



Australian Government

Defence Honours and Awards Appeals Tribunal

Stretch and the Department of Defence [2015] DHAAT 07 (18 March 2015)

File Number(s) 2014/028

Re **Mr John Leddin Stretch**
Applicant

And **Department of Defence**
Respondent

Tribunal Professor D. Horner AM (Presiding Member)
Ms N. Isenberg

Hearing Date 5 February 2015

DECISION

On 18 March 2015 the Tribunal decided to recommend to the Minister that the decision of the Department of Defence not to review Mr John Stretch's request that Mr Peter Fraser be recognised by the award of the Medal for Gallantry be affirmed.

CATCHWORDS

DEFENCE HONOUR – Defence honour – medal for gallantry – Mention in Despatches – other acts of gallantry – in action – hazardous circumstances – worth of recognition

LEGISLATION

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

Gallantry Decorations Regulations 1991

Defence Force Regulations 1952 – Reg 93B Sch 3

REASONS FOR DECISION

Introduction

1. The applicant, Mr John Leddin Stretch (Mr Stretch), seeks review of a decision of the Department of Defence not to review his request for Mr Peter Fraser to be recognised by the award of the Medal for Gallantry (MG) for Mr Fraser's service in South Vietnam during 1967-1968. Mr Fraser was then a Second Lieutenant and commander of 2 Platoon, A Company, 3rd Battalion, The Royal Australian Regiment (3 RAR), Although the Military Cross (MC) was the relevant honour at the time, it has now been replaced by the MG in the Australian Honours System.

2. On 2 March 2009 Mr Stretch, on behalf of the men of A Company 3 RAR, wrote to the Parliamentary Secretary for Defence Support, the Hon Dr Michael Kelly MP, requesting that Mr Fraser have his Mention in Despatches (MID) upgraded to an MG for his service in South Vietnam in 1967-1968.¹

3. On 3 April 2009 the Department of Defence's Assistant Secretary Personnel Support Services, Mr W. Traynor, replied to Mr Stretch stating that Mr Fraser's MID 'cannot now be upgraded'. On 17 March 2011 Mr Stretch made a second submission through Mr Fraser's local Federal Member of Parliament, the Hon Russell Broadbent, MP, the Member for McMillan. Mr Stretch was subsequently advised by phone that it was not possible to review the award.

4. On 11 February 2014 Mr Stretch provided a submission to the Tribunal's *Inquiry into Refused, Withheld and Forfeited Defence Honours and Awards*. On 27 March 2014 the Chair of the Tribunal advised Mr Stretch that his application was not within the Terms of Reference for the Inquiry but, should he agree to it, the submission could be reviewed as an individual review. Mr Stretch agreed to this course, formally seeking a review on 2 April 2014 of the decision of the Department of Defence not to review his request for Mr Fraser to be recognised by the award of the MG.

Tribunal Jurisdiction

5. Pursuant to ss 110VB(1) and 110VB(2) of the *Defence Act 1903* (the Defence Act) the Tribunal has jurisdiction to review a reviewable decision relating to a defence honour 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 to refuse to recommend a person for a Defence honour in response to an application.

6. The Commanding Officer of 3 RAR, Lieutenant Colonel J. J. Shelton, recommended Second Lieutenant Fraser be awarded the MC. The Commander 1st Australian Task Force (1 ATF), Brigadier C.M.I. Pearson, downgraded this recommendation to an MID. This downgrade was also recommended by the Commander Australian Force Vietnam, Major General A.L. MacDonald, and 2nd Lt

¹ The letter actually said 1967, but this is an error. 3 RAR served in Vietnam in 1968, having arrived in Vietnam on 20 December 1967.

Fraser was subsequently awarded the MID. Mr Stretch is not formally seeking to review Brigadier Pearson's decision, but rather is seeking to review the decision of the Department of Defence not to review the decision.

7. Section 110VA of the Defence Act provides that an application for a review can only be made by the person who made the application for a Defence honour. Mr Stretch applied to the Parliamentary Secretary for Defence to have the recommendation to award Mr Fraser the MID reviewed. This was denied by the Department of Defence. The Tribunal was satisfied that Mr Stretch had made a request for a review of a reviewable decision.

