service outside the geographic limits of Vietnam and the provision of direct combat support. He argues that the Australian Government should have amended RVNAF Directive HT.655-430 as a result of RVNAF Order No. 183 and that by not doing so it had acted illegally. He said that he has a ‘right to be judged under the orders and articles which provided that he served for more than 181 days in Ubon and met all of the conditions required by the amended Directive’.

45. In relation to the Secretary’s memorandum of 16 September 1966, Mr Morrissey asserts that the document provides the basis for the criteria to be applied to

⁴⁹ Ibid. page 6 – Folio

⁵⁰ Mr Morrissey ‘Opening Address to the Tribunal’ dated 10 May 2017 –

⁵¹ Mr Morrissey Precise Address to the DHAAT Review 10 May 2017

⁵² Australian Government Solicitor 14217054 dated 3 February 2015 to DHAAT ‘Power to Amend the Eligibility Criteria for the RVC’

service in Ubon as it identifies the only condition to be ‘special service’ for ‘a minimum of 6 months duration as defined by the Repatriation Act’.⁵³

46. Mr Morrissey conceded at the hearing that there was a lot of material to consider and that it ‘was confusing’. He stated that he wanted recognition for all of his colleagues and that his individual appeal was not just about the medal but about entitlement. He also agreed that the following was a suitable summary of his position in relation to the RVCM:

the eligibility criteria for the RVCM should be as declared in the GVM Directive HT 655-430 of 1 September 1965 with Article 3 of that Directive amended to allow eligibility for foreign military personnel serving outside the geographic limits of South Vietnam and contributing direct combat support to the RVNAF for six months. He asserts that he is eligible for the RVCM as his service in Ubon was providing direct combat support as he and his colleagues received the AASM for ‘warlike service’ – that service being the war in Vietnam and that the Australian aircraft at Ubon flew operationally in support of that war as they protected United States assets based in Ubon (bomber aircraft) who routinely bombed Vietnam. He does not accept that ABO A5/30 applies to him or his colleagues as the Order did not mention Ubon or the GVM Directive as amended and that the Australian Government (through the Department of Defence) was acting illegally by not amending the Article 3 of the GVM Directive.

47. The Tribunal advised Mr Morrissey at the hearing that it would consider his assertions and the nuances he had placed on various documents during its deliberations. On 17 May 2017 Mr Morrissey provided a letter to the Tribunal asking that during its consideration the Tribunal note that the AASM with Clasp ‘THAILAND’ was originally declared in 2001 and made no mention of the purpose being ‘for the defence of Thailand’ as the most recent amendment now does.⁵⁴ He also included several declarations, determinations, definitions and media statements relating to defence awards and the VEA. In a further letter dated 22 May 2017 he provided ‘his view’ of the background to the 2001 Declaration and a copy of the relevant Gazette.⁵⁵

The Defence Submission

48. The Defence submission, dated 14 November 2016 indicates that a delegation for the RVCM does not exist and that the award is managed under administrative practices that were inherited and applied by DH&A.⁵⁶ The submission identifies the ‘legal bases’ for the decision to refuse Mr Morrissey’s application for the RVCM including ‘Air Force Orders A5-30 Republic of Vietnam Campaign Medal dated 7 October 1968’.

⁵³ The Tribunal notes that the Repatriation Act was subsequently replaced by the VEA. The term ‘special service’ is defined in the Repatriation Act as ‘service of a person in a special area ... while a member of, or attached to, a body, contingent or detachment of the Naval, Military or Air Forces at a time when it was allotted to duty in that special area ...’

⁵⁴ Letter from Mr Morrissey to the Tribunal dated 17 May 2017

⁵⁵ Letter from Mr Morrissey to the Tribunal dated 22 May 2017

⁵⁶ Directorate Letter to the Tribunal DH&A 2016/1206095/1 dated 14 November 2016

49. The submission states that the eligibility criteria for the RVCN was 'promulgated by each of the Services in their respective service instructions'. The submission states that the criteria is specified by the RAAF in Order A5/30 which states that:

1. *The award of a medal in recognition of service by Vietnamese and Allied servicemen who assist the Vietnamese Government and the Royal Vietnamese National Armed Forces (RVNAF) to fight against armed enemies has been approved by the Vietnamese Department of National Defence. This medal is to be known as the Republic of Vietnam Campaign Medal.*

...

