



## Australian Government

### Defence Honours and Awards Appeals Tribunal

#### **Alan Larsen and the Department of Defence [2014] DHAAT 26 (4 July 2014)**

File Number(s) 2013/004

Re

**Alan LARSEN**  
APPLICANT

And

**Department of Defence**  
RESPONDENT

Tribunal

Mr A. Rose AO (Presiding Member)  
Mr J. Jones AM  
Ms C. Heazlewood

**Hearing Date** 11 March 2014

#### **DECISION**

On 4 July 2014 the Tribunal decided to set aside the decision of the Directorate of Honours and Awards not to recommend that the 1st Battalion, the Royal Australian Regiment be awarded the Republic of Vietnam Cross of Gallantry with Palm Unit Citation and substitutes its decision to recommend to the Minister for Defence that the 1st Battalion, the Royal Australian Regiment and its attached units that served in Vietnam between May 1965 and May 1966 should be awarded the Republic of Vietnam Cross of Gallantry with Palm Unit Citation.

#### **CATCHWORDS**

*FOREIGN AWARD* – Republic of Vietnam Cross of Gallantry with Palm Unit Citation – attached unit - whether evidence of offer of award – Governor General Guidelines on Acceptance of Foreign Awards.

#### **LEGISLATION**

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

Guidelines Concerning the Acceptance and Wearing of Foreign Honours and Awards by Australians

## **REASONS FOR DECISION**

### **Introduction**

1. The applicant, Mr Alan William Larsen, seeks review of the decision of the Directorate of Honours and Awards of the Department of Defence (the Directorate) that the 1st Battalion, the Royal Australian Regiment (1RAR) and its attached units that served in Vietnam between May 1965 and May 1966, should not be recommended for the award of the Republic of Vietnam Cross of Gallantry with Palm Unit Citation (CGWP). On 16 June 2011 Mr Larsen lodged an application with the Tribunal dated 29 May 2011 requesting that 1RAR and its attached units that served in Vietnam during the above period be awarded the CGWP. His application was referred to the Directorate on 5 April 2012 for assessment of his request. The Directorate replied to the Tribunal on 29 August 2012 rejecting Mr Larsen's application. The Tribunal referred the Directorate's letter to Mr Larsen for his response on 13 September 2012. By letter received on 5 December 2012 Mr Larsen requested review of the Directorate's decision of 29 August 2012.

### **The Tribunal's Jurisdiction**

2. Pursuant to s110VB(2) of the *Defence Act 1903* (the Defence Act) the Tribunal has jurisdiction to review a reviewable decision if an application is properly made to the Tribunal concerning a foreign award. The term *reviewable decision* is defined in s110V(1) and includes a decision made by a person within the Department of Defence to refuse to recommend a group of persons for a foreign award in response to an application. The Directorate made a decision on 29 August 2012 to refuse to recommend that 1RAR and its attached units be awarded the CGWP following Mr Larsen's application.

3. The term 'foreign award' is defined in s 110T as an honour or award given by a foreign country. The CGWP was described by the Joint General Staff of the Ministry of Defence of the Republic of Vietnam as a meritorious citation for courage and distinguished service. The Tribunal finds that the CGWP is an award given by a foreign country, namely the Republic of Vietnam. Therefore the Tribunal has jurisdiction to review the decision of the Directorate not to recommend that 1RAR and its attached units be awarded the CGWP.

### **Steps taken in the conduct of the Review**

4. In accordance with the Defence Honours and Awards Appeals Tribunal Procedural Rules 2011 (No.1), on 14 February 2013, the Tribunal wrote to the Secretary of the Department of Defence informing him of Mr Larsen's application for review and requesting that he provide a report. On 26 March 2013, the Directorate on behalf of the Secretary provided the Tribunal with a report. A copy of the report of the Directorate was forwarded to Mr Larsen for comment. Mr Larsen provided written responses to the Tribunal received on 21 April 2013.