8. Regulation 93B of *Defence Force Regulations 1952* defines a Defence honour as those honours set out in Part 1 of Schedule 3. Included in the Defence honours set out in Part 1 is the MC, MG and MID.

Conduct of the review

9. In accordance with its *Procedural Rules 2011*, on 16 April 2014 the Tribunal wrote to the Secretary of the Department of Defence informing him of Mr Stretch's application for review and requesting that he provide a report. On 3 June 2014 the Director of Honours and Awards, on behalf of the Secretary, provided the Tribunal with a report. In that report the Directorate recommended that the decisions of the commanders at the time to award 2nd Lt Fraser the MID be affirmed.

10. The Tribunal met on 11 December 2014 when it considered the material provided by Mr Stretch and the Department of Defence. The Tribunal conducted a hearing on 5 February 2015 when it heard oral evidence from Mr Stretch and three other people who had written statements in support of his submission, namely, Major General B. W. Howard AO, MC, ESM (Retd) (by phone), Mr T. Tonking and Mr K. Allender. During the hearing Mr Stretch asked if the Tribunal would hear from Mr P. McCrohan, and the Tribunal agreed. The Tribunal invited the Department of Defence to send a representative to support its submission and the Tribunal heard from Major General R. Burr DSC, AM, MVO, (Deputy Chief of Army). The Tribunal also invited Brigadier J.J. Shelton, DSO, MC (Retd), who had commanded 3 RAR in Vietnam, to appear by phone and he agreed. Mrs G Heard, Staff Officer Ceremonial-Army was present throughout the hearing and was invited to cross-examine witnesses and make submissions.

Background

11. Second Lieutenant Fraser served as the commander of 2 Platoon, 3RAR during the battalion's first tour of duty in South Vietnam, from 20 December 1967 to 5 December 1968.² During that time A Company, commanded by Major B. W. ('Hori') Howard was involved in a series of major operations. These included the Battle of Ba Ria (1-2 February 1968), Operation Pinnaroo in the Long Hai Hills (27 February-15 April 1968), the Battle for Fire Support Base Balmoral (25-28 May), and Operation Capital (12 October-8 November 1968).

² Fraser's service in Vietnam finished on 28 November 1968

12. According to the citation for his MID (See Appendix A), in the Battle of Ba Ria, 2nd Lt Fraser displayed 'initiative, determination and calm leadership' in commanding his platoon. Similarly, according to his citation, in a contact on 19 October 1968 he showed 'resourceful eldership and daring' in commanding his platoon.

13. After the Battle of Ba Ria two personnel who were involved received 'immediate' awards. These were 2nd Lt Roger Tingley, who commanded 3rd Troop, A Squadron, 3rd Cavalry Regiment, and Corporal John Davis, the company medical assistant for A Company, 3 RAR.

14. On 20 November 1968 the Commanding Officer of 3 RAR, Lieutenant Colonel Shelton, submitted form AF-W3121 – *Recommendation for Honours or Awards* to the Commander 1 ATF, in which he recommended 2nd Lt Fraser for the MC. Brigadier C.M.I. Pearson had taken over from Brigadier R. L. Hughes as Commander 1 ATF on 20 October 1968. Hughes had been Commander 1 ATF at the time of the Battle of Ba Ria and also, (on his last day as Commander) during the contact on 19 October 1968. Brigadier Pearson downgraded the recommendation for 2nd Lt Fraser from MC to MID and forwarded it to the Commander Australian Force Vietnam (AFV) on 12 December 1968. The Commander AFV, Major General A. L. McDonald, confirmed the recommendation for the MID and forwarded it to Army Headquarters on 31 December 1968.

15. On 17 January 1969 the Hon Phillip Lynch, Minister for the Army, forwarded a letter to the Hon Allen Fairhall, Minister for Defence, providing a list of periodical operational awards for consideration. The letter had been counter-signed by Major General C. E. Long, Adjutant General on 16 January 1969. The letter included the recommendation that 2nd Lt Fraser be awarded the MID. The letter also included recommendations that Lt Col Shelton be awarded the Distinguished Service Order (DSO) and the Major Howard be awarded the MC. These awards were gazetted on 6 March 1969 as Periodical (Operational) awards.