Qualifying Service

6. *Qualifying service for the award is completion of a minimum of six months, either continuous or aggregated, while on the posted strength of a unit or formation in SOUTH VIETNAM for the purpose of assisting the South Vietnamese and the RVNAF to fight against armed aggression.*

7. *The requirement for six months service may be waived where a member's period of qualifying service is curtailed because of being killed in action, wounded in action and evacuated, or captured and later released or escaped.*

...

50. Defence indicates that Mr Morrissey had previously made application for the RVCN in July 2013.⁵⁷ In this application Mr Morrissey stated:

... I was awarded the VLMS and AASM and ASM for service at Ubon, Thailand and I have 184 days service for the tour re the AASM and VLMS awards. My name is to be included on the Vietnam nominal roll.

51. In response to the 2013 application the Directorate assessed that Mr Morrissey had not served in Vietnam and his service at Ubon was outside the geographical limits of South Vietnam therefore he did not qualify for the RVCN. Defence stated that on 4 September 2015 Mr Morrissey wrote to the Assistant Minister for Defence (the Minister) seeking assistance in his pursuit of the RVCN and on 2 October 2015 Mr Morrissey made a further application for the RVCN.

52. Defence stated that following several exchanges of correspondence and telephone calls, Mr Morrissey was again informed of the reasons for his ineligibility and the Minister also advised him that:

... I am satisfied that rigorous processes have been followed and due consideration has been given to all points of view relating to this matter⁵⁸

53. Notwithstanding this advice, the Directorate conducted another full assessment of Mr Morrissey's eligibility for the RVCN. On 29 February 2016, the appropriate

⁵⁷ Application for the Issue of Medals 430461, Morrissey MT dated 1 July 2013

⁵⁸ Letter from the Assistant Minister for Defence to Mr Morrissey MC15-002975 dated 21 October 2015

delegate in the Directorate informed Mr Morrissey once again that he was not eligible for the RVCN for the following reasons:

RAAF Base Ubon is outside the geographical limits of South Vietnam and was not in direct combat support of the battlefield (in Vietnam) and as a result cannot be considered as qualifying service for the RVCN; and

Eligibility of individuals for the award as determined by Australian authorities did not extend to cover ground support staff in Thailand and Guam⁵⁹

54. On receipt of the Tribunal's request for a statement of reasons for the decision to refuse to recommend Mr Morrissey for the RVCN, the Directorate conducted yet another independent assessment of his claims. This assessment concluded that Mr Morrissey 'was not posted to or on the attached strength of a unit or formation in South Vietnam' and therefore he did not meet the eligibility criteria for the RVCN as specified in ABO A5/30.⁶⁰

The Tribunal's Consideration

55. **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.⁶¹ 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.

56. The facts, law and policy aspects of the decision are all considered afresh and a new decision made.⁶² 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.⁶³ 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.

57. **The Reviewable Decision.** There is no dispute that the *reviewable decision* is the decision by the Directorate on 29 February 2016 to refuse to recommend Mr Morrissey for the RVCN. The Tribunal is therefore bound by the eligibility criteria that governed the making of that decision in 2016 as required by s110VB(6) of the Defence Act.

58. **Mr Morrissey's Service.** There is no dispute that Mr Morrissey was a member of the Permanent Air Force and was attached to Base Squadron Ubon from 25 September 1963 to 31 January 1964 and from 29 July 1965 to 28 January 1966.⁶⁴ There is no indication in his records of service in South Vietnam although the

⁵⁹ Directorate Letter to the Tribunal DH&A 2016/1206095/1 dated 14 November 2016, p.38 – Folio #52

⁶⁰ Ibid. p.43-46

⁶¹ *Council of Australian Tribunals Practice Manual* dated 7 April 2006 p.1.3.1.2

⁶² Pearson, Linda, "Merit Review Tribunals", in Creyke, Robin and McMillan, John, *Administrative Law – the Essentials*, AIAL 2002, p. 68

⁶³ *McDonald v Director-General of Social Security* (1984) 1 FCR 354

⁶⁴ Personal Record of Service Airmen, 314455 Morrissey

Tribunal notes that Mr Morrissey has previously claimed to have travelled to Pleiku and An Khe in Vietnam on United States Military aircraft ‘for a period of approximately five days’.⁶⁵ There is no evidence to support this claim and in the Tribunal’s view, it is not relevant to his eligibility for the RVCN. The Tribunal also notes that at the hearing when asked if he had served in South Vietnam, Mr Morrissey confirmed that he had not.