## History

5. In May 1965, the Australian Government agreed to the deployment of an Australian combat force to South Vietnam 'to provide military assistance to the Government of the Republic of Vietnam'.<sup>1</sup> This deployment was made 'at the request of the Government of the Republic of Vietnam and in consultation with the Government of the United States'.<sup>2</sup> 1RAR was the major component of the initial Australian force which deployed to South Vietnam in late May 1965. On arrival in Vietnam 1RAR joined the 173rd Airborne Brigade based at Bien Hoa. 1RAR served as part of 173rd Airborne Brigade from June 1965 until May 1966 when the Australian force was increased to a task force consisting of two infantry battalions (later increased to three) as well as supporting arms and logistic units.

6. The CGWP was an honour awarded by the Republic of Vietnam to members and units of their military forces, for outstanding gallantry in the face of the enemy. The CGWP was also awarded to members and units of foreign allied military forces who served in Vietnam. The CGWP was awarded to units of foreign forces for their courage and their support for the military forces of the Republic of Vietnam.

## 1RAR's service in Vietnam

7. The Directive issued in May 1965 by the Chief of General Staff to the Commander, Australian Army Force Vietnam (COMAAFV) advised that the Commander had *overall command of units and personnel of the Australian Army deployed in the Republic of Vietnam. ... Initially the battalion is to be deployed in the BIEN HOA airfield area under the operational command of 173 Airborne Brigade. ... The Australian Infantry Battalion will be assigned tasks by the appropriate United States Formation Commander.* The Battalion was to be deployed as part of the larger United States force.

8. For the first few months of its deployment in Vietnam, 1RAR was restricted to operating in the Bien Hoa tactical area of responsibility (TAOR). When the 173<sup>rd</sup> Airborne Brigade deployed to operate away from Bien Hoa, which it did occasionally for short periods, 1RAR was left to conduct operations within the Bien Hoa TAOR and to provide defence for the air base. However on 30 September 1965 the Australian Prime Minister agreed to lift the restrictions on the deployment of 1RAR.<sup>3</sup> For the remainder of this tour of duty in Vietnam, the members of 1RAR served alongside the other units of 173<sup>rd</sup> Airborne Brigade on every operation and became the third manoeuvre battalion.<sup>4</sup>

## Mr Larsen's Submission

9. In his application dated 29 May 2011 and received by the Tribunal on 16 June 2011 Mr Larsen stated that 1RAR was attached to the 173<sup>rd</sup> Airborne Brigade in South Vietnam in 1965 and 1966. The 173<sup>rd</sup> Airborne Brigade was awarded both the United States Meritorious Unit Citation (MUC) and the CGWP, but due to an

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<sup>1</sup> 27 May 1965 Directive to COMAAFV, US Request for Australian Defence Assistance in South Vietnam File Number 5, NAA:248/4/114.

<sup>2</sup> Ibid.

<sup>3</sup> McNeill, Ian, *To Long Tan, The Australian Army and the Vietnam War, 1950-1966*, Allen & Unwin in association with the Australian War Memorial, Canberra, 1993, p121.

<sup>4</sup> Ibid, p122.

administrative error these awards did not 'flow on to 1RAR'. He requested that CGWP be awarded to 1RAR and its attached units.

10. Following representations (by former members of 1RAR and the 173<sup>rd</sup> Airborne Brigade) the MUC was awarded to 1RAR in 1991. According to Mr Larsen an administrative oversight meant that the CGWP was not awarded to 1RAR at the same time. This view was supported by the United States Congressional record of 20 June 1995 that set out a speech by Congressman Gil Gutknecht. The Congressman said in his speech that 1RAR 'was inadvertently left off the D.A.G.O. 51 of 1971'<sup>5</sup>, and that he intended to push for an amendment to the DAGO to include 1RAR. The DAGO referred to is the United States Department of Army General Order (DAGO) No 51 of 10 November 1971.

