



## Australian Government

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### Defence Honours and Awards Appeals Tribunal

## **Speedy, Ray, Bell and the Department of Defence re: Perrott and Kyle [2017] DHAAT 007 (21 March 2017)**

**File Number(s)** 2015/028, 2015/030, 2015/031

**Re** **Commander I.M. Speedy, DSC, RANR, Captain Robert Ray, MBE, RAN (Retd) and Commander Edward Bell, RAN (Retd)**, on behalf of **Sub Lieutenant Michael Perrott, RAN and Sub Lieutenant Robert Kyle, RAN.**  
Applicants

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

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

**Hearing Date** 7 February 2017

### **DECISION**

On 21 March 2017 the Tribunal decided to recommend to the Minister that:

- a. the decision by the Chief of Navy to refuse to recommend a higher gallantry award for Sub-Lieutenant Robert Kyle for his actions on 2 February 1969 with the Royal Australian Navy Helicopter Flight Vietnam be affirmed;
- b. the decision by the Chief of Navy to refuse to recommend a higher gallantry award for Sub-Lieutenant Michael Perrott for his actions on 2 February 1969 with the Royal Australian Navy Helicopter Flight Vietnam be set aside and that Sub-Lieutenant Perrott be asked to return the Mention in Despatches he received for the action; and
- c. the Minister recommend to the Governor-General that Sub-Lieutenant Michael Perrott be awarded the Medal for Gallantry for acts of gallantry in action in hazardous circumstances as the aircraft captain commanding the rescue of a downed helicopter crew in the vicinity of Vinh Long, South Vietnam on 2 February 1969.

## **CATCHWORDS**

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

## **LEGISLATION**

*Defence Act 1903 – ss 110V(1), 110VA, and 110VB(1)*

*Defence Force Regulations 1952 – Reg 93B Sch 3*

*Commonwealth of Australia Gazette No. S25, Victoria Cross and Gallantry Decoration Regulations dated 4 February 1991*

## REASONS FOR DECISION

### Introduction

1. On 21 February 2011, the Government requested that the Tribunal inquire into and report on *unresolved recognition for past acts of naval and military gallantry and valour* (the Valour Inquiry). As part of the Terms of Reference for the Inquiry, the Tribunal was directed to receive submissions from the public supporting recognition for those they thought worthy of higher recognition. Submissions were received from Commander Max Speedy, Captain Robert Ray and Commander Edward Bell (the Applicants). Their submissions sought higher recognition for Sub-Lieutenant Michael Perrott (SBLT Perrott) and Sub-Lieutenant Robert Kyle (SBLT Kyle) who served as first and second pilots respectively in the rescue of a downed Australian helicopter crew when serving with Contingent Two of the Royal Australian Navy Helicopter Flight Vietnam (RANHFV) on 2 February 1969. SBLT Perrott was awarded the Mention in Despatches (MID) for his actions on 2 February 1969 and SBLT Kyle was awarded the MID for his service as helicopter pilot during his deployment to Vietnam. Both of these awards were gazetted on 30 October 1969.<sup>1</sup>

2. Commander Speedy requested that both SBLT Perrott and SBLT Kyle be awarded the Victoria Cross for Australia (VC). Captain Ray initially sought that SBLT Perrott's MID be 'upgraded to the Star of Courage' however in his application for review he asked that he be awarded the Distinguished Service Cross (DSC). At the hearing the Tribunal advised Captain Ray that the Star of Courage is an Australian Bravery Decoration not administered under the *Defence Act 1903* (the Defence Act). Captain Ray confirmed that the award he was seeking for SBLT Perrott was the DSC.<sup>2</sup>

3. Captain Ray's application was silent regarding SBLT Kyle however during the hearing he indicated that he thought he should receive the Distinguished Flying Cross (DFC). Commander Bell's application sought the VC for SBLT Perrott and was silent regarding the level of award for SBLT Kyle.

4. On 14 March 2013, the Australian Government referred the Applicants' Valour Inquiry submissions to the Chief of Navy (CN) through the Chief of the Defence Force for consideration. On 23 September 2014 CN, acting on advice contained in a review conducted by Doctor David Stevens of the Sea Power Centre – Australia (the Stevens Review), referred the submissions to the Parliamentary Secretary to the Minister for Defence (the Parliamentary Secretary) recommending that he 'consider directing the Tribunal to review the nominations for SBLT Perrott and SBLT Kyle'.<sup>3</sup> The Stevens Review indicated that 'an initial desktop review of naval submissions had been completed and that the conclusion of the review team was that none (including SBLT Perrott and SBLT Kyle) contained new or compelling evidence that would warrant a merits review'.<sup>4</sup>

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<sup>1</sup> *Commonwealth of Australia Gazette* dated 30 October 1969, p6513, Posn 6 (Perrott) and Posn 8 (Kyle)

<sup>2</sup> Oral Evidence by Captain Ray – Canberra 7 February 2017

<sup>3</sup> CN/OUT/2014/1259 dated 23 September 2014

<sup>4</sup> Decision Brief for CN dated 9 April 2014, Paragraph (ii)

5. On 5 March 2015, the Parliamentary Secretary asked the Tribunal to conduct a ‘further review of the submissions for SBLT Perrott and SBLT Kyle’.<sup>5</sup> On 30 June 2015, the Tribunal wrote to the Applicants regarding the Parliamentary Secretary’s advice and asked whether they would like to proceed with a review of recognition and invited them to submit further information.<sup>6</sup> The Applicants advised that they would like the review to proceed.

### **Tribunal Jurisdiction**

6. 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 defence honour as being those awards set out in Part 1 of Schedule 3.<sup>7</sup> Included in the defence honours set out in Part 1 are the DSC and the VC.

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

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

### **Conduct of the review**

9. In accordance with its *Procedural Rules 2011*, on 19 August 2015, the Tribunal wrote to the Secretary of the Department of Defence informing him of the Applicants’ submissions and requested a report on the material questions of fact and the reasons for the decision made in relation to the request for a higher level of recognition for SBLT Perrott and SBLT Kyle for their service with the RANHFV.<sup>8</sup> The Tribunal also requested that the Secretary provide copies of documentation relevant to the reviewable decision and that he provide a copy of SBLT Perrott and SBLT Kyle’s service records.

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<sup>5</sup> Parliamentary Secretary to the Minister for Defence MA14-001989 dated 5 March 2015

<sup>6</sup> DHAAT OUT/2015/314 to Commander Speedy dated 30 June 2015

<sup>7</sup> 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.

<sup>8</sup> DHAAT/OUT/2015/487 dated 19 August 2015

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

11. On 11 November 2015 the Tribunal provided the Navy sourced material to the Applicants for comment.<sup>9</sup> The Applicants subsequently acknowledged receipt of the material.

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

13. The Tribunal noted that in accordance with its *Procedural Rules 2011* the hearing into this matter would need to be conducted in public and accordingly, the Applicants were invited to provide evidence at a hearing held in Canberra on 7 February 2017. Navy was represented at the hearing by Commodore Jonathon Sadlier, AM supported by Mr John Perryman and Commander Paul Fothergill. The Directorate of Honours and Awards in the Department of Defence was not represented. The subjects of the review, SBLT Perrott and SBLT Kyle also attended the hearing and gave evidence. Evidence was also provided by telephone by two of the crew who were rescued on 2 February 1969 – Sub-Lieutenant Warwick Symons and Sub-Lieutenant Thomas Supple.

### **The History of the RANHFV**

14. In July 1967 the Australian Government announced that a detachment of Royal Australian Navy Fleet Air Arm personnel would join a United States Army aviation company to provide airborne support for allied forces operating in South Vietnam. This new flight, known as RANHFV was integrated with the US Army 135<sup>th</sup> Assault Helicopter Company (AHC) flying helicopters in both utility and gunship configurations.<sup>10</sup>

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

16. Assault helicopter companies comprised several platoons of Iroquois UH-1D troop carrier aircraft supported by a platoon of UH-1C gunships. These gunships carried forward firing mini-guns and rocket pods fixed to the aircraft skids. Each aircraft also carried M60 machine guns fired by hand from the side doors. AHCs generally flew three types of mission: troop lift, combat assault and general support. During troop insertions and extractions, the gunships generally provided direct aerial

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<sup>9</sup> DHAAT/OUT/2015/678, 679 and 681 dated 11 November 2015

<sup>10</sup> Defence Honours and Awards Appeals Tribunal Report of the *Inquiry into unresolved recognition for past acts of naval and military gallantry and valour*, p.18-5 to 18-8

fire support to the troop carriers before and as they landed. A helicopter crew consisted of an aircraft pilot who commanded the aircraft, a co-pilot, a crew chief or load-master (who was also a door-gunner) and a second door-gunner.

17. During its tenure of almost four years, over 200 Fleet Air Arm personnel rotated through the RANHFV in four contingents of approximately one year's duration. Five Navy personnel died whilst serving with the RANHFV and 22 were wounded in action. Forty two individuals were decorated for their service with 25 of these sailors receiving the MID and 8 receiving the DSC.<sup>11</sup> RANHFV was the most highly decorated Navy unit during the Vietnam War; its members receiving 42 of the 69 Navy awards.

### **Sub Lieutenant Perrott's Service and Vietnam Deployment**

18. SBLT Michael Perrott was born on 27 July 1940. He was commissioned as an officer in the Royal Australian Navy on 1 March 1965 and qualified as a pilot on 18 August 1967. After completing flying training, he was posted to the RANHFV and deployed to Vietnam on 11 September 1968.

19. SBLT Perrott was awarded the MID on 30 October 1969.<sup>12</sup> He was originally nominated for the DSC by the Officer in Charge of the RANHFV Contingent, Lieutenant Commander G.R. Rohrsheim, DSC (OIC RANHFV), however it was downgraded to the MID by Commander Australian Force Vietnam (COMAFV). The citation for the award states:

*... Sub Lieutenant Perrott has been a section leader with the 135<sup>th</sup> Assault Helicopter Company, United States Army, and has carried out all his duties and tasks with well above average zest and enthusiasm, and set a very good example for the officers and men of his unit.*

*On 2<sup>nd</sup> February 1969, Sub-Lieutenant Perrott was responsible for returning two Australian pilots and their American gunners from certain capture, or being killed, when he landed in hostile territory under heavy machine gun and small arms fire. Sub-Lieutenant Perrott's actions were decisive and very well planned. When he was informed of the downed aircraft he flew low over the area and assessed the approach that would present the most difficult target to the enemy and then executed a perfect evacuation.*

*Sub-Lieutenant Perrott's cool methodical actions have brought significant credit to himself, his unit and the Royal Australian Navy.<sup>13</sup>*

20. SBLT Perrott also received the US Air Medal for meritorious achievement while participating in aerial flight between 12 and 19 September 1968.<sup>14</sup> He completed his deployment and returned to Australia on 11 September 1969. He remained in the Navy until 17 April 1990 when he transferred to the retired list.<sup>15</sup>

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<sup>11</sup> Ibid.p.18-26

<sup>12</sup> *Commonwealth of Australia Gazette* dated 30 October 1969, p6513, Posn 6

<sup>13</sup> Recommendation for Honours and Awards *SBLT Perrott* dated 9 June 1969

<sup>14</sup> US Air Medal Certificate dated 20 November 1968

<sup>15</sup> Historical Record – LCDR Perrott printed 26 August 2016

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

- Australian Active Service Medal 1945-75 with Clasp 'VIETNAM';
- Vietnam Medal;
- Republic of Vietnam Campaign Medal;
- National Medal; and
- Defence Force Service Medal with First and Second Clasps.<sup>16</sup>

### **Sub Lieutenant Kyle's Service and Vietnam Deployment**

22. SBLT Robert Kyle was born on 9 April 1948. He joined the Royal Australian Navy on 3 April 1964 and qualified as a pilot on 12 April 1968. After completing flying training, he was posted to the RANHFV and deployed to Vietnam on 16 October 1968.