59. **Summary of Mr Morrissey’s Claim.** Relying on Mr Morrissey’s oral evidence and having reviewed his submissions and claims, the Tribunal was reasonably satisfied that his contention is that the eligibility criteria for the RVCN is not as declared in ABO A5/30 but should be as declared in RVNAF Directive HT. 655-430 with Article 3 of that Directive amended to allow eligibility for foreign military personnel serving outside the geographic limits of South Vietnam and contributing direct combat support to the RVNAF for six months. He claims that he meets these criteria as he was part of the contingent that provided direct combat support from Ubon.

60. **What are the Eligibility Criteria for the RVCN, as Applicable to Australians?** The Tribunal was satisfied that the basis for the award of the RVCN is RVNAF Directive HT. 655-430 *Pertaining to awarding of Campaign Medal* dated 1 September 1965 and that this Directive allows for the campaign medal to be awarded to ‘allied soldiers assigned to the Republic of Vietnam after six months service in war time with mission to assist the Vietnam Government and the RVNAF’.

61. The Tribunal noted that RVNAF Order No. 183 *Pertaining to the conferral of the Vietnamese Campaign Medal on Australian Military Forces* dated 31 August 1966 indicates that the GVM had amended Article 3 of Directive HT. 655-430 and that this amendment allows for the award of the campaign medal to foreign military personnel serving outside the geographic limits of South Vietnam, provided they are contributing direct combat support to the RVNAF for a period of six months.

62. The Tribunal was satisfied that Article 2 of RVNAF Order No. 183 clearly assigns responsibility for the determination of the ‘eligibility for individuals’ for the RVCN to ‘Australian authorities’ and expressly provides for foreign authorities, including Australia to decide their own respective eligibility criteria for the award as evidenced by the statement:

foreign authorities will determine eligibility of their personnel for this award

63. The Tribunal noted that there is no evidence that the Australian Government decided to apply the amendment to include service outside the geographic limits of South Vietnam or to allow for the provision of direct combat support.⁶⁶ The Tribunal notes that the amendment was advised to the Australian Government after approval had been granted by the Queen to accept the medal as originally submitted under the auspices of RVNAF Directive HT. 655-430.

⁶⁵ Letter from Mr Morrissey to Minister Scott dated 20 February 1997

⁶⁶ Report of the *Inquiry into Eligibility for the Republic of Vietnam Campaign Medal* dated 24 March 2014, p.55

64. The Tribunal considers that there is compelling evidence that the amendment was considered by the Secretary for the Department of Defence as it is referred to in his memorandum of 16 September 1966.⁶⁷ The Tribunal notes that this memorandum from the head of the Department provides guidance to the three Services for the formulation of their respective regulations/orders for the determination of the eligibility criteria for the RVCN. The Tribunal notes that the Secretary specifically rejects the inclusion of the Article 3 amendment particularly as it applies to ‘ground support staff in Thailand’ as evidenced by his statement:

our interpretation is the same as that of the United States

65. Furthermore, the Tribunal notes that the Secretary clearly states:

at present no Australians serving with Australian units outside the Vietnamese theatre would be eligible for the award

66. The Tribunal is of this view that this statement indicates that the Secretary was aware of groups such as the Ubon contingent, and that he had considered at the time that they should not be eligible for the Vietnamese campaign medal or be effected by the amendment to the criteria.

67. The Tribunal considers that it was open to the Secretary to reject the amendment as the head of Department and that further, if the Services were not satisfied, it was equally open to them to contest the guidance. There is no evidence that this occurred and after receipt of the guidance, each of the Services produced their own orders specifying the eligibility and qualifying service requirements for the RVCN. For the RAAF, this is as specified in ABO A5/30 dated 7 October 1968.

68. The Tribunal therefore finds that the legal eligibility criteria for the award of the RVCN to Australian airmen is as stated in ABO A5/30 dated 7 October 1968:

...