11. Mr Larsen referred to other units who had served in Vietnam and who had been awarded the CGWP including D Company (D Coy) of 6RAR. He argued that the circumstances of 1RAR were similar and they should also receive the CGWP.

12. In his application for review received on 5 December 2012 Mr Larsen referred to the Australian Government decision with respect to the awarding of the CGWP to D Coy 6RAR and the 'proof of offer' by the Republic of Vietnam. In Mr Larsen's opinion the award of the MUC to 1RAR was sufficient evidence to prove that it was intended that 1RAR also be awarded the CGWP.

13. In an email to the Tribunal dated 21 April 2013 in response to the Directorate's submission, Mr Larsen argued that when 1RAR was assigned to the 173<sup>rd</sup> Airborne Brigade an order was issued advising that personnel were not to accept foreign awards. The battalion believed that the Americans became tired of offering awards that were not accepted to Australians. Mr Larsen reiterated his argument that the awarding of the MUC to 1RAR was proof of an intention to award the CGWP to the Unit.

14. Mr Larsen pointed out that 1RAR had taken part in 7 of the 17 operations referred to in the CGWP citation regarding the 173<sup>rd</sup> Airborne Brigade. The MUC awarded to 1RAR referred to the support provided by 1RAR *while attached to the 173rd Airborne Brigade (Separate), United States Army*.

### **The Directorate's Submission**

15. In its letter of 29 August 2012 in response to the Tribunal's referral, the Directorate stated that Mr Larsen was seeking to have the CGWP awarded to 1RAR for its service in Vietnam in 1965 and 1966. The Directorate explained that Mr Larsen wanted to have the CGWP awarded to the United States 173<sup>rd</sup> Airborne Brigade extended to 1RAR, because it was attached to the United States Brigade in 1965 and 1966.

16. The Republic of Vietnam awarded the CGWP to the 173<sup>rd</sup> Airborne Brigade for their service from 5 May 1965 to 26 September 1970. The award was promulgated by DAGO No 51 of 10 November 1971. The DAGO No 51 does not

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<sup>5</sup> United States Federal Congressional Record E1296, June 20, 1995.

refer to 1RAR as being an assigned or attached unit of the 173<sup>rd</sup> Brigade for the purpose of the award.

17. The United States MUC was formally offered to 1RAR in 1990 by the United States government. The Queen accepted this offer and the MUC was awarded to 1RAR in 1991. The Directorate questioned whether the United States government had the authority to offer the CGWP to 1RAR because it was an award of the Republic of Vietnam not the United States.

18. In its report dated 26 March 2013 the Directorate outlined the procedure to be followed when a foreign government wished to confer an award on a unit or member of the Australian Defence Force. The Directorate could find no evidence that 1RAR had ever been formally offered the CGWP by the Republic of Vietnam. The Directorate noted that the CGWP had been offered to the United States 173<sup>rd</sup> Airborne Brigade and its attached and assigned units. The phrase 'attached or assigned unit' referred to United States units and not Australian units.

19. The Directorate argued that 1RAR was not an attached unit of the 173<sup>rd</sup> Airborne Brigade because it remained under Australian Command whilst deployed. The Australian Commander had the right and ability to refuse to deploy units and personnel on operations he considered unsafe or not in Australia's interest.

20. The Directorate argued that if the Republic of Vietnam had wished to award the CGWP to 1RAR it would have approached the Australian Government and indicated a desire to award 1RAR the CGWP. The Republic of Vietnam was aware of the proper process and had followed that process when awards were offered to other Australian military units.

### **The Citation**

21. On 10 July 1970 the Joint General Staff of the Ministry of Defence, Republic of Vietnam wrote to the Commander, United States Military Assistance Command, Vietnam advising that the Joint General Staff intended to meritoriously cite the 173<sup>rd</sup> Airborne Brigade because, during five years in battle in Vietnam they had been involved in 15 large scale operations and had provided assistance to units of the Republic of Vietnam Armed Forces. On 31 August 1970 General Abrams, United States Military Assistance Command, Vietnam accepted this offer on behalf of the United States government.