23. SBLT Kyle was awarded the MID on 30 October 1969.<sup>17</sup> The citation for the award states:

*... Since his arrival, Sub-Lieutenant Kyle has flown in excess of one hundred hours a month on combat assault missions.*

*Sub-Lieutenant Kyle was the second pilot of an Iroquois UH-1H troopship which, under heavy fire, rescued the crew of a downed helicopter gunship on the 2<sup>nd</sup> February, 1969. His calm assistance during the rescue contributed significantly to the success of the task.*

*On many occasions Sub-Lieutenant Kyle has come under automatic weapons fire, and twice his aircraft has been extensively damaged by booby traps. Each time Sub-Lieutenant Kyle has acted professionally and played a vital role in ensuring the safety of his crew.*

*Sub-Lieutenant Kyle has played a significant role as a sound and capable lift helicopter pilot in missions this Company has undertaken.<sup>18</sup>*

24. SBLT Kyle completed his deployment and returned to Australia on 9 October 1969. With the exception of a four year period of separation from November 1986, he remained in the Navy until 18 April 1993 when he transferred to the Navy Reserve. His Service Record indicates that he was still serving as a Reservist on 1 August 2016.<sup>19</sup>

25. SBLT Kyle's Service Record states that he received the following awards for his service:

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<sup>16</sup> Ibid.

<sup>17</sup> Commonwealth of Australia Gazette dated 30 October 1969, p6513, Posn 8

<sup>18</sup> Recommendation for Honours and Awards SBLT Kyle dated 9 June 1969

<sup>19</sup> ADO Service Record – LCDR Kyle printed 31 August 2016

- Australian Active Service Medal 1945-75 with Clasp 'VIETNAM';
- Vietnam Medal;
- Mention in Despatches;
- National Medal;
- Defence Force Service Medal with First Clasp;
- Australian Defence Medal;
- United States of America Air Medal;
- Republic of Vietnam Cross of Gallantry with Bronze Star;
- Republic of Vietnam Campaign Medal; and
- Returned from Active Service Badge<sup>20</sup>

### **Official Accounts of the Action on 2 February 1969**

26. The Royal Australian Navy's online history of the RANHFV<sup>21</sup> records that:

*During the early evening of 2 February 1969 the EMUs took part in a vigorous action in Vinh Long province. The slicks were held down in the landing zone by heavy fire from a Viet Cong force entrenched in a tree line. Some of the gunships called in to assist in extricating the slicks were themselves hit and forced down and among these was the helicopter of LEUT Tom Supple, RAN. Once on the ground, enemy soldiers attacked the crew, which included SBLT W.E. Symons, RAN. Armed with the downed Huey's M60 machine gun and small arms, the aviators were involved in a running gunfight with the enemy as they were chased across the paddy fields under heavy fire. Another Huey crewed by Australians SBLT Mick Perrott, RAN and SBLT R.J. Kyle, RAN, seeing what was taking place manoeuvred their aircraft through intense ground fire to reach and rescue the downed aircrew.*

27. The rescue is also described in the Official History of the Royal Australian Navy in the Vietnam War.<sup>22</sup> The action is described as:

*On 2 February Sub-Lieutenant W.E. Symons was shot when the gunship he was flying with co-pilot Sub-Lieutenant T.F. Supple was engaged by heavy enemy fire. The crew was forced to detach the M60 machine gun mounted as a door gun to hold off parties of the enemy until they were reached by Sub-Lieutenants M.A. Perrott and R.J. Kyle. Perrott and Kyle were later mentioned in despatches.*

*On 22 February Symons was wounded when his aircraft again came under heavy fire, and he was evacuated to Australia in March ... Symons was awarded the Distinguished Service Cross for 'example, leadership and sustained courage' on these two occasions. Supple was also awarded the*

<sup>20</sup> Ibid.

<sup>21</sup> <http://www.navy.gov.au/history/squadron-histories/ran-helicopter-flight-vietnam-history> accessed 20 December 2016

<sup>22</sup> Jeffrey Grey, *Up top: the Royal Australian Navy and Southeast Asian Conflicts 1955-1972*, Allen and Unwin 1998 p 267



*DSC for his actions on 2 February and for similar gallantry and flying skill during operations the previous October and in the subsequent April.*

28. The RANHFV Report of Proceedings (ROP) for the month of February 1969 was unable to be located by Defence or the Tribunal however the Tribunal notes that Commander Speedy quotes from the report in his submission.<sup>23</sup> He says that the OIC RANHFV noted in the monthly report:

*... on 2<sup>nd</sup> February, Sub Lieutenant Symons and Sub Lieutenant Supple were shot down when flying in support of the Flight in their UH-1C Gunship and were rescued in the most professional and courageous manner by Sub Lieutenant Perrott and his crew.*

### **Witness Accounts of the Action on 2 February 1969**

29. **SBLT Perrott.** SBLT Perrott described the action in an email dated 24 November 2011:<sup>24</sup>

*As EMU lead, 2 February 1969 the flight had an early morning start ... it was a busy day which went without significant incident until we were alerted to the downing of a Taipan gunship. No other specific details were given. ...*

*At the time I arrived in the area of the downed Taipan there was definitely no other helicopter in the area ... It was the incoming yellow .50 Cal tracer that alerted the gunner to the area of the downed chopper. I banked right in checking for the .50 cal fire which I saw passing behind the tail in dead straight heading skywards, at about a 45 degree angle.*

*It was at this moment that Bob Kyle spotted the downed crew and I commenced our rapid decent (sic) in a turn towards the downed crew as directed by Bob Kyle.*

*I then spotted the crew and the enemy which was in hot pursuit of the downed crew. My mental picture is of 'nipper palm' tree line from which the enemy was running in pursuit of the downed Taipan crew.*

*I then chose a landing spot and concentrated on getting in as low as I could. It was then that the slight rise was sight (sic) and I stopped with the rise between us and the .50 Cal.*

*I then cursed that the downed crew were still about 50 metres away.*

*It was then that we observed that it was Rick and Tom, and I mused 'fancy it being them'.*

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<sup>23</sup> Commander Speedy Submission dated 29 November 2016, p.5 attributed to AWM 78, Control Symbol: 389/1 DPI 200 p.154

<sup>24</sup> Email from Michael Perrott to Max Speedy dated 6.37pm 24 November 2011

*I remember seeing the pursuing enemy came in to view as the downed crew were covering the last 10 metres.*

*At this point I switched my attention to preparing for our departure and way out in waiting for the word to 'Go' ...*

30. SBLT Perrott provided further context to the lead up to the rescue in an email to Commander Speedy on 26 July 2015:<sup>25</sup>

*... in my mind the sight of .50 Cal that close, on single target and still heading skywards in a very straight line is a real life wake up call involving split second decisions. It was an instant decision not to leave 2 of 8 ... I remember this fact because it was the first sign that our rescue was a bit more than routine.*

*... we were fired upon from great distance and it was only after we had turned and dived that Bob spotted the downed gunship near where the .50 cal fire was coming from. I was diving with no power and across the line of fire with Bob calling the position of the aircraft. I didn't turn towards the rescue until we were nap of the earth ...*

31. At the hearing SBLT Perrott provided further context as to how he came to be in a position to conduct the rescue. He said it was at the end of a not unusual but long day where he had been assessing the competence of SBLT Kyle so that he could be qualified as a Flight Lead. He said that they had returned as a Flight to the refuel area and 'we had been dismissed from the Flight, so C&C was out of the picture, he was probably flying the ground commander back to the 9<sup>th</sup> ARVN Headquarters, so the Flight was at Vinh Long on its own and control had been handed back to EMU Lead which was me'. He said:

*Bob Kyle was out supervising the refuelling when I heard the message that the Taipan was down, it was a very vague message, that's when I told Bob to get back in, handed Lead to Two and I could see it was only 15 kilometres and we had sufficient fuel to get down there quickly so I didn't waste time, just dashed off.*

*We flew out to the area – it was pretty dark and the first thing that I knew anything was happening was when the port-side door gunner opened up. He's not meant to open up unless he's given direction to fire, so I chastised him and he said 'we've got .50 cal', so I banked left and through the doorway I could see this yellow stuff which was absolutely dead straight, so I turned slightly away to increase the cross fire angle, dived for the ground and on the way down Bob spotted the aircraft and crew and was able to give me directions all the way down. When I got close to the ground I swung around and headed in towards the area that Bob was talking about.*

*We were really low and I wasn't interested in anything except just keeping the aircraft out of the ground and when Bob said we were getting close that's*

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<sup>25</sup> Email from Michael Perrott to Max Speedy dated 4.10pm 26 July 2015

*when I took my first look and noticed high ground and just skidded to a halt and banged it on. They [the downed crew] came running towards us, it didn't take long but when you're sitting there I was thinking I wished I'd moved it over a bit closer but in hindsight if we had gotten closer perhaps we wouldn't have gotten away with it because I saw the Viet Cong come over the high ground we were hiding behind and by this time the two pilots were in the chopper and the M60 gunner looked like he was really determined to make a battle of this and we were trying to get him to get in ... and we just turned but not directly away from the fire, because if you do you present a profile where they can fire right up your bum so I just kept crossing the angles like I'd done on the way in and that was it.*

*Everybody did their job, everybody deserves credit because everybody did the right thing.*

32. In relation to whether he had been directed to conduct the rescue he was emphatic that this was not the case as he had 'been released therefore the Flight was mine'.

33. The Tribunal asked SBLT Perrott if he considered whether SBLT Kyle should be recognised. He said that in his view 'the 135<sup>th</sup> did miss out – we did a lot of work in Vietnam and every day was a danger day'. He said:

*what SBLT Kyle did as a co-pilot on that day was above what you would expect of a pilot in Vietnam but not above what I would expect of an Australian crew, and I had purposely selected Bob as my understudy because I knew I could rely upon him*

34. At the hearing SBLT Perrott tabled a Statutory Declaration in which he provided a further account of his action.<sup>26</sup> This statement was largely a repeat of previous evidence and accounts although it did describe more fully his airmanship during the insertion and extraction:

*... spotted a rise in the ground sufficient to shield us from the .50 Cal line of fire; I quickly rolled into the turn and sideways flare which kept us low and I was able to reduce the flare and at the last moment, kick the aircraft for a short running landing ...*

*... I was shouting 'get-in, get-in and let's get out of here ... at this point I virtually spot turned the aircraft around to the left on the left skid before pulling power in keeping the nose clear of the ground as we accelerated away from the action, I continued at low level until I felt we were well clear of the .50 Cal and then climbed to 1,500 at full power ...*

35. **SBLT Kyle.** SBLT Kyle provided a comprehensive account of the action in a submission he provided to the 'Vietnam End of War List'.<sup>27</sup> The account was in

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<sup>26</sup> Statutory Declaration by Michael Perrott dated 6 February 2017 declared before Ruth Cheatham, JP

<sup>27</sup> Letter from Mr R.J. Kyle to the Federal Member for Gilmore dated 27 July 1999

support of a proposal to award the DFC to SBLT Perrott for his actions on 2 February 1969.