Eligibility Criteria for Military Cross and Mention in Despatches

16. Section F of the *Pamphlet on Military Honours and Awards* (WO 12922) dated July 1960 provides the description and conditions of the Imperial awards available during the Vietnam War.

17. The MC was available to be awarded to officers (up to the rank of major) and warrant officers 'for gallant and distinguished service in action against the enemy'.

18. The MID was available to be awarded to all ranks 'for an act of bravery or for continuous good work over a long period'. Paragraph 5 of the Pamphlet states that the MID may be 'awarded for either gallant or distinguished service'.

19. The Pamphlet states that operational awards for service in a campaign were to be made on a scale based on the average strength of the force deployed. The normal scale was 1 in 250 for decorations and 1 in 150 for MID every six months. This operational scale, also known as the 'quota', was applied by the Australian Government during the Vietnam War for Army units.

Eligibility Criteria for the Medal of Gallantry

20. The *Commonwealth of Australia Gazette* (CAG) No S25 dated 4 February 1991, creates the awards of the Star of Gallantry; the Medal for Gallantry; and the Commendation for Gallantry by Letters Patent, which provides recognition for members of the Defence Force and certain other persons who perform acts of gallantry in action. The conditions for these awards are referred to as the *Gallantry Decorations Regulations 1991* (the Regulations). The Regulations were amended in CAG No. S420, dated 6 November 1996.

21. The Regulations as amended, stipulate the following conditions for award of decorations at Regulation 3:

(1) The Star of Gallantry (SG) shall be awarded only for acts of great heroism or conspicuous gallantry in action in circumstances of great peril.

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

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

Mr Stretch's Submission

22. Mr Stretch was a National Serviceman who served in A Company 3 RAR in South Vietnam from 20 December 1967 to 2 April 1968. Mr Stretch states that he provided his submission on behalf of the men of A Company 3 RAR, and in particular those of 2 Platoon who served under 2nd Lt Fraser. Mr Stretch had served in 2 Platoon before going to Vietnam, but in Vietnam served as Major Howard's batman.

23. Mr Stretch initially claimed that 2nd Fraser's recommendation for an MC was downgraded because of the 'quota system' that limited the number of awards, but did not press this submission at the hearing. He wrote:

The argument restricting Fraser's award to a MID is grossly unfair, inequitable and un-Australian. Fraser currently shares an award with a number of servicemen who 'did not go out through the wire'. This submission does not in any way play down the important roles played by excellent performing support services in Vietnam. Those who served with Fraser and close to the situation at the time in Vietnam, including a number of senior officers, remain totally convinced that the downgrade was due to the quota system.

24. Mr Stretch also argues that the government should give the same consideration to his submission as was given to the soldiers who served at Long Tan. As a result of a review of the Battle of Long Tan several officers had their awards upgraded. This submission also was not pressed at the hearing, and his contention was that the case in favour of the award to Fraser stood on its merits.

25. Mr Stretch claimed that the significance of the Battle of Ba Ria has not been fully appreciated:

At that battle Peter Fraser clearly excelled in courage and leadership which was for him and his platoon the start of an outstanding service in Vietnam. We, the men who served with Fraser, saw him on a number of occasions put his life on the line, displaying outstanding leadership and bravery.

26. In his oral submission Mr Stretch stated that since 1968 when Fraser was recommended for the MC new compelling evidence had come to light which should now be considered. In particular he referred to an account of the Battle for Ba Ria, prepared in 2011 and the book by Michael English, *Brave Lads*, published in 2008. These referred to Fraser leading an assault across a road to rescue US advisers in a building. Major Howard had told Fraser that it was critically important to relieve the US advisers as soon as possible. Mr Stretch claimed that 21 personnel served in 2 Platoon during its tour in Vietnam, four personnel were killed and 21 wounded, and that the platoon had 47 contacts of some nature.

27. In his written submission Mr Stretch provided statements from:

- Mr T. Tonking, who was a section commander in Fraser's platoon.
- Mr K. Allender, Fraser's batman for at least part of the tour, including the Battle of Ba Ria.
- Major General B. W. Howard, AO, MC, ESM (Retd), OC A Company 3RAR in Vietnam.