22. On 26 September 1970 the Chief of Joint General Staff, Republic of Vietnam Armed Forces issued the following General Order:

#### *CITATION BEFORE THE ARMY*

#### *THE 173D AIRBORNE BRIGADE, UNITED STATES ARMY*

*The 173d Airborne Brigade is a veteran unit, in which is (sic) gathered courageous soldiers who have always distinguished themselves with high and enthusiastic spirit for the destruction of the enemy.*

...

*In 1965's Operations:- IRON TRIANGLE in Binh Duong Prov., HUMP in War Zone D, NEW LIFE in Long Khanh Prov., and SMASH1 in Phuoc Tuy Prov.*

*In 1966's Operations:- MARAUDER in Hau Nghia Prov., CRIMP in Binh Duong Prov., SILVER CITY in War Zone D Bien Hoa & Long Khanh Prov.*

The citation mentioned operations in 1967 and 1969 as well. According to Mr Larsen 1RAR participated in the operations Iron Triangle, Hump, New Life, Smash 1, Marauder, Crimp and Silver City. Mr Larsen's assertion is supported by the Official History of Australia in the Vietnam War.<sup>6</sup>

The citation concluded with the following words:

*UNIT CITATION RIBBON with the color of Cross Gallantry to the 173d Abn Bde's Colors, and to the Detached & Subordinate Units in inclusure (sic)*

...

*UNIT CITATION BADGE with the color of Cross Gallantry/Palm to the 173d Abn Bde servicemen, and to the Detached & Subordinate Units.*

23. The Awards Division United States Department of Defence then attempted to identify the units that should be included in the award, noting that only the assigned and attached units in the cited period were to be included. The cited period was determined to be 5 May 1965 to 26 September 1970. The General Order of the Vietnamese Chief of the Joint General Staff became the United States DAGO 51 of 1971. That is, the Department of the Army in Washington promulgated a General Order No 51 on 10 November 1971, which translated the Award by the Vietnamese Chief of Joint General Staff into a United States Order.

24. The DAGO stated that the CGWP had *been awarded by the Government of the Republic of Vietnam for outstanding service during the period 5 May 1965 through 26 September 1970 to: 173D AIRBORNE BRIGADE and its assigned and attached units.* Those attached and assigned units were named in the DAGO. 1RAR was not included in those named units. Between 1971 and 1975 the named units were amended several times by amending DAGOs. 1RAR was not added to the list.

25. DAGO 48 in 1968 awarded the MUC to 173<sup>rd</sup> Airborne Brigade for the period 5 May 1965 to 4 May 1967. Following submissions from former members of both 173<sup>rd</sup> Airborne Brigade and 1RAR, the DAGO was amended in 1991 to include 1RAR. On 13 May 1991 the Queen agreed that the MUC could be awarded to 1RAR.

### **The Procedure for the Acceptance of Foreign Awards**

26. In Principal Administrative Officers' Committee (Personnel) Minute 4/67 of 17 March 1967 the Department of Defence set out the rules for the acceptance of foreign awards for service in Vietnam. Under the heading Unit Citations and Awards it was stated that *as a general principle, it is considered that the acceptance of unit awards should be confined to those offered by South Vietnam.*

27. The Minute recommended that the Prime Minister approach the Queen for her approval before accepting a foreign award and that the award should be for gallantry and distinguished service worthy of recognition where the act or service would be precluded from consideration of an Australian or British award. Otherwise the prevailing British Regulations should continue to apply to Australian forces.

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<sup>6</sup> McNeill, *To Long Tan*, p.122.