*On 2 February 1969 I was co-pilot and deputy lead to (then) SBLT Perrott who was flight lead of ten US Army UH-1H-13 Iroquois helicopters ... In the late afternoon of 2<sup>nd</sup> February we had completed a series of combat assaults and had led the flight to Vinh Long to refuel. We were 'hot refuelling' when we heard on the radio that one of our company helicopter gunships had been shot down and the crew were engaged in a firefight with an enemy force and were in dire need of rescue.*

*SBLT Perrott handed 'Flight lead' to our Chalk 6 aircraft and took off as a single aircraft to attempt a rescue. By the time we reached their last known position about ten minutes later, the sun was setting. Flying at 1500 feet (the height considered to be safe from small arms fire) we reached the report area and were looking for the downed aircraft when one of our door gunners opened fire. When questioned he reported that we were 'taking fire' (being shot at). SBLT Perrott immediately banked the aircraft so we were able to confirm that we were receiving fire. The fire was not the usual 7.62mm crimson or green tracer that lost speed and curved away at 1500 feet, but 50 calibre yellow tracer that was streaking past our aircraft skywards in a straight line.*

*Immediately SBLT Perrott dived the aircraft under power. During our descent we spotted the downed gunship while our door gunners returned fire – using their two 7.62mm machine guns – on the source of the stream of enemy tracer. In the gloom we could see the crew of the downed gunship engaged in a running gunfight with some enemy troops. Still under intense fire, and while I maintained visual contact with the downed crew, SBLT Perrott manoeuvred our helicopter at full power, low level just inches above the grass toward the crew of the gunship that we could see in the gloom making a dash in our direction with about 15 enemy troops in hot pursuit.*

*SBLT Perrott performed a very unorthodox sideways flare (essential to maintain our low nap-of-the-earth profile) and landed our aircraft a short distance from a row of nipa palm – which the four downed crew were working their way through – but with a small patch of higher ground between us and a 50 calibre enemy machine gun (which meant that the 50 cal fire was passing just overhead). At the same time we were receiving small arms fire from the enemy troops closing on our position, but as they were on the move in hot pursuit of the downed crew their fire was somewhat erratic. Moments later the gunship crew burst through the nipa palm – perhaps 'burst' is the wrong word as they were running backwards firing at the dozen or so NVA troops in hot pursuit. Our gunners continued to direct M60 machine gun fire against the enemy while the downed crew dashed the last few yards to leap into our aircraft.*

*The instant the downed crew, Australian pilots Tom Supple and Rick Symons, and their two American gunners, were onboard, SBLT Perrott took off down wind and made a high-speed, nap-of-the-earth departure to maximise*

*protection afforded by the slight rise between our aircraft and the closest enemy 50 calibre machine gun. Once we had cleared the danger area we climbed out to a more normal transit altitude of 1500 feet. The rescue was complete in less than five minutes. By this time the sun had completely set and we flew in darkness back to Vinh Long. Had our rescue attempt been delayed for even a few minutes, the downed crew was certain to have been captured and most likely executed by the enemy...*

*In addition to the 'not so common' close encounters with 50-cal machine gun fire, this rescue is significant for two other reasons. Firstly, the fact that two previous rescue attempts had been driven off by the 50-cal machine gun fire. Secondly SBLT Perrott's exceptional flying skill and courage under fire were clearly demonstrated when he flared the aircraft sideways to a halt using a 'tiger moth' crossed control technique. There was no margin for error with this particular manoeuvre, but it did achieve the aim of keeping the aircraft close to the ground and greatly reducing our vulnerability to the intense enemy fire. By comparison, a normal 'quick stop' would call for a flare straight ahead by raising the nose and hence the cabin of the aircraft so as to prevent the tail from striking the ground. This would have placed the crew and the most vulnerable part of the aircraft in a very exposed position ...*

*Clearly the rescue was not a knee jerk, rush-of-blood reaction, but a well executed series of difficult manoeuvres performed in a cool and determined manner in the face of extreme danger.*

36. In an e-mail SBLT Kyle wrote in 2011 he elaborated on the decision to undertake the rescue attempt.<sup>28</sup> He stated that whilst refuelling:

*... we heard that a gunship had been shot down, but didn't know who it was until we were about three-quarters fuelled. Then, Mike beckoned to me to get back in. By the time I strapped in we were airborne and Mike briefed that we were going back to try and rescue Tom and Rick ...*

37. At the hearing SBLT Kyle repeated the written account in a compelling and self-effacing manner where he stated:

*I was an eye witness to Mike Perrott's exceptional daring, courageous and gallant flying under enemy fire and he effected a very problematic rescue ... we were under intense .50 calibre fire from two and possibly three machine guns as well as small arms fire both in the air and on the ground ... his flying skills were incomparable – the best flying I ever saw under fire ...*

*... when we first sighted the .50 cal fire Mike's immediate reaction was not to roll the aircraft or to dive as you would in a fixed wing aircraft because you just can't do that in a helicopter but he kept control, positive G, pulled it around and at almost the same time we were in an auto-rotation to make sure we got down as quickly as possible and all of those things were disrupting the*

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<sup>28</sup> Email from LCDR Kyle to Commander Speedy dated 24 November 2011 included in the Speedy Submission dated 7 February 2017, p.9

*enemy fire because it made their target acquisition much more difficult because of the sudden change in direction and altitude ...*

38. In relation to the insertion, SBLT Kyle stated that SBLT Perrott's 'manoeuvre of the aircraft disrupted the enemy's ability to engage'. He said that he [Kyle] was 'following on the controls but I wasn't flying'. He said that Perrott:

*instead of doing a normal 'quick stop' landing he rolled to the left so that the aircraft presented the lowest possible profile, came in sideways and put it down (I thought a brilliant manoeuvre). We were only down for a moment when we saw the four crew running backwards firing and I saw a dozen or more enemy NVA coming – we had nowhere to go and our crew chief opened fire with his M60 but didn't have a good field of fire because of the proximity of the downed crew. Three of the four crew got into the aircraft but one kept firing and Perrott kept calling to 'get him in'.*

*Mike then did a bit of a pedal turn and went out through a clearing in the trees and downstream from the enemy fire. A .50 cal then opened up from the left and I could see Mike thinking through everything he needed to do to make the enemy fire as inefficient as possible ... we were then out of the area in about ten seconds*

39. SBLT Kyle said that in terms of daring and gallantry:

*Mike's flying and skills were incomparable, they were excellent, the best flying that I've ever seen and under fire*

*In hindsight I can see that the award that was provided to recognise Mike Perrott was not compatible with the reality in that he clearly demonstrated all of the prerequisites for the VC and he was never properly recognised - that should be changed.*

40. SBLT Kyle in response to questions regarding the threat on the ground said that he 'did not consider that there was an option to leave without the rescued crew and that whilst the aircraft was on the ground there was the potential for them to be killed'. He said that they were prepared to wait for the crew because they were 'in a relatively safe position with the .50 calibre fire going over the top of them'.

41. SBLT Kyle said that when they returned to base he approached the unit Operations Officer to report what had happened and to describe SBLT Perrott's actions so that he could be recognised. He said that the Operations Officer was curt and dismissive and would not listen to his account. He said he then approached the OIC RANHFV but he similarly would not engage in a discussion about recognition.

42. SBLT Kyle said that in his view, SBLT Perrott deserved the VC for his daring and gallantry as the mission commander. In response to questions about his own role in the rescue, SBLT Kyle stated that it was a team effort but:

*it is what it is – I did my duty, I did my best to make sure that we completed the rescue – that was my aim, Mike was making the decisions based on the*

*information flows that he had, I simply did my job – SBLT Perrott was the one making the decisions and flying the mission.*

43. **SBLT Symons.** SBLT Symons was the aircraft captain of the downed gunship. In response to a series of questions sent to him by Commander Speedy, SBLT Symons described his involvement in the action:<sup>29</sup>

*SBLT Symons with SBLT Supple as co-pilot was with another gunship engaging the enemy when hit by what was believed to be .50 cal machine gun fire which was intense. On clearing the aircraft the crew moved 200 metres and were fired upon by automatic weapons. The pilots returned fire with M16s and the crew chief and gunner with M60s. They sheltered behind a small group of trees facing the enemy positions. Perrot's (sic) aircraft landed behind us and Supple and I boarded the helicopter while the crew chief and gunner provided covering fire with their M60s. The crew chief and gunner then boarded the helicopter. The helicopter was under fire. The helicopter took off with the left gunner firing.*

44. At the hearing SBLT Symons elaborated on his written account. He said that when they landed, 'they cleared the aircraft with their weapons and made their way to a tree-line about 150 metres from the aircraft which accorded them some cover'. He said that they continued to receive fire and they returned fire but it was difficult to see what they were firing at. He stated that whilst they were doing that 'from behind us a helicopter appeared, flown by Perrott and Kyle and we retreated to the helicopter, both the crew chiefs kept firing while we got into the helicopter, then they got in and we took off under fire – I remember saying to Mike hey we're getting a hell of a lot of fire here.'

45. In relation to recognition for SBLTs Perrott and Kyle he stated that in his opinion the fact that they saved their lives and were not recognised for doing this was 'not fair and not reasonable'. He said that the fact that the rescue helicopter was 'under intense fire when they came in and picked them up was "brave"'. He said that he had 'an expectation that they would be picked up as there was a flight of helicopters out there and they knew we were down'. He also acknowledged that if they did not come he expected that they would 'be captured and then killed as the logistics of keeping us alive would be very difficult'.

46. In response to questions about the airmanship and skills demonstrated by Perrott and Kyle he said that most of the actions that crews were involved in were instinctive and that they rarely sought permission or gained approvals when faced with a short notice task. He said that the rescue from a skills perspective was 'a nice, clean piece of flying'.

47. In relation to the threat and risk SBLT Symons said that the threat was high and that 'encounters with .50 calibre machine guns were not uncommon but were terrifying'. He said that from his experience one in twenty contacts included .50

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<sup>29</sup> Commander Speedy Submission dated 29 November 2016, p.7

calibre machine guns and the hitting power of these weapons could cause catastrophic structural damage to the aircraft - 'we had a lot of respect for them'.

