



**Australian Government**

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Defence Honours and Awards Appeals Tribunal

**REVIEW OF THE ELIGIBILITY OF THE LATE LIEUTENANT  
COLONEL DAVID SCOTT BELL FOR THE VIETNAM  
LOGISTIC SUPPORT MEDAL AND THE CLASP 'VIETNAM' TO  
THE AUSTRALIAN ACTIVE SERVICE MEDAL 1945-1975 FOR  
AND ON BEHALF OF MR DAVID SCOTT BELL**

## DECISIONS UNDER REVIEW

Two decisions of the Department of Defence are addressed in the appeal of Mr David Bell<sup>1</sup> on behalf of his late father.

- a. The decision of the Directorate of Honours and Awards of the Department of Defence made on 28 May 2008 that Lieutenant Colonel (LTCOL) David Bell is not eligible for the Vietnam Logistic Support Medal and the Clasp 'VIETNAM' to the Australian Active Service Medal 1945-75.<sup>2</sup>
- b. The decision of the Directorate of Honours and Awards of the Department of Defence which was advised in a letter to Mr Bell dated 12 August 2011 that awards to which LTCOL Bell has been determined to be eligible will not be issued until the medals which were previously issued in error have been returned.

## DECISIONS OF THE TRIBUNAL

The Defence Honours and Awards Appeals Tribunal:

- a. affirms the decision of the Department of Defence that LTCOL Bell is not eligible for the Vietnam Logistic Support Medal and the Clasp 'VIETNAM' to the Australian Active Service Medal 1945-75; and
- b. sets aside the decision of the Department of Defence that awards to which LTCOL Bell has been determined to be eligible should be withheld until the medals which were previously issued in error have been returned.

## DATE OF DECISIONS

19 January 2013

## THE TRIBUNAL

For the purpose of this appeal the Tribunal was constituted by:

Mr John Jones AM

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<sup>1</sup> In this report of the Tribunal, references to **Mr Bell** should be read as Mr David Scott Bell, who is the applicant. References to **LTCOL Bell** apply to Lieutenant Colonel David Scott Bell, the deceased former member of the Australian Defence Force, whose eligibility for various awards is the subject of the appeal and of this review.

<sup>2</sup> The letter of appeal submitted by Mr Bell in October 2011 did not specifically seek review of this decision. However, in a letter to the Tribunal dated 5 March 2012 and during a telephone interview with the Tribunal on 19 June 2012, Mr Bell asked if an exemption from or amendment to the eligibility dates might allow the family to retain these medals. The Tribunal has considered this as a request for a review of LTCOL Bell's eligibility.

## REASONS FOR DECISIONS

### Introduction

1. The Defence Honours and Awards Appeals Tribunal (the Tribunal) is established under the *Defence Act 1903*. Its functions are set out in Section 110UA of the Act. Those functions include reviewing a decision refusing to recommend a person or group of persons for a defence award. After conducting a review, the Tribunal may make a decision affirming the original decision, substituting a new decision or referring the matter to a person for reconsideration.
2. In March 1997, LTCOL Bell applied to the Medals Section of the Soldier Career Management Agency (SCMA) for recognition of his service in Vietnam during April 1963. In November 1997 SCMA advised LTCOL Bell that he was eligible for the Vietnam Logistic Support Medal (VLSM) and that he may be eligible for the award of the newly announced Australian Active Service Medal (AASM) 1945-75 with Clasp 'VIETNAM'. His eligibility for the AASM 1945-75 with Clasp 'VIETNAM' was subsequently confirmed and it and the VLSM were issued to LTCOL Bell.
3. In February 1999, LTCOL Bell applied to SCMA for an Australian Service Medal (ASM) with Clasps 'THAI-MALAY' and 'THAILAND'. SCMA responded to this application in December 1999 with a request for further information about his service in Thailand and Malaysia<sup>3</sup>. In that response, SCMA also informed LTCOL Bell that the award of the VLSM and the AASM 1945-75 with Clasp 'VIETNAM' had been made in error. The effect of the errors of law and fact made by Defence was that its initial decisions were null and void. The letter acknowledged that the error had occurred within SCMA and apologised for it. The letter also informed that SCMA would recommend to the Governor General that LTCOL Bell's entitlement to the two awards be cancelled and requested LTCOL Bell to return them to SCMA.
4. The entitlement to the two awards was cancelled by the Governor General in January 2000. LTCOL Bell was told of the cancellation by Defence in July 2000 with a further apology for the original error and a second request for return of the awards.
5. In October 2001 Defence again wrote to LTCOL Bell requesting the return of the cancelled awards. LTCOL Bell was advised at this time that he was eligible for the ASM 1945-75 with Clasp 'SE ASIA' but that the award had not been recommended to the Governor General as Defence was awaiting further information from LTCOL Bell regarding his service in Thailand.
6. LTCOL Bell died on 2 September 2003. There appears to have been no further correspondence between LTCOL Bell and Defence after October 2001.
7. In April 2011 Defence received three applications for the posthumous award of medals to LTCOL Bell. Two applications (the Australian Defence Medal [ADM] and the Pingat Jasa Malaysia [PJM]) were made by his widow, Mrs Vivienne Bell,