28. In the *Review of Recognition for the Battle of Long Tan* of March 2008<sup>7</sup> it was noted that generally foreign awards would only be accepted where agreement had been reached with a foreign government and the Queen's assent had been obtained. A small number of Australians received individual foreign awards during the Vietnam War. The Republic of Vietnam often offered awards but they were rarely recommended to the Queen for approval. From March 1967 more foreign unit awards were accepted. On 22 December 1997 the *Guidelines Concerning the Acceptance and Wearing of Foreign Honours and Awards by Australians* were amended to enable the acceptance of foreign awards in certain extraordinary or unusual circumstances. It was noted however, that these extraordinary or unusual circumstances did not preclude the need to show proof of an intention to make the award.

29. Generally Australians may accept and wear foreign awards when a country with which Australia maintains diplomatic relations, the United Nations or a recognized international agency makes an offer of an award. Permission to accept the foreign award will be given by the Governor General on the advice of the Prime Minister. Clause 14 of the 1997 Guidelines provided:

*In extraordinary or unusual circumstances permission for the formal acceptance and wearing of foreign awards by Australians may be recommended to the Governor-General by the responsible Minister without formal approach through diplomatic or other official channels to the foreign government concerned.*

30. On 8 August 2012 these Guidelines were revoked and replaced by another set of Guidelines that did not contain the equivalent to clause 14.

### **Findings of Fact**

31. 1RAR served in Vietnam from June 1965 to May 1966 at Bien Hoa. The Chief of General Staff directed that 1RAR would be under the operational control of the United States Military Assistance Command which in turn placed 1RAR under the operational control of the 173<sup>rd</sup> Airborne Brigade while the COMAAFV would retain overall command of the battalion. 1RAR became the third manoeuvre battalion for 173<sup>rd</sup> Airborne Brigade. The battalion was deployed as part of the larger United States force.

32. On 10 July 1970 the Republic of Vietnam awarded the CGWP to the 173<sup>rd</sup> Airborne Brigade and its attached and assigned units. This offer was accepted by the United States government and promulgated as DAGO No 51 of 1971. 1RAR was not included as one of the attached units in the DAGO. The Republic of Vietnam ceased to exist on 30 April 1975.

33. 1RAR participated in seven operations with 173<sup>rd</sup> Airborne Brigade in 1965 and 1966 that were referred to in the citation awarding the CGWP to 173<sup>rd</sup> Airborne Brigade.

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<sup>7</sup> Department of the Prime Minister and Cabinet, *Review of Recognition for the Battle of Long Tan*, Department of the Prime Minister and Cabinet, Barton, 2008.

34. The 173<sup>rd</sup> Airborne Brigade was awarded the MUC by the United States government in 1968. 1RAR was not included in the MUC awarded to the 173<sup>rd</sup> Airborne Brigade. Following submissions from past members of both the 173<sup>rd</sup> Airborne Brigade and 1RAR, the MUC was awarded to 1RAR in 1991.

### **Conclusion**

35. Mr Larsen has requested that the CGWP, an award of the Republic of Vietnam be awarded to 1RAR and its attached units. He argued that a clerical error in 1971 resulted in 1RAR and other foreign units attached to 173<sup>rd</sup> Airborne Brigade not being included in DAGO 51 of 1971. He argued that the Republic of Vietnam intended that 1RAR receive the award and the evidence for this was the award of the MUC by the United States government to 1RAR in 1991. The Tribunal carefully considered this argument and concluded that it could not agree with Mr Larsen. An award by the United States government (the MUC) did not mean that the Republic of Vietnam considered that 1RAR should be awarded the CGWP. These were different governments and different awards.

36. The problem for Mr Larsen and his argument is that the Republic of Vietnam ceased to exist on 30 April 1975. This means that the Australian government is no longer able to ask the Republic of Vietnam if they intended offering the CGWP to 1RAR in 1970. The Tribunal must decide whether there is evidence, which would allow it to infer such an offer. An analysis of the documents issued at the time and the citation of the Republic of Vietnam may reveal an intention. If there was such an intention do the Governor-General Guidelines of 1997 apply?