48. **SBLT Supple.** In the book *A Bloody Job Well Done, The History of the RAN Helicopter Flight Vietnam 1967-1971*, written by two of the Applicants (Speedy and Ray), SBLT Supple recalls:<sup>30</sup>

*... our gunship was hit by fifty calibre machine gun. Tracers the size of golf balls crashed through the Perspex and we were on our way down. Clearing the crash site we took cover behind a rice dyke, defending ourselves as best we could with the weapons at hand. We were on our own and would soon be overrun by the advancing NVA troops.*

*I don't know what, if any, discussion took place between Mick Perrott and Bob Kyle, but they were well aware that by coming to our aid it was odds on that they would not survive the attempt. In spite of extremely heavy and constant enemy fire they did manage to carry out a dramatic and skilful rescue of all four of us. There were some relatively minor gunshot wounds and their very well ventilated chopper didn't fly again for a long time ...*

*This was not an isolated incident; in fact this form of reckless valour or temporary insanity was a regular event and not considered unusual ...*

49. At the hearing SBLT Supple confirmed that he thought it was a life and death situation and that if they were not rescued, they would be killed as 'it was very difficult logistically to deal with prisoners'. He said that in his view if they were not picked up 'we would not have survived the onslaught'. He described the enemy advancing across the rice paddies towards them:

*there were lots of them probably regular army and there was plenty of incoming fire*

50. **Crew Chiefs Williams and Pauly.** Crew Chief Jeff Williams and Crew Chief Ronald Pauly were the US backseat crew in the Symonds/Supple gunship when it was shot down. In e-mails passed to the Tribunal on 9 December 2016 they described the rescue and offered themselves as witnesses if required at the hearing.<sup>31</sup> Chief Williams stated:

*... while searching for enemy movement we were struck by a large calibre projectile, may day was called and the following events took place.*

*A text book auto-rotation, we scrambled out while receiving small arms fire. Grabbing my M-60 and as many rounds as I could carry around my back I told everyone to follow me through this tree line to higher grass for cover. While I saw Charlie coming up through tunnels I didn't return fire yet save ammo and didn't want to give away location. When I heard the pop of smoke*

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<sup>30</sup> Speedy, Max and Ray, Bob - *A Bloody Job Well Done, The History of the RAN Helicopter Flight Vietnam 1967-1971*, 3<sup>rd</sup> Edition 2011, p211

<sup>31</sup> Email from Commander Speedy to the Tribunal dated 12.54 p.m. 9 December 2016



*I knew the slicks were coming so I opened up. I knew they were receiving intense fire so I keep firing until Mike Perrott and Bob Kyle came in low and swung that ship sideways for us to have a better angle to run and get on. I told everyone run to ship - I'll cover, back pedalling until someone reached out and pulled me in. As far as I'm concerned they earned the highest award your country has. I'm here today because of these brave men who risked their lives to rescue my crew.*

51. Chief Pauly stated:

*... on that day we were making gun runs on the known VC position. On the third or fourth run, coming in low as the sun was setting ... we were maybe halfway through the run when we suddenly dropped with no engine. Captain Chance (other gunship) screamed over the radio 'Taipan 21 you are on fire'. I immediately felt heat and wet sweat. Jeff and I looked at each other with that 'O Shit' look. It happened fast and we were on the ground again with that 'O Shit' look again we are still alive. I have to say it that was the first time I ever experienced an auto rotation. It was text book perfect as far as I'm concerned.*

*We got out and started to remove radios in front of the chopper when the windshield was exploding with rounds and Jeff says 'let's get the F#uck out of here' and started to head toward a stand of trees (less than ¼ acre) to the right of us about 100 yards away. Jeff and I walked backwards the whole way taking out the VC as best we could. The other gunship slowed the VC also.*

*Marking us with smoke to be rescued gave the VC about where we were at and the ground erupted in rounds all around us. Made it to the other side of trees where rescue was more likely. First attempt was not successful and turned away from heavy gunfire from the VC. Second attempt was likewise. It's getting dark now and looks like we might have to spend the night there.*

*Then by some miracle a third attempt was made with chopper coming in low and fast and set down not far from us. In seconds we were on board and out of there. If it was not for the third attempt we would not be here today ...*

52. **Colonel T. Staadt, USAR.** Colonel Staadt was a US Army flight platoon leader in 1969. He made a submission to the Vietnam End of War List seeking recognition for of SBLT Perrott, SBLT Kyle and their crew.<sup>32</sup> His statement includes the following:

*... two rescue attempts were made to no avail. Then, the Flight Lead of the lift company, SBLT Perrott along with his co-pilot SBLT Kyle, both RAN Officers made the decision to try and rescue the downed crew. SBLT Perrott made an extraordinary flight manoeuvre, a slide slip approach and landed his aircraft while receiving large volumes of enemy small arms and 50 calibre fire. The Viet Cong actually tried to rush the aircraft but were turned back by the machine gun fire of the crew. All members of the downed gunship were*

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<sup>32</sup> Submission by Colonel T.A. Staadt, USAR to the Federal Member for Gilmore dated 4 August 1999

*rescued thanks to the very heroic efforts of SBLTs Perrott and Kyle and their enlisted crew ...*

53. **Lieutenant Colonel P.E. Raetz, USAR.** Lieutenant Colonel Raetz was the Air Mission Commander in the Command and Control aircraft on the day the gunship was shot down.<sup>33</sup> In an e-mail dated 21 November 2011 he stated:

*... Perrott and Kyle were the first to complete refuelling and so I dispatched them to rescue Supple and Symons ...*

54. In an accompanying letter to Commander Speedy, Lieutenant Colonel Raetz elaborated on the rescue:<sup>34</sup>

*... a frantic call came that one of our gunships had been shot down. The crew had survived the crash landing but was pinned down by enemy fire and could not hold out for much longer. Immediately, Lieutenant Perrott came on the air saying that they had completed refuelling and requested permission to attempt rescue. I realized that it was a mission fraught with extreme danger but simultaneous with that thought was that summary abandonment of the gunship crew was unthinkable so a rescue attempt, no matter how precarious, had to be made. I therefore gave my immediate permission to Lieutenants Perrott and Kyle to proceed.*

*The hostile fire at the crash site was intense but it did not deter them from the rescue. In a display of professional airmanship and exceptional personal courage, they effected the rescue and saved the lives of four of my men. Their conspicuous gallantry and uncommon valor not only reflected distinct credit upon themselves, but was lasting inspiration to the entire unit and raised the bar of military excellence for all to emulate. Their heavily bullet-riddled aircraft that somehow managed to limp back home was manifest witness to the extent of the danger faced and the complete disregard Perrott and Kyle had for their own safety in effecting the rescue ...*

55. The Tribunal noted that Lieutenant Colonel Raetz had recently passed away and accordingly, the veracity of his statement that he gave his permission and dispatched SBLT Perrott and Kyle to conduct the rescue cannot be confirmed. As previously stated, SBLT Perrott was emphatic at the hearing that he had not been directed to conduct the rescue and had acted quickly and independently when he heard that the aircraft was down. The Tribunal was inclined to accept this view particularly as SBLT Perrott had described in his introduction that he was a decisive individual who did not hesitate to act and ‘had that background when he went to Vietnam’. He described this as being a potential weakness as some colleagues were reluctant to fly with him due to his tenacity, notwithstanding on the day in question he had ‘crew who had flown with him before and we understood each other’.

## **The Applicant’s Submissions**

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<sup>33</sup> Email from LTCOL Raetz to Commander Speedy dated 21 November 2011 included in the Speedy Submission dated 7 February 2017, p.5

<sup>34</sup> Ibid.

56. **Commander Speedy.** Commander Max Speedy was the Second in Command of Contingent Two of the RANHFV, deploying at the same time as SBLT Perrott and SBLT Kyle. He served as a pilot Flight Leader and was awarded the DSC on 30 October 1969 for his tour of duty with the RANHFV.<sup>35</sup> Commander Speedy is also the co-author of *A Bloody Job Well Done, The History of the RAN Helicopter Flight Vietnam 1967-1971*.

57. On 25 November 2011 Commander Speedy made a submission to the Valour Inquiry seeking that the Tribunal ‘reassess the gallantry of SBLT Perrott and SBLT Kyle to provide for them the proper recognition of a rescue that was as equally daring as any aviation encounter in Vietnam’.<sup>36</sup> The submission outlined many of the witness accounts previously mentioned in this report and also sought to compare ‘other actions that received valorous or distinguished recognition’ which Commander Speedy asserted ‘set relevant and appropriate benchmarks by which to judge the actions of Perrott and Kyle’. His submission subsequently outlined the service of Lieutenant (later Air Marshal) F.H. McNamara who was awarded the VC when he rescued a fellow pilot behind enemy lines in 1917; Lieutenant Commander Waddell-Wood who received a DFC as the commander of a RAN detachment with the Royal Australian Air Force in 1969 and Lieutenants Clark and Buchanan who received DFCs during their service with Contingents Three and Four of the RANHFV respectively.

58. On 30 November 2015, Commander Speedy made application for review of the 2014 decision by CN not to support recognition of SBLT Perrott and Kyle.<sup>37</sup> In this application Commander Speedy indicated that he considered that the VC was the appropriate award for SBLT Perrott and SBLT Kyle. He restated the contents of his 2011 submission and moved on to include observations on the ‘formula’ used to establish hours flown and the linkage of this to the number of awards made to the RANHFV.

59. In this submission Commander Speedy asserted that the application of the ‘formula’ was in his view a clear case of maladministration by ‘HQ COMAFV’ and that when compared to the awards received by the RAAF, ‘higher headquarters was not looking after the HFV’s interests’.<sup>38</sup> Commander Speedy stated that:

*I submit that this is an erroneous approach and that the DHAAT has the authority, and an obligation, to see that recognition is given to distinctive service and for an appropriate award irrespective of whether or not a recommendation from a service personnel’s immediate commander occurred.*

60. Commander Speedy also stated that:

*In recommending Perrott and Kyle for a VC, this author has done so understanding that unless it is proposed, nothing will be considered. Three witnesses are available for Perrott (Kyle, Symons and Supple).*

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<sup>35</sup> *Commonwealth of Australia Gazette* dated 30 October 1969, p6513, Posn 2

<sup>36</sup> Commander Speedy Submission to the Valour Inquiry dated 25 November 2011, p16

<sup>37</sup> Application for Review of Decision by Commander Speedy dated 30 November 2015

<sup>38</sup> *Ibid.* p.14

61. Commander Speedy implied that similar witnesses including the back-seat crew of the two aircraft would be available in support of SBLT Kyle as ‘he was equally involved and courageous as was Perrott’.

62. On 29 November 2016, the Tribunal received another submission from Commander Speedy.<sup>39</sup> In this submission he restated the contents of his 2011 submission and 2015 application and added additional examples from the Second World War, Korea and Vietnam of individuals who were recognised for gallantry asserting that ‘none compare to Perrott or Kyle’s exploits’. Commander Speedy continued to press the inequity of the awards process in Vietnam and suggested that:

*Perrott was recommended for the award of a DSC and it could have been approved by COMAFV had there been the slightest attempt to provide some small degree of equity. I submit that this was a manifestly erroneous approach by COMAFV and the quota system could not and should not have been applied to such a heroic action on the parts of Perrott and Kyle ... Higher command had before it sufficient information to ensure equality and equity and this did not occur.*<sup>40</sup>

63. On the day prior to the hearing Commander Speedy tabled another version of his submission.<sup>41</sup> This submission repeated much of the content of his two previous submissions and dealt with two matters – the facts of the rescue, and the assertion of maladministration. The submission included new evidence from other witnesses which provided further context around whether or not rescue attempts were made before Perrott and Kyle arrived, and who made the downed aircraft report.