28. In response to the Tribunal forwarding him a copy of the After Action Report for the contact on 19 October 1968, on 16 February 2015 Mr Stretch provided an additional submission in the form of a Summary of Operation Windsor/Capital, written by Howard, Fraser and Mr Paul McCrohan.

29. In his written statement Mr Tonking states that he 'witnessed first-hand [Fraser's] leadership and outstanding aggression and bravery when in battle. He was an inspirational platoon commander and I have no doubt that a number of us soldiers who served under him are alive today due to his courage and leadership.' He claims that 'Baria was one of the heaviest and most successful actions seen by a rifle company in Vietnam'.

30. In his oral evidence Mr Tonking stated that he had returned home from Vietnam on 23 July 1968. During the Battle for Ba Ria, as a lance corporal, he had been acting commander of the section that provided covering fire while Fraser crossed a road under fire and entered a building.

31. In his written statement Mr Allender states that in the Battle of Ba Ria 'Fraser was tenacious. Under heavy fire and with little regard for his own safety, he charged the compound breaking down doors and meeting the enemy front on. We had a number of soldiers wounded but none were killed. Our success was largely due to Fraser's tactics, speed and aggression'. Later that day the platoon was under attack with rocket propelled grenades and machine gun fire. Fraser 'was calm, measured and in absolute control. Without that I have no doubt the results would have been devastating'.

32. In his oral evidence Mr Allender stated that he served as Fraser's batman and returned to Australia in August 1968. He stated that during the battle for Ba Ria he saw Fraser lead an assault by crossing a road 20 metres wide and breaking down a door in a building before entering it. Later in the day at another compound Fraser was knocked down by an RPG blast but recovered to continue leading his platoon.

33. In his written statement Major General Howard stated that he is in no doubt that Fraser's 'bravery and coolness under fire during the Battle for Ba-Ria, 1-2 February 1968 alone merited higher recognition'. 'Fraser led the assault personally and largely through his personal bravery it succeeded in rescuing the American Advisers.' Howard also referred to the contact on 19 October 1968 when 2 Platoon suffered two killed and five wounded after an attack by an enemy company. Fraser 'controlled both artillery and air support during this extremely heavy contact as well as manoeuvring his platoon in such a way that the enemy could not launch a final assault which would have undoubtedly over-run his understrength platoon'.

34. In his oral evidence Major General Howard stated that he saw Fraser lead the assault to relieve the US advisers. He cannot remember clearly, but believes that he might have nominated Fraser for an award immediately after the battle of Ba Ria. He added that after the Battle of Ba Ria he wrote an After Action Report that was apparently lost and he was required to submit a second report, which he did on 22 March 1968. The brevity of that report (it was nonetheless seven typed pages) might, he thought, have contributed to any shortcomings in the account of the battle in the Official History.

35. Major General Howard stated that Fraser's conduct in the contact on 19 October 1968 was perhaps even more praiseworthy than his performance in the battle of Ba Ria. Fraser's under-strength platoon was attacked by a much larger enemy force. He conducted a withdrawal while controlling artillery and air support. Major General Howard stated that after this action he again submitted Fraser's name for an award. He stated that the subsequent citation for Fraser's nomination for the MC was written in Battalion headquarters and he did not write it.

36. Mr Paul McCrohan gave oral evidence. He served throughout the tour in Vietnam as a lance corporal and second-in-command of a rifle section in 2 Platoon. He was not present for the battle of Ba Ria but was present for the contact on 19 October when he was acting as Fraser's radio operator. He witnessed Fraser calling for artillery and air support during the contact. Like the other members of the platoon, the members of platoon headquarters were under enemy fire and also were receiving shrapnel from the artillery that was called in very close to the platoon position.

Defence's Submission

37. The Defence submission argued that the recommendation that Fraser's award be downgraded from MC to MID was made by an authorised superior officer and upheld by the Commander AFV and the Adjutant General. The recommendation was not eligible to be reviewed as part of the End of War List as the recommendation did

not meet the criteria: the downgrade occurred in theatre by the Commander 1 ATF and not in Australia³.

38. Defence acknowledged that there was a 'quota' system, but this was applied 'in accordance with the policy in place at the time as determined by the Sovereign'. Further, Defence claimed:

There is no evidence that the quota policy was the reason that the recommendation by the CO 3 RAR for a MC was downgraded to a MID. Of the 67 recommended honours submitted to the Minister for Defence on 17 January 1969, including the recommendation for 2LT Fraser, 24 recommendations were downgraded at various stages of the process.