### *Attached or Assigned Units*

37. The Directorate has argued that 1RAR was not attached or assigned to the 173<sup>rd</sup> Airborne Brigade. The terms ‘attached’ or ‘assigned’ are not defined in any defence documents and so the Tribunal applied their ordinary meaning. In the Oxford Dictionary of English ‘attached’ was defined as ‘joined, fastened or connected to’. ‘Assigned’ was defined in similar terms.

38. The original citation referred to the detached or subordinate units. The Oxford Dictionary definition of ‘detached’ is ‘not connected to’ whereas the definition of ‘subordinate’ is ‘a person under the control of another person’.

39. The Directive to the COMAAAFV stated that 1RAR was to be under the operational control of the 173<sup>rd</sup> Airborne Brigade, although the Commander was to retain overall command. It was noted in the Directive that the battalion was to be deployed as part of the 173<sup>rd</sup> Airborne Brigade and it became its third manoeuvre battalion.

40. Given the definition of ‘attached’ the Tribunal concludes that 1RAR was attached to the 173<sup>rd</sup> Airborne Brigade from June 1965 to May 1966. 1RAR was connected to the 173<sup>rd</sup> Airborne Brigade because it became the third battalion under the operational control of the 173<sup>rd</sup> Airborne Brigade. It was an integral part of the operations conducted by the 173<sup>rd</sup> Airborne Brigade in 1965 and 1966.



41. The Tribunal also considered that 1RAR was a subordinate unit to 173<sup>rd</sup> Airborne Brigade because it was under the operational control of the United States Commander.

*Intention to award the CGWP to 1RAR*

42. Given that it is no longer possible to ascertain the intention of the Republic of Vietnam directly, the Tribunal examined the citation awarding the CGWP to the 173<sup>rd</sup> Airborne Brigade to ascertain whether it could be inferred that the Republic of Vietnam intended to award the CGWP to 1RAR as well. The words of the award referred to the courage of the soldiers of the 173<sup>rd</sup> Airborne Brigade in a number of operations over four years. 1RAR had participated in all the cited operations in 1965 and 1966.

43. The citation also referred to the award being made to the 173<sup>rd</sup> Airborne Brigade and its 'detached and subordinate units'. In the United States translation of this award to the DAGO, this became 'attached and assigned units'. It would appear that the United States authorities interpreted 'detached' as 'attached' which would accord with the intention of the Republic of Vietnam citation. The Tribunal has found that 1RAR was attached to the 173<sup>rd</sup> Airborne Brigade and was also subordinate to it. This leads to the conclusion that the Republic of Vietnam intended the CGWP to be awarded to 1RAR as a subordinate unit of the 173<sup>rd</sup> Airborne Brigade. The Tribunal finds that the Republic of Vietnam intended that the CGWP be awarded to 1RAR as a detached unit when it made the award to the 173<sup>rd</sup> Airborne Brigade on 10 July 1970.

*Extraordinary or Unusual Circumstances*

44. The Guidelines for the acceptance of foreign awards during the Vietnam War required the foreign government to approach the Australian government through diplomatic channels and offer the award. The Australian government would decide whether or not to accept the award after assessing whether there was a more suitable Australian or British award. If the Australian government decided to accept the award it would seek permission from the Queen for the acceptance of the award. If the Queen assented, the Australian Government would give its permission for the person or unit to accept the award.

45. In 1997 the procedure changed. At this time the Governor-General had carriage of the procedure for the acceptance of foreign awards. The Guidelines promulgated by the Governor-General were similar to the guidelines operating during the Vietnam War except it was no longer necessary to seek the Queen's permission. The new guidelines also contained an exception to the general procedure. If there were extraordinary or unusual circumstances, permission for the acceptance of foreign awards might be given by the Governor-General without a formal approach through diplomatic or official channels.