Eligibility

5. *Officers and airmen who fulfil the conditions of qualifying service, between 31 July 1962 inclusive and a date to be determined [subsequently established as 28 March 1973⁶⁸], are eligible for the medal.*

Qualifying Service

6. *Qualifying service for the award is completion of a minimum of six months, either continuous or aggregated, while on the posted strength of a unit or formation in SOUTH VIETNAM for the purpose of assisting the South Vietnamese and the RVNAF to fight against armed aggression.*

7. *The requirement for six months service may be waived where a member’s period of qualifying service is curtailed because of being killed in*

⁶⁷ Memo, Secretary, Department of Defence ‘Vietnamese Campaign Medal’ dated 16 September 1966

⁶⁸ HQ ADF PPP486/97 ‘Extension of Eligibility for the RVCN Campaign Medal’ dated 11 March 1997

*action, wounded in action and evacuated, or captured and later released or escaped.*⁶⁹

...

69. **Mr Morrissey's Claims.** The Tribunal turned to address the areas Mr Morrissey identified for the Tribunal to 'give attention to' in its deliberations.⁷⁰

70. **The Relevance of Warlike Operations Applicable to 79 Squadron.** The Tribunal noted that the operations of 79 Squadron from Ubon had been extensively addressed in the Tribunal's *Inquiry Into Unresolved Recognition Issues for RAAF Personnel Who Served at Ubon Between 1965 and 1968*.⁷¹ This Inquiry confirmed the role of the Squadron in protecting the airbase whilst restricted to Thai airspace and thus allowing the resident USAF Phantom aircraft to bomb North Vietnam in support of the Vietnam War. The Inquiry recommended, and the Government agreed that RAAF personnel who served at Ubon from 25 June 1965 to 31 August 1968 receive the VLSM. As expressed in the Report of the Inquiry, there is 'no doubt in the Tribunal's view that the conditions of service there were warlike – as has been recognised by the Government by awarding the persons serving there the AASM 1945-75 with Clasp 'THAILAND' and granting eligibility for repatriation benefits'. Accordingly, the Tribunal is reasonably satisfied with Mr Morrissey's assertion that 79 Squadron's operations at Ubon were warlike, noting that as a result members of the Squadron were appropriately recognised with the AASM and VLSM.

71. **Examination of the Amendment of Article 3.** Mr Morrissey asked that the Tribunal examine the 'contentious amended Article 3 ... and the impact of that change on my entitlement ... to the RVCM'. The Tribunal addressed the consideration of the amendment by the Secretary above and concluded that he had considered and rejected the proposal, preferring to advise the Services that their Orders and instructions should be focussed on the original offer by the GVM.

72. The Tribunal accepts that by not including the amended Article 3 in the Australian eligibility criteria, Mr Morrissey's 'entitlement' may have been impacted. However, even if the amendment had been incorporated, it would still have remained for Mr Morrissey to prove that he was providing 'direct combat support'.

73. **Direct Combat Support - Did Mr Morrissey Contribute Direct Combat Support to the RVNAF?** The Tribunal notes that Mr Morrissey goes to great lengths to prove his opinion that he and his colleagues provided direct combat support to the RVNAF. The Tribunal notes that there is no Australian Department of Defence definition of direct combat support and that the issue was extensively canvassed in the first Inquiry.⁷² The Tribunal notes that the Inquiry concludes that:

⁶⁹ Air Board Orders - Issue No. 156, 'A5/30. Republic of Vietnam Campaign Medal for Service in South Vietnam Between 31 July 1962, and a date to be Determined'; dated 7 October 1968

⁷⁰ Mr Morrissey Precis Address to the DHAAT Review 10 May 2017

⁷¹ Report of the *Inquiry Into Unresolved Recognition Issues for RAAF Personnel Who Served at Ubon Between 1965 and 1968* dated 18 February 2011

⁷² Report of the *Inquiry into Eligibility for the Republic of Vietnam Campaign Medal* dated 24 March 2014, p.54-61

*direct combat support requires the provision of support directly to combat units on the battlefield*⁷³

74. The Tribunal also notes that in 2016 the CDF, as the professional head of the Defence Force, and in relation to the definition of direct combat support as it applied during the period in question, stated that it was:

*... services being supplied to the combat forces in the area of operations by ground units, ships and aircraft **provided it involves actually entering the designated area** ...*⁷⁴ (Emphasis added by Tribunal)

75. The Tribunal was therefore reasonably satisfied that whilst a definition of direct combat support does not exist, the views of senior subject matter experts and the experience of those consulted in previous reviews and inquiries all point consistently to the application of support being within the actual area of operations and/or directly onto the battlefield. The Tribunal considered that in the context of Mr Morrissey's service on the ground in Thailand, this could not be reasonably achieved as it is outside the area of operations and he could not therefore provide support directly to combat units on the battlefield.