39. Defence based much of its argument against reviewing the award on views expressed in the Tribunal's report *Inquiry into Unresolved Recognition for Past Acts of Naval and Military Gallantry and Valour*, (the Valour Inquiry) where the Tribunal adopted the following guidelines when reviewing each case:

To undertake a process review to determine whether due process had been followed. If due process had been followed, if there was no maladministration, and if there is no new evidence, then the original decision should remain unchanged.

Defence argued that the use of the quota system did not constitute maladministration.

40. Defence referred to the three officers who served at Long Tan who had their awards upgraded. Defence pointed out that the Valour Inquiry stated that the Long Tan awards were upgraded 'not on evidence of a flawed process but as a result of reconsiderations of the circumstances with the advantage of 40 years of hindsight', and that 'such an approach would open the possibility of reviewing all decisions made contemporaneously by a competent authority'. Defence argued that if Fraser's award were to be upgraded it would have 'the potential to create an unsustainable situation whereby every legitimate recommendation, processed in accordance with the policy and procedures and was downgraded could be reviewed'.

41. Defence also examined Fraser's citation and stated that:

The citation that CO 3 RAR wrote reflects that he thought highly of 2LT Fraser and intended to recognise the length of his service in Vietnam. This is evident in the reference to his participation in multiple operations spanning the length of his deployment as well as the summation of his service in the final paragraph of the citation; *'By his coolness under fire, consistent and sound leadership he has led his platoon with distinction'*.

³ In the late 1990s the Howard government set up an interdepartmental committee and a subsequent independent review panel to review awards from the Vietnam War. The review was confined to awards that had been recommend at the highest level in Vietnam but subsequently altered or denied in Australia. The new or revised awards were announced in the End of War List.

The citation indicates that 2LT Fraser was not recommended only for gallant and distinguished service in action against the enemy as required for the MC, but for his excellent leadership and personal courage for the duration of his deployment. The citation is more reflective of good work over a long period as required for an MID.'

42. Defence claimed in its written submission that Mr Stretch had not provided any additional information to that which was available to the commanders at the time. Defence stated that '...it is important to note that while the incident [at Ba Ria] is identified in the citation it is not the sole reason for the recommendation, particularly given the recommendation was not submitted until 20 November 1968, nine months after the incident. The recommendation cites a number of operations and actions that 2LT Fraser was involved [in] as a means of highlighting his overall leadership and personal courage in commanding his platoon for the duration of his deployment'.

43. Defence recommended in its submission that the decisions of the commanders of the time to award 2nd Lt Fraser the MID be affirmed.

44. In his oral submission, Major General Burr reiterated the case set in Defence's written submission. He further argued that 'a case of maladministration or new evidence does not of itself justify recommending an Australian honour. Any approach to a review should be sustainable, equitable and transparent, and above all maintain the integrity of the Australian honours and awards system'. Further, he stated: 'Army does not believe that it is appropriate to apply contemporary standards to events that occurred at a different time to that which we live today'.

45. The Tribunal pointed out to Major General Burr that it was bound under the *Defence Act 1903* to review a reviewable decision, but that there was no mention in the Act about the Tribunal being bound to take into account the integrity of the Australian honours system. Major General Burr still asked the Tribunal to take it into account.

Evidence of Brigadier Shelton

46. From its own research the Tribunal decided that it might be useful to hear evidence from Brigadier J. J. Shelton, DSO, MC (Retd), who was the commanding officer of 3 RAR during its 1967-68 tour in South Vietnam, and who had nominated 2nd Lt Fraser for the MC. Brigadier Shelton stated that he understood that there was a quota of awards and tried to keep his nominations within the quota. Brigadier Hughes had told him that he could put forward between 17 and 19 nominations for awards. He discussed the performance of officers and soldiers with his company commanders but he did not speak directly to Howard about who he was nominating. The citations were prepared in Battalion Headquarters. He did not personally deliver his list to Brigadier Pearson and did not discuss his nominations with Pearson. He believed that Fraser should have been awarded an MC and accepts that he might have been at fault for not writing the citation in such a manner to ensure that the MC was awarded. He was disappointed when he later learned that Fraser was awarded an MID not an MC. He did not know who had downgraded it. In response to a question from Mrs Heard, Brigadier Shelton agreed that he wanted to recognise Fraser's entire tour of duty, while giving some emphasis to the Battle of Ba Ria.