64. At the hearing the Tribunal accepted the submission of 7 February 2017 as tabled and asked that Commander Speedy in his evidence, concentrate on the actions of Perrott and Kyle and the reasons why these actions would meet the eligibility criteria for the award of the VC to both individuals. Commander Speedy discussed his submissions starting with the witness account from SBLT Supple, he asked the Tribunal to note the evidence that stated:

*... they [Perrott and Kyle] were well aware that by coming to our aid it was odds on that they would not survive the attempt*<sup>42</sup>

65. Commander Speedy said that in the January to April 1969 period, the intensity of operations and flying was high, he said that ‘there wasn’t a day went by when the Slicks didn’t come back having been involved in some sort of serious engagement with the enemy and taking hits’.

66. He pointed to evidence provided by First Lieutenant (1LT) David Chance, US Army; the pilot of an accompanying aircraft present when Symons was shot down and suggested that it was probable that Chance had coordinated, or been present, when

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<sup>39</sup> Submission to the DHAAT – SBLT Perrott and SBLT Kyle by CMDR I.M. Speedy dated 29 November 2016

<sup>40</sup> Ibid. p. 21

<sup>41</sup> Commander Speedy Submission to the Tribunal ‘The Heroes’ dated 7 February 2017

<sup>42</sup> Ibid. p.7 – Tom Supple statement

two initial rescues were attempted and had possibly alerted Perrott and Kyle when he called for further support.<sup>43</sup>

67. In relation to procedures for the conduct of rescues, Commander Speedy stated that usually the last aircraft 'Tail-end Charlie' was designated to conduct the pick-up of a downed crew however in this instance, despite being able to delegate responsibility, Perrott did not do so and took the initiative to conduct the rescue himself – 'leading by example'. Commander Speedy said:

*importantly Perrott and Kyle were acting together and in unison in this – Kyle wasn't an unwilling participant, he'd been leading the Flight the whole day as a trainee Slick leader, he was already an aircraft captain, both of them were*

68. In response to questions from the Tribunal, Commander Speedy said:

*technically Perrott was in command of the aircraft*

69. In relation to survivability after being shot down, Commander Speedy said:

*in the north there was the possibility of being retained as a prisoner but in the south [where they were] it was different. For captured crew it would be logistically difficult, there was a bounty on our heads so these guys would have been dead, never POWs, four of them probably, and eight of them possibly, if it hadn't been for the rescue*

70. Commander Speedy pointed to comparable actions by McNamara, Bell-Davies,<sup>44</sup> Edwards,<sup>45</sup> Middleton (discussed below) and Newton<sup>46</sup> stating that these provided a 'measuring stick' against which to judge Perrott and Kyle. He also pointed out that a large number of Congressional Medals of Honour were awarded in Vietnam and three of these were 'of the same style as the Perrott and Kyle rescue'.

71. Commander Speedy said that he selected the VC for both Perrott and Kyle because he:

*considered that both of them were equally in charge of what was going on and it was standard procedure for both pilots to be hands on because there was no way that you could not be instantly ready to take control of an aeroplane from the other person if he were shot*

*Perrott was flying but Kyle was directing where to go and how to go and had hands and feet on – when they came out of the landing zone Kyle was on the firing side so in that sense I considered them equal from an under-fire perspective*

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<sup>43</sup> Ibid. p.11 – Correspondence with 1LT Chance

<sup>44</sup> Squadron Commander Richard Bell-Davies VC, awarded the VC for the rescue of Sub-Lieutenant Gilbert Smylie in Bulgaria, 1916

<sup>45</sup> Acting Wing Commander Hughie Edwards VC, awarded the VC for gallantry during an attack on the Port of Bremen, 1941

<sup>46</sup> Flight Lieutenant William Newton VC, awarded the VC for gallantry during aerial attacks on Salamaua, New Guinea, 1943

*I also considered them equal because Kyle had been the Slick leader all day – OK there is a technical difference between the pair of them, Perrott was the Aircraft Captain and Kyle was the co-pilot*

72. In response to a question about whether he was aware of precedent with crew recognition for gallantry, Commander Speedy pointed to the circumstances of Middleton in 1942 who:

*ditched in the English Channel having got most of his crew out and received a posthumous VC whilst the aircraft observer received a DFC and 2<sup>nd</sup> pilot and two other crew members received the DFM<sup>47</sup>*

73. Commander Speedy said:

*with the yardsticks that I had, I considered them both to be equally as valorous as other comparisons – rescuing people under fire, knowingly going into danger and into extreme peril, not as could have happened by sending somebody else off ... the actions ‘met every one of the criteria for the VC and I didn’t see any need to go through the list*

74. In relation to the ROP being so bland and not mentioning the action in detail, he responded that:

*the ROP says why – it was the hottest month we’d ever had and it was, there was action all day every day – it was just another day in the Delta more or less except this one stood out a little bit better*

75. Commander Speedy said that he had not provided advice or been involved in any collective consideration of honours and awards during his time in Vietnam. He said that in his view the OIC RANHFV nominated SBLT Perrott for the DSC ‘as he was the aircraft captain’.

76. He said that the OIC often remarked that:

*we don’t have it tough here – think of the guys in the trenches in World War One – that was his attitude so I can understand why he would have recommended as he did*

77. Commander Speedy suggested that the reason that SBLT Perrott’s nomination was downgraded from a DSC to the MID by COMAFV was to accord with the quota in place at the time and despite the fact that later on, out of scale awards were allowed.

78. **Commander Speedy’s Case for SBLT Kyle.** In the 2011 submission and his later correspondence, Commander Speedy makes a case for equal recognition of SBLT Kyle.<sup>48</sup> He states:

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<sup>47</sup> Ibid. p. 22

<sup>48</sup> Commander Speedy Submission to the Valour Inquiry dated 25 November 2011, p.14

*... Kyle was not sitting idly by whilst this action was taking place. Although the co-pilot for the day he was in fact acting as the Leader. He and Perrott will have shared the total hours 'in command of the actual flying' and when not actually flying, it was SOP for the other pilot to be 'on the controls' especially when arriving and departing the landing Zones, i.e. hands on cyclic and collective levers and feet on the rudders in case the other was shot and he had to take control in an instant. In this encounter Kyle was most certainly on the controls and in any event was directing Perrott to the downed crew and busily directing the fire of the M60 while Perrott flew in. He is as equally involved as Perrott in this dramatic encounter.*

79. **Captain Ray.** Captain Robert Ray served with the RANHFV as a staff officer from September 1968. He was appointed as a Member of the British Empire (MBE) for his service with the RANHFV in 1969.<sup>49</sup> Captain Ray was also the co-author of *A Bloody Job Done Well – The History of the Royal Australian Navy Helicopter Flight Vietnam 1967-1971*.

80. Captain Ray made a submission to the Valour Inquiry in 2011 - *A Case for Considering the Upgrading of the Mention in Despatches Awarded MA Perrott and AC Perry for gallant action during the Vietnam conflict whilst serving with the RANHFV*.<sup>50</sup> In this submission Captain Ray suggested that:

*the case for upgrading the award for Perrott is particularly strong in precedent and justified by his outstandingly courageous action.*

81. Captain Ray provided a copy of the citation for the award of the VC to Air Marshal McNamara in 1917 and compared this to SBLT Perrott's MID citation. He also included the previously discussed accounts of the 2 February 1969 rescue by SBLT Supple and SBLT Kyle. Captain Ray concluded that the Tribunal should:

*recommend the MID be upgraded to the Australian Star of Courage*

82. On 1 December 2015 Captain Ray wrote to the Tribunal after receiving the Stevens Review.<sup>51</sup> He indicated that 'as the originator of the bid to have the whole unit recognised I am obliged to request that this matter be reviewed'. During the hearing the Tribunal informed Captain Ray and the other Applicants that recognition of the unit was not within the scope of the matter before it.

83. Captain Ray's 2015 letter also stated that:

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

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<sup>49</sup> Recommendation for Honours and Awards *LEUT Ray* dated 9 June 1969

<sup>50</sup> *A Case for Considering the Upgrading of the Mention in Despatches Awarded MA Perrott and AC Perry for gallant action during the Vietnam conflict whilst serving with the RANHFV*, undated and authored by Robert G. Ray

<sup>51</sup> Letter from Captain Ray to the Tribunal dated 1 December 2015

84. During the hearing, Captain Ray confirmed that he was in fact seeking the DSC for SBLT Perrott and a DFC for SBLT Kyle.

85. Captain Ray said that there 'were several shortcomings in the process that was set up to ensure that acts of heroism and outstanding service were recognised during the Vietnam conflict'. He said that the most significant of these was that 'there was a directive that there was to be no immediate recommendations for valour raised' and that accordingly commanders had to wait for rotations to occur before awards were raised. He did not produce evidence to support this claim but stated that it was common practice.<sup>52</sup> After the hearing Captain Ray emailed the Tribunal stating that 'I have been unable to establish why LCDR Rohrsheim was of the belief that immediate awards were not to be submitted'.<sup>53</sup>

86. Captain Ray said that he did not participate in any collective consideration of individuals for recognition during the tour but:

*it was a thing that was going through his [the OIC RANHFV] mind constantly*

87. Captain Ray said he was 'responsible to draft the ROP' and he took the approach to 'keep them short and dull'. Captain Ray said that he 'knows a bit about bravery ... but is not qualified as an expert in bravery.' He said that when Perrott and Kyle became aware of the situation:

*without hesitation or direction they launched their helicopter ... working together as a close knit crew...*

*Perrott and Kyle reacted instantly to a call from a downed aircraft in hostile territory, they worked as a team under the leadership of SBLT Perrott, the captain of the aircraft, they did not hesitate from fear but the adrenalin must have been pumping, they thought clearly under intense pressure and did exactly what all their training was aimed at – courage, confidence and the determination to see a job through*

88. Captain Ray said that:

*comparisons can be made to other acts of valour that history records but what's the point, these two young men demonstrated courage and tenacity of the highest order and it is something that the Navy and the Nation should record and reward with a DSC for Perrott and a DFC for Kyle – it's never too late to amend the errors of the past*

89. In response to questions regarding his role in the processing of awards in Vietnam he said that he:

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<sup>52</sup> The Navy Historian subsequent to the hearing provided 'Department of the Navy Administrative Arrangements and Conditions of Service for the RANHFV' dated 11 Oct 67 which states in relation to the processing of honours and awards that 'recommendations for honours and awards for both gallantry and distinguished service are to be forwarded to the COMAFV in accordance with such instructions as he may give.' There was no evidence available as to what if any instructions were given.