76. The Tribunal noted Mr Morrissey's assertion that:

*until the Tribunal report of 24 March 2014, the Australian Government definition of 'warlike service' was accepted as covering all the permutations of a 'warlike service' combat assignment, therefore I assert that the term 'direct combat support' is really defined and included in the all inclusive ADF term 'warlike service',*⁷⁵

77. Mr Morrissey produced no credible evidence or argument to support this claim and the Tribunal therefore dismissed the assertion. The Tribunal also noted Mr Morrissey's comparison of direct combat support definitions as they apply to various United States honours and awards but did not accept that comparison was a justifiable factor in determining eligibility for awards. Eligibility is determined by the conditions as declared in the Instruments, Regulations, Determinations or Orders for each particular award and is determined in each matter according to its own facts. The Tribunal therefore dismissed the Mr Morrissey's claims regarding comparison as the Tribunal has an obligation to examine eligibility based on the applicable criteria as declared by the Australian authority. The provision of direct combat support is not a condition included in ABO A5/30.

78. For the reasons given above and noting that the application of direct combat support is not a requirement of the Australian eligibility criteria for the RVCM, the Tribunal finds that Mr Morrissey did not contribute direct combat support to the RVNAF.

⁷³ Ibid. p.59

⁷⁴ CDF Letter to Mr M Barnes, CDF/OUT2016/756 dated 31 August 2016

⁷⁵ Mr Morrissey Letter to the Tribunal dated 12 September 2016 p.5.0

79. **The Theatre of Operations Should be Considered in the Context of the Free World Military Force's (FWMF) Conduct of War Operations in South-East Asia.** The Tribunal noted that Mr Morrissey asserts that the theatre of operations should be considerably larger to include Thailand, as it was a contributor to the FWMF. The Tribunal accepted that the FWMF supported American and South Vietnamese forces in the fight against communism and noted that many of the contributing nations fought under their own banners in the Vietnam War. However, the Tribunal notes that the 'prescribed area of operations' for the purposes of the AASM with Clasp 'VIETNAM' does not include Thailand and is clearly defined in Determinations relating to the award.⁷⁶ The Tribunal was therefore reasonably satisfied that use of the term 'in SOUTH VIETNAM' in ABO A5/30 could reasonably be considered to be that area also defined as the prescribed area of operations for the AASM with Clasp 'VIETNAM' and any service for the purposes of the RVCМ would therefore need to be 'in South Vietnam'.

80. **Failure to Apply the Advice of the Australian Government Solicitor.** Mr Morrissey claims that the AGS advice⁷⁷ was not given the full consideration it deserved in the second Inquiry and was ignored by Defence. Mr Morrissey submits that the advice at paragraph 16 confirms that the Government did not have the power to change the eligibility criteria. He contends that the statement 'we do not think this could be considered a power to change the eligibility criteria for the RVCМ' should be read to mean that the Government did not have the power to not include the amendment to Article 3. The Tribunal does not agree with Mr Morrissey's view and for completeness includes the full transcript of the relevant part of the advice:

Effect of Directives

15. *We have considered whether the various Directives of the Government of the republic of Vietnam could be considered to grant the Australian Government any power to change the eligibility criteria. In particular, Article 3 (as amended) provides for foreign authorities to determine the eligibility of their personnel for the award.*

16. *We do not think this could be considered a power to change the eligibility criteria for the RVCМ. In our view, the power conferred on foreign authorities by Article 3 is a power to determine which of their personnel meets the criteria established by the Government of the Republic of Vietnam. While this allows the Australian Government (and other governments) a measure of discretion in interpreting and applying the criteria (eg. to determine whether a person was 'wounded in action'), we do think it can be said to extend to actually amending those criteria.*

17. *This view is supported by the amendment to Article 3 requested by the United States. Prior to this amendment, orders had been made for the eligibility of individuals for the RVCМ to be determined by their relevant authorities. It would not have been necessary for the United States to request the Government of the Republic of Vietnam to amend the criteria, if the power of the United States to determine the eligibility of individuals extended to amending the eligibility criteria themselves.*