The Battle for Ba Ria

47. An account of the battle of Ba Ria is provided in the Australian official history, by Ian McNeill and Ashley Ekins and is reproduced at Appendix B.⁴ The Tribunal drew on other sources, including:

- Paul Anderson, *When the Scorpion Stings, The History of the 3rd Cavalry Regiment, South Vietnam, 1965-1972*, Allen & Unwin, Sydney, 2002
- Gary McKay and Graeme Nicholas, *Jungle Tracks, Australian Armour in Viet Nam*, Allen & Unwin, Sydney, 2001
- Ray Stuart (ed.), *3 RAR in South Vietnam 1967-1968*, Printcraft Press, 1969.
- 'The Battle for Ba-Ria 1-2 February 1968: Account of the battle by those who fought it', paper provided by Mr Stretch. It was published in the magazine *Australian Infantry* in 2011.
- Maj B. W. Howard, 'Combat After Action Report, 22 March 1968' (covering the action on 1-2 February 1968), AWM98, R698/1/5.
- Michael C. English, *Brave Lads: The 3RAR Tour of Duty in South Vietnam 1967-1968*, AHMP, Loftus, NSW, 2008

48. These accounts enabled the Tribunal to gain a better understanding of the Battle for Ba Ria. A Company 3 RAR had only two platoons rather than its normal strength of three platoons. 3 Troop A Squadron, 3 Cavalry Regiment had only nine APCs rather than its proper establishment of 13 APCs. Major Howard recounted that his force's total strength was about 85 personnel. He was led to believe that he was opposed by two VC platoons. In fact he was opposed by a VC battalion with a strength of two to three hundred soldiers.

49. The Official History gives little space to the assault by 2 Platoon to clear the VC from the area around the US complex at Ba Ria. This was the assault which was led personally by 2nd Lt Fraser. As a result of this action Corporal Philip ('Spider') Williams, who was acting platoon sergeant, was awarded an MID.

50. In the narrative, 'The Battle for Bar Ria 1-2 February 1968', 2nd Lt Fraser provided his own account of the battle. He wrote that after Corporal Strain was wounded he (Fraser) crossed the road with Strain's section in line abreast formation. He wrote that he 'approached the front door of the house and contacted the occupants. The key to a padlock was produced by one of the occupants and the door was opened to allow us to enter the building'.

51. English's book was written after interviewing several participants, including Fraser. In the book, Fraser is quoted as saying (page 82) that the first half of Corporal Strain's section crossed the road first and that next he (Fraser) crossed the road with the second half of Strain's section. Further, English wrote that 'Fraser and several of his soldiers realised that a large padlock secured the main entrance. He felt that he

⁴ Ian McNeill and Ashley Ekins, *On the Offensive, The Australian Army in the Vietnam War, January 1967 to June 1968*, Allen & Unwin in association with the Australian War Memorial, Sydney, 2003, pp. 305-309.

and his platoon had suddenly gone from crusading heroes to “Avon ladies” as he gingerly rang the doorbell – and a very nervous person opened the door’ (page 85).

52. Similarly, the Official History gives little space to 2 Platoon’s efforts to rescue a US CIA civilian and the Australian warrant officer later in the day at Ba Ria. The history merely says that 2 Platoon was isolated and was not withdrawn until just before last light. There is no mention that during this battle Corporal Davis provided medical assistance to wounded soldiers and was awarded an immediate Military Medal.

53. Although the Battle for Ba Ria is mentioned in the citation from Fraser’s MID, he is not mentioned in the Official History. The Official History (in a footnote) mentions that 2nd Lieutenant Tingley of 3 Cavalry Regiment was awarded an MC for the action but fails to mention that his troop sergeant, Sergeant John Murphy, was awarded an MID. Also there is no mention that Captain John Coggan of 161 (Independent) Reconnaissance Flight was awarded a Distinguished Flying Cross for his support of A Company later in the day. So in a battle in which seven participants (the above-mentioned participants and Howard, whose MC citation referred to the Battle for Ba Ria) were awarded decorations for bravery, only two, Howard and Tingley, are mentioned in the Official History.