<sup>53</sup> E-mail from Captain Ray to the Tribunal dated 6.44 p.m. 27 February 2017



*drafted the citations for the awards and that the MID at the time was the appropriate award in the situation that we were given and the priorities we were setting*

90. Captain Ray said that he believed that the ‘downgrading of the MID was a situation that should be redressed’. He said that if the awards had progressed at level, he would have been satisfied at the time if SBLT Perrott had received the DSC. He said that he was and remained ‘comfortable that the decisions of the OIC RANHFV were made based on sound thought’.

91. In relation to why he had split the awards so that one received the DSC and the other the DFC he said that:

*as I have tried to make clear, one person was in command*

92. On 27 February 2017 Captain Ray sent an email to the Tribunal stating:

*I believe now that Kyle’s MID is appropriate and should stand and Perrott be awarded a DSC upgraded from a MID<sup>54</sup>*

93. **Commander Bell.** Commander Bell’s submission to the Valour Inquiry was by e-mail on 3 July 2011 seeking the award of the VC to SBLT Perrott.<sup>55</sup> Commander Bell included in his e-mail the previously discussed account by SBLT Kyle of the 2 February 1969 action and he drew comparisons of this to Air Marshal McNamara’s 1917 action. In a further e-mail on the same day Commander Bell included the account by SBLT Supple of the rescue.<sup>56</sup>

94. Commander Bell indicated that in his view the rescue was ‘an act of unbelievable bravery, not only by SBLT Perrott, but by all concerned’. He stated that:

*throughout this whole rescue, SBLT Perrott showed incredible airmanship, judgement and courage. Without his professional and personal qualities and courage and coolness in a very difficult situation while under intense fire from close range, and in a situation which had caused two other helicopters to refuse the task, the crew of the downed gunship would have been murdered ...*

95. On 10 December 2015 Commander Bell wrote to the Tribunal after receiving the Stevens Review.<sup>57</sup> He indicated that he was ‘disturbed by the coverage of the incident’ in the Stevens Review, asserting that coverage in the review ‘lacks significant information’ and that ‘the courageous actions (of Perrott) have never been properly presented nor understood’.

96. Commander Bell attended the hearing on 7 February 2017 and offered his opinion regarding the complexity involved in flying the UH-1H. He said that the manoeuvres that SBLT Perrott completed during the rescue demonstrated exceptional

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<sup>54</sup> Ibid.

<sup>55</sup> E-mail from Ed Bell dated 1.56pm 3 July 2011

<sup>56</sup> E-mail from Ed Bell dated 2.50pm 3 July 2011

<sup>57</sup> Letter from Commander Bell to the Tribunal dated 10 December 2015

flying skills. He also stated that SBLT Perrott completed more operational flying hours in Vietnam than any other Navy pilot.

97. On the day prior to the hearing Commander Bell also provided evidence that the senior officers of the Navy at the time of the Vietnam War were negative towards junior officers being decorated.<sup>58</sup> He described being ‘summonsed to Canberra’ sometime after Vietnam where he was rebuked by an Admiral for his ‘attitude towards awards for gallantry’. He said that in his opinion the senior officers of the Navy were ‘ignorant of what their people had done’. He opined that many of these senior officers at the time ‘had served with gallantry in the Second World War and I think in their hearts they didn’t want to see junior officers get the sort of awards they had’. He said that he believed that ‘favouritism came into the selection process’. He said the Admiral ‘did not understand what was happening’ and that the Admiral said to him ‘we can’t have all these junior officers running around with DFCs’.

98. This view of the prevailing culture towards decorating junior officers was confirmed by one of the OIC RANHFV, Commodore Farthing during his evidence the previous day.<sup>59</sup> He stated that after Vietnam he struggled with the fact that ‘nobody would accept what the RANHFV did – the fact was that everyone in those Flights behaved above and beyond the call of duty – it was an elite unit’. He said that he went to see the Chief of Naval Staff – Vice Admiral Sir Victor Smith sometime after he returned ‘because the junior officers in my Flight were not properly recognised’. He said that Smith told him ‘they did what they were paid and trained to do’.

99. Following the hearing, Commander Bell e-mailed the Tribunal with further elaboration of his views on the action.<sup>60</sup> He concluded that:

*without SBLT Perrott’s most courageous, daring and exemplary courage and skill, supported by his crew in increasing darkness, the downed crew would have been executed ... they all owe their lives to the skill of an extraordinarily gifted and conspicuously courageous pilot – SBLT Perrott*

100. Commander Bell added a note to his e-mail regarding SBLT Kyle’s part in the action stating:

*I find it most difficult to believe that SBLT Kyle’s execution of his duties as a co-pilot could ever justify any award for him for his performance, he just did his job ...*

## **The Defence Submission**

101. Navy considered the Applicant’s submissions to the Valour Inquiry as part of a package of eight other applications. The material relied upon by the CN in making his decision was the Stevens Review.<sup>61</sup> The Stevens Review indicated that the Tribunal’s own assessment guidelines from the Valour Inquiry had been used in the conduct of the review of the submissions. Doctor Stevens also relied upon archival

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<sup>58</sup> Hearing 6 February 2017 – Recognition for SBLT Perry, RANHFV for actions on 18May 1970

<sup>59</sup> Ibid. Oral Evidence by Commodore Farthing 6 February 2017

<sup>60</sup> E-mail from Commander Bell to the Tribunal dated 3.16pm 14 February 2017

<sup>61</sup> CN/OUT/2014/1259 dated 23 September 2014

material held in the Sea Power Centre and the author's personal knowledge of naval history and secondary published materials. No attempt was made to seek supplementary information from the Applicants.

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

*Both nominees were awarded a MID in Oct 1969 for an incident on 2 Feb 1969 when, as first and second pilots, their helicopter rescued the crew of a downed helicopter while under heavy enemy fire ...*

*...the submissions provided extracts from a variety of primary and secondary sources together with more recent interviews and recollections from witnesses to the action.*

*The submission from CMDR Speedy noted problems with the nature of the awards system in existence at the time of the incident but did not take issue with the recommendation process itself and offered no evidence that Australian authorities failed to follow the proper process in deciding to award both officers a MID.*

*Likewise, the submission by CAPT Ray included no evidence of maladministration instead basing its argument for the award of the Australian Star of Courage ... on a direct comparison ... of a VC to LEUT McNamara, AFC in 1917.*

103. Doctor Stevens concluded that:

*Neither submission included anything to suggest that the evidence provided in the submission was new and compelling, or that it was not considered at the time of the original decision to award each officer an MID. On the contrary, the wording of the MIDs ... clearly indicate that both the skill and gallantry displayed by the two officers were fully recognised by higher authority.<sup>62</sup>*

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

*... none of the received submissions warrant a merits review on the basis of either maladministration or compelling new evidence.<sup>63</sup>*

105. During the hearing Commodore Sadlier, representing the Navy, sought advice regarding jurisdiction and powers to consider other awards even if the application was for a specific award. The Tribunal noted that s110VB(1)(b) of the Defence Act indicates that the Tribunal 'may make any recommendation to the Minister that the Tribunal considers appropriate'. Accordingly, the Chair advised Commodore Sadlier that if the Tribunal in conducting a merits review of the action, finds that another

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<sup>62</sup> Review by Dr Stevens dated May 2015, p4

<sup>63</sup> Decision Brief for CN dated 9 April 2014, p.8

award may be appropriate, it is open under the legislation to make such a recommendation.

106. Commodore Sadlier reiterated the Navy view that ‘in order to get all of the evidence on the table and to achieve impartiality whilst preserving the integrity of the process, this [the Tribunal] is currently the best forum to do that in’.

107. He said that in Navy’s view, after considering the documentation and evidence:

*the presence of mind that was displayed, the decision making that was there and the actual execution of the outcome was worthy of being referred to the Tribunal in the context of gallantry*

108. The Navy Historian, Mr John Perryman stated that having heard the evidence and reviewed the tendered material he considered the action to be:

*a spontaneous rescue which involved initiative, zeal, courage and coolness under fire*<sup>64</sup>

109. He stated that he was surprised that SBLT Perrott and SBLT Kyle were not asked by the Tribunal if they were afraid. SBLT Perrott responded that they were not afraid ‘because they knew what they were doing’. Mr Perryman suggested that this response ‘proved mission orientation and a commitment to see the mission through’.

110. Mr Perryman said that historically, ‘higher awards had been given out for flying skills or airmanship’. He pointed to precedent for the award of the Air Force Cross (AFC) from the First Gulf War for a helicopter rescue under fire which he opined ‘was not much different to what we see today’. He also pointed to recent precedent for airmanship through the award of the AFC for exceptional flying during a peacetime operation in Australia; once again opining that there were similarities with this action.

### **Tribunal Consideration**

111. **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.<sup>65</sup> 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.

112. The facts, law and policy aspects of the decision are all considered afresh and a new decision made.<sup>66</sup> 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.<sup>67</sup> The Tribunal is bound to make what it regards as the

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<sup>64</sup> Oral Evidence by Mr Perryman on 6 February 2017

<sup>65</sup> *Council of Australian Tribunals Practice Manual* dated 7 April 2006 p.1.3.1.2

<sup>66</sup> Pearson, Linda, “Merit Review Tribunals”, in Creyke, Robin and McMillan, John, *Administrative Law – the Essentials*, AIAL 2002, p. 68

<sup>67</sup> *McDonald v Director-General of Social Security* (1984) 1 FCR 354

‘correct or preferable’ decision and must reach a decision that is legally and factually correct.

113. **The Reviewable Decision.** The Tribunal noted that the 2014 decision by the CN to refer the Applicant’s submissions to the Parliamentary Secretary and recommend that he ‘consider directing the Tribunal to review the nominations for SBLT Perrott and SBLT Kyle was based upon the Stevens Review.’<sup>68</sup> The Tribunal considered that the reason given by Doctor Stevens that none of the material presented contained ‘new or compelling evidence that would warrant a merits review’, was inadequate. Additionally, the Tribunal considered that the statement by Doctor Stevens that ‘both nominees were awarded a MID in Oct 1969 for an incident on 2 Feb 1969’ was incorrect. The citation for SBLT Kyle’s MID mentions the incident but the award is clearly for his entire tour whilst SBLT Perrott’s is solely for the 2 February action.

114. The Tribunal also noted the Navy representative’s submissions at the hearing that the CN considered that in dealing with retrospectivity and honours, the Tribunal, as an impartial body was best placed to judge the relative merits of the actions and whether or not SBLT Perrott and SBLT Kyle deserved recognition.

115. **Precedent and Comparisons.** The Tribunal noted the Applicants’ various assertions regarding precedent and comparisons to supposedly ‘similar’ actions which resulted in high level gallantry awards. The Tribunal did not accept that comparisons were a valid method of establishing the benchmark for a particular award.

116. Similarly, 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 as declared in the Instruments, Regulations and Determinations for each particular honour or award and is determined in each matter according to its own facts. In the case of gallantry, decisions to grant awards are discretionary. The Tribunal therefore dismissed the Applicant’s claims regarding precedent, as the Tribunal has an obligation to determine eligibility based on the merits of each case.