⁷⁶ Commonwealth of Australia Gazette No. S. 64 - *Australian Active Service Medal 1945-1975 Regulations* (d) dated 28 February 2002

⁷⁷ Australian Government Solicitor 14217054 dated 3 February 2015 to DHAAT 'Power to Amend the Eligibility Criteria for the RVCМ'

81. The Tribunal considers that paragraph 17 of the advice clearly indicates the view that the amendment to Article 3 was requested by the United States as it was unable to amend the original criteria themselves. The Tribunal considered that the fact that the amendment was subsequently made does not of itself mean that other countries were obliged to accept the amendment and it is a matter of fact that Australia did not.

82. The Tribunal noted that the advice from the AGS was discussed in the second Inquiry and the Deputy General Counsel concluded that ‘... Article 3 should be interpreted so that it does not give the Australian Government the authority to amend the eligibility criteria’.⁷⁸ Therefore the Tribunal considers that Mr Morrissey’s claim that the AGS advice was not given the full consideration it deserved and was ignored by Defence is not supported by the evidence. Furthermore, the Tribunal does not agree with his interpretation of that advice.

83. **Equity in Relation to the Award of the RVCM to United States Personnel.** Mr Morrissey claims that ‘equity is a significant factor which I consider has not been given adequate consideration in the first and second Tribunal Reports’. The Tribunal noted that Mr Morrissey made submissions to the first Inquiry and provided evidence at the Inquiry’s hearing of a USAF ground crewman in Ubon who had received the RVCM.⁷⁹ At the hearing into this matter Mr Morrissey again pressed the equity issue between the USAF and RAAF personnel at Ubon, however the Tribunal was satisfied that the position taken in the Inquiry that ‘it is up to each country to determine how it interprets the conditions laid down by the GVM’ was a reasonable and consistent approach to the issue of equity. The Tribunal also noted that it is consistent with the guidance provided in the RVNAF Order No. 183 which states that ‘eligibility for individuals for the award will be determined by Royal Australian authorities’.

84. **Mr Morrissey’s Claim that ABO A5/30 Does Not Apply to Him.** The Tribunal considered Mr Morrissey’s claim that ABO A5/30 did not apply to him as it did not include Ubon but rejected the claim as the ABO is for the award which Mr Morrissey seeks – the RVCM. That ABO A5/30 does not directly mention Ubon is correct, however it also does not mention many other countries/locations where the war was supported or prosecuted from. The issue for Mr Morrissey is to prove that the criteria applies to him, simply stating that the criteria does not mention the location where he was based is not in the view of the Tribunal a supportable position.

85. **‘Warlike Service’ in Ubon and the Vietnam War.** The Tribunal noted Mr Morrissey’s assertions regarding the linkage between the award of the AASM, warlike service and the VEA. The Tribunal dismissed the alleged linkage to the VEA as this is different legislation for different purposes and is not related to medallic recognition or the provision of foreign awards. The VEA and declarations made pursuant to it, provide for repatriation benefits not defence honours and awards.

⁷⁸ Report of the *Inquiry into the Feasibility of Amending the Eligibility for the Republic of Vietnam Campaign Medal* dated 25 June 2015, p.40

⁷⁹ Report of the *Inquiry into Eligibility for the Republic of Vietnam Campaign Medal* dated 24 March 2014, p.107

86. The Tribunal reviewed Mr Morrissey's assertion that because the AASM that he and his colleagues received was for 'warlike service' and that as that service was in support of the Vietnam war, he should be eligible for the RVCM.

87. The Tribunal noted that the AASM 1945-75 is an Australian award instituted by Letters Patent on 11 December 1997 to recognise military service in *prescribed warlike operations* from 1945 to 1975. The Schedule sets out *the Regulations Governing the award of the AASM 1945-75* (the Regulations).⁸⁰ Regulation 3 states that the Governor-General, on the recommendation of a Minister may declare a warlike operation in which members of the Defence Force were engaged between 3 September 1945 and 13 February 1975 to be a *prescribed operation*. Regulation 4 sets out the conditions for the award of the medal.