54. In the context of the operations conducted by 1 ATF during 1968 the Battle for Ba Ria was a most significant company-level battle, one in which a small Australian force defeated a VC battalion in the unfamiliar environment of a built up area.

55. These comments are not meant as criticism of the Official History. The official history is focussed at the Task Force level and it had limited space to describe the multitude of operations carried out in the period covered by the volume. Nonetheless the comments above indicate that with hindsight there were more aspects to the battle than have previously been recognised.

Contact on 19 October 1968

56. The Official History makes no mention of the contact conducted by 2 Platoon on 19 October 1968 even though similar contacts are described throughout the Official History. Perhaps the contact was overlooked because it took place the day before Brigadier Hughes handed command of 1 ATF to Brigadier Pearson. To understand the contact the Tribunal drew on the Contact After Action Report of 30 October 1968 (AWM95, R7/3/66), on an account written by the soldiers on the A Company 3 RAR website, on English, *Brave Lads*, on Major General Howard’s statement submitted by Mr Stretch, and on the paper ‘Operation Windsor/Capital by Howard, Fraser and McCrohan submitted by Mr Stretch.

57. It appears that on 19 October 2 Platoon, with a strength of just 18 men (one account says 17 men), was mounting an ambush when it was attacked by an enemy company. The platoon suffered two killed and five wounded almost immediately. The battle lasted four hours before 2nd Lt Fraser could withdraw his platoon from the area. By then the platoon had lost another soldier wounded. Enemy casualties were seven killed and possibly another seven killed. In his oral submission Major General Howard said that in this contact his company was in more danger of being over-run by

the enemy that in any other battle they were involved in in Vietnam. As a result of his actions during this battle Private Kevin Booth was awarded the Military Medal.

58. The Official History noted that 1 ATF Operation Capital I and Operation Capital II lasted from 12 October to 30 November 1968 and involved all three of the Task Force's battalions as well as other units. Total Task Force casualties during this seven-week operation were four killed in action, one died of wounds and nine wounded in action. Enemy casualties were 46 killed, three wounded and two captured.⁵ Against these statistics, the contact by 2 Platoon on 19 October was significant. Within three days, A Company had accounted for some fourteen enemy killed and another seven possibly killed.

Tribunal Consideration

59. The first matter to be considered was whether the Tribunal had any discretion in the matter of considering the award of an honour. Defence argued that in its Valour Inquiry the Tribunal concluded that if the correct process was followed, if there was no maladministration, and if there was no compelling new evidence, the original decision should stand.

60. The Tribunal noted that in the Valour Inquiry the Tribunal had Terms of Reference which required it to maintain the integrity of the Australian honours system and identify any consequential impact any finding or recommendation may have on that system. While the Tribunal concluded that widespread retrospective recognition was generally not desirable, the Tribunal considered each case to determine if the correct process had been followed and whether there was any new, compelling evidence.

61. In considering an application for review the Tribunal was in a different situation to when it was conducting an Inquiry. For this review it had no Terms of Reference requiring it to maintain the integrity of the Australian honours system. On the contrary, under Part VIIC of the *Defence Act 1903*, if an application is properly made for a review of a reviewable decision, the Tribunal 'must review the decision'. That is, even if the process by which the original decision was made was correct, and if there was no maladministration, the Tribunal must still review the decision. The Tribunal was not persuaded by the argument that in reviewing a reviewable decision it was bound to take into account the integrity of the Australian honours system, except to note that integrity is maintained by ensuring that the criteria set out for a particular honour are met.

62. The second matter to consider was whether the 'quota' policy played a role in Brigadier Pearson's decision to downgrade Fraser's award from an MC to an MID. Defence argued that there was no evidence that the quota policy was the reason Brigadier Pearson downgraded the recommendation. It could just as easily be argued, however, that there is no evidence that it did not play a role. Brigadier Pearson would have been aware of the quota policy and he might well have decided to make his recommendations with that policy in mind, aware that if he did not apply the quota,

⁵ Ashley Ekins with Ian McNeill, *Fighting to the Finish, The Australian Army in the Vietnam War, 1968-1975*, Allen & Unwin in association with the Australian War Memorial, Sydney, 2012, p. 726.

then it would be applied by a higher authority anyway. The Tribunal heard that Brigadier Hughes, Lieutenant Colonel Shelton and Major Howard were all aware of the quota system.