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<sup>3</sup> The Tribunal has not addressed this matter since it appears no adverse decision has been made by Defence.

while the third (the Australian Service Medal 1945-1975 with Clasp 'SE ASIA' was made by his son, Mr Bell).

8. In response to these applications the ADM was issued to Mrs Bell. A letter dated 12 August 2011 was sent by Defence to Mr Bell advising that no outstanding awards would be issued until the VLSM and the Clasp 'VIETNAM' to the AASM 1945-75 were returned.

9. On 30 September 2011 Mr Bell lodged an 'Application for Review of a Decision' in relation to his father's award. The application form was followed by a letter from Mr Bell dated 4 October 2011 in which he made arguments for the setting aside of the decisions relating to the awards in question.

10. On 25 October 2011 the Tribunal requested Defence to conduct a review of recognition in respect of LTCOL Bell in response to Mr Bell's application. Defence forwarded its review on 12 December 2011. That review was then forwarded to Mr Bell who responded to it on 5 March 2012.

11. On 19 June 2012 the Tribunal commenced its review by interviewing Mr Bell by telephone. Subsequently the Tribunal sought and received further information from Defence.

### **Findings of the Tribunal**

12. LTCOL Bell while posted to the 28<sup>th</sup> Commonwealth Brigade in Malaysia was sent to Vietnam from 16 April 1963 to 25 April 1963 and 'placed temporarily on the strength of the Australian Army Staff in the Saigon Embassy.' He acted as an observer with United States Army Aviation units. He had no other service in Vietnam.

13. The VLSM was established in 1993. The VLSM Regulations provide that the medal may be awarded for service of one day or more in the area of operations in Vietnam during the period 29 May 1964 to 27 January 1973.

14. LTCOL Bell did not serve in Vietnam during the period for which the VLSM may be awarded.

15. The AASM 1945-75 with Clasp 'VIETNAM' can be awarded for service in the area of operations during the period 31 July 1962 to 27 January 1973 to:

- a. 'a member of the Australian Defence Force who rendered service as such a member while allotted and posted as a member of the Australian element to the prescribed operation; or
- b. a member of the Australian Defence Force who rendered service as such a member for a period of 30 days, or for periods amounting in the aggregate to 30 days, for official visits, inspections or other occurrences of a temporary nature...'

16. LTCOL Bell was not 'allotted' or 'posted' to 'a prescribed operation'. His temporary service in Vietnam 'for official visits, inspections' etc did not amount to 30 days.

17. The Department of Defence has advised the Tribunal that LTCOL Bell's service did, however, satisfy the eligibility requirements for the PJM, and the ASM 1945-75 with Clasp 'SE ASIA'.