88. The Tribunal noted that the subsequent Declaration for the AASM 1945-75 with Clasp 'THAILAND' dated 27 March 2001 declares:

(a) ... *the following warlike operations in which members of the Australian Defence Force were engaged in Thailand to be a prescribed operation for the purposes of the Regulations;*

(i) *at the Royal Thai Air Force base at Ubon during the period that commenced on 25 June 1965 and ended on 31 August 1968 ...*⁸¹

89. The Tribunal acknowledges Mr Morrissey's view that subsequent declarations in 2012 and 2013 amended (a)(i) to 'activities in the defence of Thailand conducted from the Royal Thai Air Force Base at Ubon ...' but does not consider this relevant to his claim that 'this "warlike service" was in support of the Vietnam war'. None of the Regulations or declarations mention or discuss Vietnam – the AASM with Clasp 'THAILAND' was for warlike operations in which members of the ADF were engaged in Thailand at the Ubon Air Base. The Tribunal also noted that at the hearing Mr Morrissey did state that the operations at Ubon were a 'defacto defence of Thailand'.

90. **Comparison of Other Similar Cases.** The Tribunal noted Mr Morrissey's analysis of previous RVCM decisions, particularly his comments regarding the Tribunal's review of recognition for Reverend Ashworth.⁸² The Tribunal did not accept his selective analysis noting that many 'quotations' were inaccurate, seemingly amended to suit his argument or provided out of context as evidenced by this direct quote:

*"the MBI does not cover RAAF personnel, that RAAF personnel are governed by an AFO issued after the RAAF Contingent Ubon had been disbanded and that both the MBI and AFO are in error."*⁸³

⁸⁰ Commonwealth of Australia Gazette No. s18 dated 19 January 1998 – *Regulations Governing the Award of the Australian Active Service Medal 1945-1975*.

⁸¹ Commonwealth of Australia Gazette No. s102 dated 27 March 2001 – *Declaration ad Determination Under the Australian Active Service Medal 1945-1975 Regulations*.

⁸² Ashworth and the Department of Defence [2015] DHAAT 49 (14 December 2015)

⁸³ Mr Morrissey Letter to the Tribunal dated 12 September 2016 p.3.0.2

91. The *Ashworth* decision does not say this. Furthermore, the Tribunal informed Mr Morrissey at the hearing that Reverend Ashworth's claim was quite different to his situation. Reverend Ashworth, despite being based at Ubon, did deploy on duty to South Vietnam and was subsequently medically evacuated. Reverend Ashworth's claim relied on the provisions in the ABO for dispensation if 'wounded in action and evacuated'. The Tribunal found that he was not 'wounded in action' and therefore determined that his claim was unable to be supported.

92. In any case the Tribunal does not accept that precedent is a relevant factor in determining eligibility for awards. Eligibility is determined by 'the conditions for the award of the decorations' as declared in the Instruments, Regulations, Determinations or Orders for each particular award. The Tribunal therefore dismissed Mr Morrissey's assertions regarding precedent, preferring to determine eligibility based on individual merits.

93. **Does Mr Morrissey Meet the Eligibility Criteria for the RVCM?** Mr Morrissey's service record does not indicate that he served 'on the posted strength of a unit or formation in South Vietnam' or that he completed a minimum of six months, either continuous or aggregated in South Vietnam. Mr Morrissey did not produce any evidence or make any claims that he served in South Vietnam for a period of six months. He therefore does not meet the eligibility criteria for the RVCM as specified in ABO A5/30.

94. **Conclusion.** Mr Morrissey's basic contention is that the Australian eligibility criteria for the RVCM should include the subsequent amendment to Article 3 which would allow foreign military personnel serving outside the geographic limits of South Vietnam and contributing direct combat support to the RVNAF for six months to be eligible for the award. He contends that if this was the case, he would meet the criteria and be eligible. The Tribunal is satisfied that the amendment to Article 3 was not accepted by the Australian government at the time and, even if it were to have been accepted, Mr Morrissey and the Ubon Contingent did not contribute direct combat support to the RVNAF and therefore would not be eligible in any case.

Finding

95. For the reasons set out above, the Tribunal finds that Mr Morrissey is not eligible for the RVCM as he did not serve on the posted strength of a unit or formation in South Vietnam for a period of six months. Accordingly, the Tribunal finds that the decision of the Directorate is correct.

DECISION

96. The Tribunal decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Mr Michael Morrissey is not eligible for the award of the Republic of Vietnam Campaign Medal.