117. **The Case for Equal Recognition of the Pilot and Co-Pilot.** The Tribunal noted that Commander Speedy, whilst acknowledging that SBLT Perrott was ‘technically in charge of the aircraft’ stated that ‘Perrott and Kyle were acting together and in unison in this’. He further stated that he ‘considered that both of them were equally in charge of what was going on ... and it was standard procedure for both pilots to be hands on ... I considered them equal from an under-fire perspective ... I also considered them equal because Kyle had been the Slick leader all day’.

118. The Tribunal noted that Commander Speedy’s view regarding equality in recognition was not supported by the other Applicants, particularly Commander Bell who stated that ‘I find it most difficult to believe that SBLT Kyle’s execution of his duties as a co-pilot could ever justify any award for him for his performance, he just did his job’. The Tribunal also noted that SBLT Kyle himself stated that ‘I simply did my job – SBLT Perrott was the one making the decisions and flying the mission’.

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<sup>68</sup> Decision Brief for CN dated 9 April 2014, Paragraph (ii)

119. The Tribunal did not consider that a case of ‘equality’ could be made for the co-pilot or indeed for the remainder of the crew. There was no dispute that at the time of the rescue, SBLT Perrott was ultimately responsible as the appointed Aircraft Captain and in the Tribunal’s view, recognition for him and other members of the crew should be determined based on a consideration of the merits of each individual and their actions and responsibilities. The Tribunal therefore dismissed Commander Speedy’s claims for equality and determined that it would consider the actions of SBLT Perrott and SBLT Kyle separately.

120. **Maladministration.** The Tribunal noted that Commander Speedy, and to a lesser extent Captain Ray, went to great lengths in their various submissions and applications to contest the Stevens Review findings regarding maladministration. Commander Speedy asserted that the ‘formula’ used to establish hours flown and the linkage of this to the number of awards made to the RANHFV was in his view ‘a clear case of maladministration by HQ COMAFV’ and that ‘higher headquarters was not looking after the HFV’s interests’.<sup>69</sup>

121. The Tribunal noted that the Stevens Review found that ‘none of the received submissions warrant a merits review on the basis of either maladministration or compelling new evidence’.<sup>70</sup> The Tribunal considered that whether there was maladministration or not was largely irrelevant as the Tribunal is bound by legislation to conduct a merits review of SBLT Perrott and SBLT Kyle’s actions. Accordingly, the Tribunal turned to an assessment of the merits of their actions against the eligibility criteria for gallantry decorations.

### **Gallantry Decorations**

122. **Imperial Gallantry Awards During the Vietnam War.** The Tribunal noted that the DSC for the Navy and the DFC were Third Level Imperial gallantry awards.<sup>71</sup> The conditions for the award of the DSC for the Navy was:

*conspicuous gallantry, devotion to duty or valuable services in action that did not meet the requirement for the DSO*<sup>72</sup>

123. The DFC was awarded for:

*acts of exceptional valour, courage or devotion to duty whilst flying in active operations against the enemy*<sup>73</sup>

124. The MID was a Fourth Level Imperial award available to all ranks and all Services during the Vietnam War for:

*an act of bravery or for continuous good work over a long period*<sup>74</sup>

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<sup>69</sup> Ibid. p.14

<sup>70</sup> Decision Brief for CN dated 9 April 2014, p.8

<sup>71</sup> The Report of the Inquiry into *Unresolved Recognition for Past Acts of Naval and Military Gallantry and Valour*, dated 21 January 2013, Appendix 6, Table A6-3

<sup>72</sup> Ibid.

<sup>73</sup> Ibid.

<sup>74</sup> Ibid. Table A6-4

125. **Contemporary Gallantry Awards.** Australian service personnel received honours and awards including the DFC, DSC and MID 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>75</sup> The eligibility criteria for gallantry awards in the Australian system are:

**The Victoria Cross for Australia.** 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>76</sup>*

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.*

...

***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.*

...

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

*according recognition to members of the Defence Force and certain other persons who perform acts of gallantry in action.<sup>77</sup>*

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.*

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<sup>75</sup> Prime Minister of Australia Media Release 111/92 dated 5 October 1992

<sup>76</sup> *Commonwealth of Australia Gazette No. S25 – Victoria Cross Regulations*– dated 4 February 1991

<sup>77</sup> *Commonwealth of Australia Gazette No. S25 – Gallantry Decorations Regulations* - dated 4 February 1991

*(2) The Medal for Gallantry shall be awarded only for acts of gallantry in action in hazardous circumstances.*

*(3) The Commendation for Gallantry may be awarded for other acts of gallantry in action which are considered worthy of recognition.*

...

### ***Making of awards***

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

...

126. As the Tribunal is unable to make recommendations relating to Imperial honours, it may only review eligibility for contemporary gallantry awards for SBLT Perrott and SBLT Kyle. In conducting the merits review the Tribunal determined that it would review the evidence, applicant claims and submissions and then assess the actions of SBLT Perrott and SBLT Kyle against the eligibility criteria for gallantry awards.

127. **What is Gallantry?** The Tribunal noted that gallantry decorations accord recognition for individuals ‘who perform acts of gallantry in action’. Whilst ‘in action’ is relatively easy to define, ‘gallantry’ is an abstract term, which is not defined in the Regulations. Various dictionary definitions such as ‘dashing courage; heroic bravery’<sup>78</sup>; and ‘courageous behaviour, especially in battle’<sup>79</sup>, are largely circuitous and unhelpful. Some countries have attempted to differentiate between ‘bravery’ and ‘gallantry’; defining the later as recognition of military personnel who carry out acts which put their lives at risk while involved in operational service; whilst ‘bravery’ is defined as saving or attempting to save the life of another person in the course of which they place their own life at risk.<sup>80</sup> Again this is largely unhelpful in defining gallantry in the context of the Australian Honours and Awards system.

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

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

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

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<sup>78</sup> The Macquarie Dictionary on-line accessed 20 February 2017

<sup>79</sup> The Oxford Dictionary on-line accessed 20 February 2017

<sup>80</sup> <http://medals.nzdf.mil.nz/category/d/index.html>



## **Evidence and Findings from the Accounts of the Action**

131. **Summary of the Action.** Relying on SBLT Perrott and SBLT Kyle's written and oral evidence, eye witness accounts and the official history, the Tribunal was satisfied that on the evening of 2 February 1969 in the Vinh Long province, a gunship flown by SBLT Symons with SBLT Supple as co-pilot was shot down and the crew subjected to a ground attack by the Viet Cong. Immediate attempts to rescue the crew were unsuccessful.

132. About 15 kilometres away SBLT Perrott having assumed Flight Lead responsibilities from the Mission Commander at the end of a separate operation was refuelling along with the rest of his flight when he heard a call that the subject gunship was down and the crew under fire. He instinctively and without direction ordered his co-pilot SBLT Kyle to cease refuelling and their aircraft immediately departed to attempt to rescue the downed crew.

133. As they neared the crash site SBLT Perrott's aircraft came under intense fire from ground based heavy machine guns and small arms. Perrott, relying on the co-pilot's observations, manoeuvred the aircraft to avoid fire and completed a skilful landing in an area proximate to the downed crew and carefully selected to accord some protection from ground fire. The aircraft remained on the ground whilst the downed crew fought their way to the aircraft and boarded. SBLT Perrott then executed a hasty extraction, again avoiding fire as he manoeuvred the aircraft and safely returned the downed crew to their home base.

134. **Findings of Fact in Relation to SBLT Perrott's Actions.** Having reviewed the evidence and submissions, the Tribunal was reasonably satisfied that the following facts are established relating to SBLT Perrott's actions on 2 February 1969:

- a. he was the Captain and pilot of the aircraft and accordingly was responsible for its operation and safety during flight;
- b. he took the initiative and reacted instinctively to attempt a rescue when he heard that an aircraft was shot down;
- c. as the Captain of the aircraft he was also the commander and responsible to make all decisions relating to ingress and egress from the crash site;
- d. the threat to the aircraft and crew when they closed on the crash site was extreme with the possibility of catastrophe real when they were engaged with .50 calibre machine gun fire in the anti-aircraft mode;
- e. the threat and risk to the aircraft and crew once on the ground was acute with no other friendly forces in the vicinity and a large number of enemy pursuing the downed crew as they escaped;
- f. the airmanship shown by SBLT Perrott in avoiding the .50 calibre fire in the air was exceptional as was his skill in landing and reducing the

profile of the aircraft to lessen their vulnerability on the landing zone and under fire.

### **SBLT Perrott's Eligibility for a Gallantry Award**

135. **The Mention in Despatches.** The Tribunal noted from the citation for SBLT Perrott's MID that the OIC RANHFV nominated him initially for the DSC, a third level gallantry award and that this nomination was downgraded by the recommending officer, COMAFV to a fourth level gallantry award – the MID. Despite Commander Speedy's various assertions regarding maladministration and application of a 'formula', the Tribunal considered that the evidence suggested that COMAFV did give the matter careful consideration. In the Tribunal's view, it appears that he applied the quota for the January to June 1969 period generously as evidenced by his declaration to the Secretary of the Navy that he was submitting four aircrew honours recommendations despite having a quota of only two.<sup>81</sup> The Tribunal considered that the downgrading of the nomination was a decision open to the COMAFV to make and accorded with policy and procedures in place at the time. The Tribunal also reviewed the citations for the four who were recommended for the DSC above SBLT Perrott and noted that all were for multiple cited actions or actions combined with service, whereas SBLT Perrott's citation focussed on the single action. The Tribunal was of the view that it was therefore possible that COMAFV may have decided that it was more appropriate that Perrott be recognised for 'a single act of bravery' – the stated condition for the award of the MID.

136. The Tribunal turned to the assertions regarding the impact of culture on the process. The Tribunal gave some weight to the evidence of the Applicants that there may have been a general culture of non-support for junior officer recognition within the senior ranks of the Navy at the time of the action, but could not be satisfied that this alleged culture had any bearing upon COMAFV's decision to downgrade SBLT Perrott's nomination. The Tribunal noted that in making the decision to recommend an MID, the COMAFV had only limited information available to him including the citation for the action and, by the drafter's own admission a deliberately 'short and dull' ROP.

137. The Tribunal also gave weight to the statement by SBLT Kyle that he had attempted to draw the chain of command's attention to SBLT Perrott's actions immediately afterwards but was rejected. Accordingly, the Tribunal considered that the accounts provided by the many witnesses including those who were rescued, the Mission Commander and other aircraft crew present on the day constituted new evidence which may not have been available to COMAFV when he made his decision to recommend the MID.

138. The Tribunal, having reviewed the new evidence and tested it during the hearing finds it to be reliable and compelling. The Tribunal determined that the new evidence should be considered together with the evidence from 1969 against the eligibility criteria for contemporary Australian Gallantry awards for SBLT Perrott.

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<sup>81</sup> Australian Force Vietnam *Recommendations for Honours and Awards* dated 14 July 1969

139. **SBLT Perrott's Actions and the Eligibility Criteria.** To be eligible for an Australian gallantry award, SBLT Perrott's actions would need to demonstrate that he had performed 'acts of gallantry in action'. There is no dispute that SBLT Perrott was 'in action' – he was threatened by enemy ground fire whilst in the air and on the ground and during the extraction.