46. The first issue for the Tribunal to address is whether these Guidelines applied to Mr Larsen's application to have the CGWP awarded to 1RAR. Mr Larsen's application was made when his application was lodged on 16 June 2011. On that date the 1997 Guidelines applied. For this reason the Tribunal finds that the Guidelines that applied to Mr Larsen's application were the Guidelines promulgated in 1997.

47. The second issue is whether extraordinary or unusual circumstances applied in this matter. It is no longer possible for the Republic of Vietnam to approach the Australian government officially to advise of its intention, because that government ceased to exist in 1975. There is evidence that the Republic of Vietnam intended the CGWP be awarded to 1RAR as a detached unit of 173<sup>rd</sup> Airborne Brigade and the Tribunal has found that it was their intention.

48. The Tribunal is not able to say why 1RAR was not included in the list of attached units set out in DAGO 51 of 1971. The documents prepared at that time indicate that there was no existing list of attached units and the list was drafted after consultation with various officers who had served with the 173<sup>rd</sup> Airborne Brigade. By 1971 five years of war had passed since 1RAR had been attached to the 173<sup>rd</sup> Airborne Brigade. It seems likely that those who were asked to compile the list of units were no longer aware that 1RAR had been an attached unit. There may be some merit to Mr Larsen's argument that 1RAR was left off the list because of bureaucratic error. Significantly when past members of 1RAR approached the Society of the 173<sup>rd</sup> Airborne Brigade, the Society went out of its way to ensure that 1RAR was included in the award of the MUC. The United States Government amended the DAGO to include 1RAR. Every effort has been made by the Society of the 173<sup>rd</sup> Airborne Brigade to assist 1RAR with respect to the award of the CGWP.

49. The courts have considered the meaning of special circumstances or special reasons in a number of cases. They have determined that the meaning will depend upon the purpose for which the power is given, what distinguishes this case from the usual case and whether the result would be unfair if the circumstances were not taken into account (*Angelakos v Secretary Department of Employment and Workplace Relations* [2007] FCA 25). The Tribunal notes that the purpose of clause 14 was to enable persons to accept a foreign award where it was no longer possible to approach the foreign government concerned. This circumstance applied in this matter. This was not a usual case because it occurred nearly 40 years ago during the Vietnam War. When the situation was drawn to the attention of the United States Government it supported 1RAR's application. The Tribunal has found that it was intended that 1RAR be awarded the CGWP. Given all these circumstances the Tribunal concludes that extraordinary circumstances apply and the exception to the usual procedure should apply in this case.

50. Given the Tribunal's finding that clause 14 of the *Guidelines Concerning the Acceptance and Wearing of Foreign Honours and Awards by Australians* apply in this case, the Tribunal determines that it should recommend to the relevant Minister, the Minister for Defence that the strength of 1RAR and its attached units that served in Vietnam between May 1965 and May 1966 be awarded the Republic of Vietnam Cross of Gallantry with Palm Unit Citation..

51. The Tribunal was provided with the Minute paper prepared by Major Tilbrook of the Australian Army History Unit on 15 April 2002 in relation to the award of the MUC to 1RAR. The purpose of the Minute was to identify the units attached to 1RAR when it was attached to the 173<sup>rd</sup> Airborne Brigade between June 1965 and May 1966 to ensure that those units were included in the award of the MUC. In the Tribunal's opinion the units included for the award of the MUC should be regarded as attached units for the purpose of the award of the CGWP.

## **DECISION**

52. The Tribunal has decided to set aside the decision of the Directorate of Honours and Awards not to recommend that the 1st Battalion, the Royal Australian Regiment be awarded the Republic of Vietnam Cross of Gallantry with Palm Unit Citation and substitutes its decision to recommend to the Minister for Defence that the 1st Battalion, the Royal Australian Regiment and its attached units that served in Vietnam between May 1965 and May 1966 should be awarded the Republic of Vietnam Cross of Gallantry with Palm Unit Citation.