### **Summary of the Arguments of Mr Bell**

18. Mr Bell's principal concern is why he should return the VLISM and the 'VIETNAM' Clasp to the AASM 1945-75. Mr Bell told the Tribunal that he believes that his father's service in Vietnam has been unrecognised and that that service deserved recognition - particularly when considered in the light of the service of others who have been awarded the VLISM, especially Australian entertainers who performed for Australian troops in Vietnam.

19. Mr Bell also argues that the erroneous issue of the VLISM and the 'VIETNAM' Clasp to the AASM 1945-75 was the fault of Defence and that his father merely accepted them as proper recognition for his service.

20. Mr Bell believes that no good purpose is served by insistence on the return of the awards issued in error. He requests that his father be deemed eligible for these awards, either by changing the dates of eligibility or by the grant of an exemption for his father's case.

### **Summary of the Arguments of Defence**

21. Defence argues that its review clearly establishes that LTCOL Bell is not eligible for the VLISM and the 'VIETNAM' Clasp to the AASM 1945-75 because the dates and the nature of his service in Vietnam do not satisfy the criteria for those awards.

22. In relation to the PJM and the ASM 1945-75 with Clasp 'SE ASIA', Defence has assessed LTCOL Bell as eligible for both awards but has refused to recommend their issue to the Governor General because the VLISM and the 'VIETNAM' Clasp to the AASM 1945-75 have not been returned. Defence has argued that it 'has no obligation to issue the medals to next of kin. It is not a right, it is a gesture made in good faith'.

23. In later correspondence about this aspect, Defence referred to a policy statement entitled "**GRANTING OF UNISSUED SERVICE AWARDS FOR DECEASED MEMBERS**" which was the subject of **Department of Defence INTERIM POLICY DEFGRAM NO 3/2010** issued on 23 August 2010 with an expiry date of 23 February 2011.

24. Defence has advised that the policy is now incorporated in the Defence Honours and Awards Manual (DHAM).<sup>4</sup> The policy statement includes the following provision in relation to posthumous awards: 'While the entitlement to an award exists

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<sup>4</sup> DHAM was published in September 2012 but is incomplete and not publicly available.

only for the original member, unissued awards may be granted to an approved claimant as a gesture of respect to the deceased member.’

25. Defence went on to state that ‘Director Honours and Awards is the delegated Recommending Authority on behalf of the Chief of the Defence Force and used their (sic) discretion to not recommend further awards for the late LTCOL Bell while the cancelled awards remain to be returned to Defence custody.’ Further inquiry confirmed that, in November 1998, the CDF delegated his power of recommendation for the AASM 1945-75 to the Director Honours and Awards and to the Director General Career Management Policy. The Acting Director Honours and Awards has advised that no delegation has been made, and nor is one required, in relation to the PJM.

### **Consideration of the Tribunal**

26. The Tribunal was unable to find any sufficient grounds to grant or recommend an exemption from the eligibility criteria for either the VLISM or the ‘VIETNAM’ Clasp to the AASM 1945-75, or to seek changes to those criteria.

27. The Tribunal cannot support the repeated discretionary decision by Defence to withhold medals for which it agrees all eligibility requirements are met. There are legal remedies available to effect recovery of medals issued in error - as Defence made clear in its review. The use of these medals as bargaining tools in lieu of recourse to the available legal avenues is unseemly and does not accord with the notion of ‘a gesture of respect to the deceased member’.

### **DECISION**

28. The Defence Honours and Awards Appeals Tribunal:

- a. affirms the first decision under review that LTCOL Bell was not eligible for the VLISM or the ‘VIETNAM’ Clasp to the AASM 1945-75; and
- b. sets aside the second decision under review and substitutes its decision that Defence should proceed to issue the PJM and the ASM 1945-75 with Clasp ‘SE ASIA’ without further delay; and
- c. refrains from making any decision in relation to LTCOL Bell’s requests concerning his eligibility for the ASM 1945-75 with Clasps ‘THAILAND’ and ‘THAI-MALAY’ and notes that it would be preferable that Mr Bell seek resolution of this matter from Defence.