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

- a. SBLT Perrott's decision to immediately attempt the rescue was instinctive and undirected, he had a choice as the Flight Lead to delegate the responsibility but chose to conduct the operation himself;
- b. the enemy threat on the ground was such that there was a strong likelihood that the downed crew would be killed;
- c. there was considerable risk to SBLT Perrott, his crew and the aircraft when the enemy engaged them with a .50 calibre machine gun;
- d. despite the enemy threat, SBLT Perrott as the commander held his nerve and remained on the ground whilst the downed crew fought their way to the aircraft – the vulnerability of Perrott's crew and the aircraft whilst on the ground was perilous and life threatening; and
- e. in the view of the Tribunal, SBLT Perrott demonstrated airmanship well above the level expected despite being under fire and clearly threatened.

141. Having made these observations, the Tribunal considered that SBLT Perrott made a deliberate decision to conduct the rescue in the knowledge that there was likely to be considerable threat. The Tribunal was satisfied that the decision to conduct the rescue was made by SBLT Perrott alone and was instinctive. The Tribunal was satisfied that SBLT Perrott, having made the decision to launch, then flew his aircraft into a complex and challenging environment with great risk and threat. The Tribunal was reasonably satisfied that the consequences of him not taking the actions he took would have almost certainly resulted in the loss of the downed crew.

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

143. **The Level of Award.** Having found that SBLT Perrott's actions were gallant, the Tribunal turned to an assessment of his actions against the eligibility criteria for Australian gallantry awards starting with the VC. The Tribunal noted that the VC required 'the most conspicuous gallantry or a daring or pre-eminent act of valour or self-sacrifice or extreme devotion to duty'. The Tribunal noted that the evidence suggested that whilst SBLT Perrott was the Captain of the aircraft, the rescue was

reliant on the entire crew performing their individual responsibilities at a level above what could be expected to be 'normal'. Without the observations of SBLT Kyle, it is doubtful that the insertion could have been successful. Without direct fire support from the door gunners it is unlikely the enemy would have been suppressed. If the downed crew had not been active in their own fire fight up until they boarded the aircraft, there was a likelihood of failure. For these reasons, the Tribunal could not be satisfied that SBLT Perrott's individual gallantry could be considered to be conspicuous or pre-eminent. The Tribunal considered that SBLT Perrott's decisions were courageous and his actions brave and skilful but it was the efforts of the crew when combined which ultimately carried the day. Accordingly, the Tribunal finds that SBLT Perrott's individual actions do not meet the extraordinarily high threshold for the VC.

144. The Tribunal noted that Captain Ray had not considered the eligibility criteria for gallantry decorations when submitting his application but had decided for various reasons that the DSC was an appropriate level of recognition. The Tribunal noted that the DSC for the Navy was an Imperial level 3 gallantry award considered in the contemporary Australian system to be the equivalent of the MG.<sup>82</sup> However, the Tribunal decided that a merits review should not rely on a simple 'equivalency' matrix and so turned to an assessment of SBLT Perrott's actions against the eligibility criteria for the SG, MG and Commendation for Gallantry.

145. The Tribunal noted that the SG 'shall be awarded only for acts of great heroism or conspicuous gallantry in action in circumstances of great peril'. As previously stated, the Tribunal determined that the rescue was reliant on the entire crew and accordingly, the Tribunal did not consider that SBLT Perrott could be assessed as having demonstrated 'great heroism'. The Tribunal also considered that despite the environment at the rescue site being dangerous and risky, SBLT Perrott was not in 'circumstances of great peril' as there was considerable firepower available from his own crew and the downed crew and his aircraft was in a position which, although limited, did provide some protection from direct fire as evidenced by the statement that the enemy fire was going over their heads. Accordingly, the Tribunal finds that SBLT Perrott's actions do not satisfy the conditions for the award of the SG.

146. The Tribunal noted that the MG 'shall be awarded only for acts of gallantry in action in hazardous circumstances'. Having found that SBLT Perrott did perform acts of gallantry in action, the Tribunal reviewed the threat, risk and challenging circumstances of the rescue and was reasonably satisfied that his actions were performed in 'hazardous circumstances'. The Tribunal was also satisfied that the airmanship displayed by SBLT Perrott was above the standard expected of a junior officer and made a considerable difference to the outcome of the action. The Tribunal considered that this airmanship of itself, could be seen to be an act of exceptional courage and when combined with his command and leadership and his responsibility for his own crew, the Tribunal was reasonably satisfied that SBLT Perrott performed an act of gallantry in action in hazardous circumstances.

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<sup>82</sup> Valour Inquiry Report, A6-3

147. For completeness, the Tribunal also reviewed the conditions for the Commendation for Gallantry which could be awarded for ‘other acts of gallantry in action which are considered worthy of recognition’. The Tribunal considered that the phrase ‘worthy of recognition’ seriously understated the actions of SBLT Perrott and the consequences of the rescue not being successful.

148. **Finding in Relation to SBLT Perrott’s Eligibility for a Gallantry Award.** For the reasons stated above, the Tribunal finds that SBLT Perrott meets the eligibility criteria to be awarded the Medal for Gallantry for acts of gallantry in action in hazardous circumstances as the aircraft captain commanding the rescue of a downed helicopter crew in the vicinity of Vinh Long, South Vietnam on 2 February 1969.

### **SBLT Kyle’s Eligibility for a Gallantry Award**

149. **Findings of Fact in Relation to SBLT Kyle’s Actions.** Having reviewed the evidence and submissions, the Tribunal was reasonably satisfied that the following facts were established relating to SBLT Kyle’s actions on 2 February 1969:

- a. he was the co-pilot of the aircraft and despite having been acting Flight Leader before the rescue was launched; at the time of the action he was not responsible for the aircraft’s operation, safety during flight or for the decisions made in relation to the rescue;
- b. he was responsible to ‘shadow’ the pilot and to provide observations to him regarding the threat, aircraft profile, likely landing zones and potential avenues of approach;
- c. the threat to the SBLT Kyle during the rescue was extreme;
- d. he provided ‘calm assistance during the rescue which contributed significantly to the success of the task’;<sup>83</sup> and
- e. by his own admission, he ‘did his job – SBLT Perrott was the one making the decisions and flying the mission’.

150. **The Mention in Despatches Citation.** The Tribunal noted that the Stevens Review stated that ‘... both nominees were awarded a MID in Oct 1969 for an incident on 2 Feb 1969 ...’. The Tribunal, having reviewed the citations for both awards was not satisfied that this was correct. There is no dispute that SBLT Perrott’s award is focussed on the 2 February 1969 rescue however, SBLT Kyle’s citation clearly indicates that his award is for multiple occurrences throughout his entire deployment including but not limited to the 2 February 1969 action. Additionally, COMAFV stated in his letter to the Secretary of the Navy that he was submitting SBLT Kyle ‘ahead’ of another officer because ‘his [Kyle’s] citation covers a period of 8½ months in the company during which he clearly gave outstanding service’.<sup>84</sup>

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<sup>83</sup> Citation for Award of the MID to SBLT Kyle dated 9 June 1969

<sup>84</sup> Australian Force Vietnam *Recommendations for Honours and Awards* dated 14 July 1969

151. The Tribunal considered that this difference in citations was significant as it suggests that the nominations were crafted from differing perspectives, suggesting that the original nominator did not consider that SBLT Kyle's actions as the second pilot during the rescue were strong enough to stand on their own as an act of gallantry. The Tribunal also noted that SBLT Kyle was nominated as third in the order of priority of three for the MID by COMAFV.

152. **Assessment of Witness Accounts and Evidence Regarding SBLT Kyle's Actions.** The Tribunal noted that the basis of Commander Speedy's submissions regarding recognition for SBLT Kyle was equality. As previously discussed, the Tribunal did not consider that a simple case of equality could be made and accordingly it dismissed Commander Speedy's claims in this regard.

153. The Tribunal noted that SBLT Perrott considered that 'what SBLT Kyle did as a co-pilot on that day was above what you would expect of a pilot in Vietnam but not above what I would expect of an Australian crew'. The Tribunal gave this statement limited weight noting that SBLT Perrott had almost no experience in recommending individuals for recognition.

154. The Tribunal gave some weight to the statement of Captain Ray that the award of the MID to SBLT Kyle 'is appropriate and should stand'. The Tribunal, recognising that Commander Bell was a widely-respected trainer of helicopter pilots and crew<sup>85</sup>, gave great weight to his statement that 'I find it most difficult to believe that SBLT Kyle's execution of his duties as a co-pilot could ever justify any award for him for his performance, he just did his job'.

155. The Tribunal gave significant weight to SBLT Kyle's own statement that he 'simply did his job'.

156. **Finding in Relation to SBLT Kyle's Eligibility for a Gallantry Award.** To be eligible for an Australian gallantry award, SBLT Kyle's actions would need to demonstrate that he had performed 'acts of gallantry in action'. There is no dispute that he was 'in action' – he was threatened by enemy fire whilst in the air and on the ground. However, no evidence was produced which would indicate that SBLT Kyle's actions could be classified as individual acts of gallantry. The Tribunal considered that he did his duty bravely and made a significant contribution to the success of the rescue – he did what he was trained and expected to do as the co-pilot. Accordingly, the Tribunal finds that SBLT Kyle's actions on 2 February 1969 do not meet the threshold to be recognised for an act of gallantry in action. The Tribunal considers that he was appropriately recognised with the MID for his outstanding service as a pilot over a period of 8½ months in the RANHFV.

## **Conclusion**

157. The Tribunal was in no doubt that the rescue mission on 2 February 1969 was an instinctive action which relied upon the commander's decisiveness, his exceptional airmanship and individual gallantry and the brave performance of duty of his crew. Their collective actions saved the lives of four airmen and the individual actions of

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<sup>85</sup> See Farthing, Ray, Bell and the Department of Defence re: Perry [2017] DHAAT 006; para 54

SBLT Perrott as the aircraft captain, ensured the success of the mission. His individual actions met the eligibility criteria for the award of the MG.

### **TRIBUNAL DECISION**

158. The Tribunal decided to recommend to the Minister that:
- a. the decision by the Chief of Navy to refuse to recommend a higher gallantry award for Sub-Lieutenant Robert Kyle for his actions on 2 February 1969 with the Royal Australian Navy Helicopter Flight Vietnam be affirmed;
  - b. the decision by the Chief of Navy to refuse to recommend a higher gallantry award for Sub-Lieutenant Michael Perrott for his actions on 2 February 1969 with the Royal Australian Navy Helicopter Flight Vietnam be set aside and that Sub-Lieutenant Perrott be asked to return the Mention in Despatches he received for the action; and
  - c. the Minister recommend to the Governor General that Sub-Lieutenant Michael Perrott be awarded the Medal for Gallantry for acts of gallantry in action in hazardous circumstances as the aircraft captain commanding the rescue of a downed helicopter crew in the vicinity of Vinh Long, South Vietnam on 2 February 1969.