63. Assuming that Brigadier Pearson did not consider the quota policy when downgrading the recommendation, the Tribunal then considered another matter that might have caused him to downgrade the recommendation. This is the actual wording of Fraser's citation (which is reproduced at Appendix A). Defence argued that Fraser's citation indicates that his commanding officer thought highly of him and intended to recognise the length of his service in Vietnam. Defence claimed that he was recommended not 'only for gallant and distinguished service in action against the enemy as required for the MC, but for his excellent leadership and personal courage for the duration of his deployment. The citation is more reflective of good work over a long period as required for an MID'. In fact, the Tribunal found that there was no mention of 'gallant and distinguished service' in the actual citation. Furthermore, in his evidence, Brigadier Shelton said that he wished to recognise Fraser's entire tour with an emphasis on the Battle of Ba Ria.

64. The Tribunal accepted that Fraser's citation could be read in the manner outlined by Defence. The Tribunal also noted that the citations for the MC for Major Howard and for another 3 RAR officer, Major Peter Phillips, refer to their performance over the entire period of their service in South Vietnam. Clearly there was an acceptance at the time that an MC could be awarded for leadership and courage over a sustained period.

65. The Tribunal noted that the eligibility criteria for an MID refer to 'an act of gallantry or for continuous good work over a long period', and elsewhere that the MID may be 'awarded for either gallant or distinguished service'. It was unclear whether Fraser was awarded the MID for a specific act of gallantry or for continuous good work over a long period. Because his citation refers to 'initiative, determination and calm leadership' at Ba Ria, 'resourceful leadership and daring' in October 1968, resolute leadership on Operation Pinaroo, and his participation in all A Company operations, the Tribunal preferred the view that the latter was the basis for the award. .

66. The Tribunal noted that it was reviewing a decision not to review an application for Fraser to be awarded an MG. The End of War List stated that the MG was equivalent to the MC. This equivalency was used by the End of War List review panel as a means of rectifying problems that arose from decorations being downgraded in Canberra. The document is a guide for equivalency but does not suggest that, for example, the MC is identical to the MG. The eligibility criteria for the MC and the MG are slightly different. The MC was '*for gallant and distinguished service in action against the enemy*'. By implication, the gallant and distinguished service could take place over a period of time, without any specific act of gallantry being identified. By contrast, the MG '*shall be awarded only for acts of gallantry in action in hazardous circumstances*'. That is, there must have been at least one specific act of gallantry.

67. Defence argued that it did 'not believe that it is appropriate to apply contemporary standards to events that occurred at a different time to that which we

live today'. The Tribunal concluded that since it was reviewing a decision concerning an MG it was bound to use the criteria for that honour.

68. The Tribunal considered that for Fraser to be awarded the MG he would need to have conducted a particular act of gallantry and that there needed to be witnesses to this act.

69. Mr Stretch argued that there was new evidence and drew on his own evidence, the evidence of witnesses such as Howard, Allender and Tonking, and the accounts in the 'The Battle of Ba Ria 1-2 February 1968' and the English book, *Brave Lads*. The only specific act of gallantry attributed to Fraser was the assault on the house with the US advisers on 1 February 1968. The Tribunal heard or was presented with conflicting evidence about this act. On one hand it was led to believe that Fraser ran across the road by himself, under fire, and kicked down the door of the house, thereby rescuing the US advisers inside. On the other hand, the Tribunal has evidence from Fraser (in written accounts) that half a section was already across the road, and that he led the other half of the section across the road. He did not kick down the door but asked the occupants to let him in.

70. Mr Stretch provided well-researched submissions and his witnesses provided valuable first hand-evidence. However, the witnesses were unable to provide evidence of specific acts of gallantry at the CIA compound later on 1 February 1968 or in the contact on 19 October 1968.

71. On the basis of the findings in paragraphs 69 and 70 the Tribunal concluded that it would not be able to recommend the award of the MG to Fraser.

72. The Tribunal considered that in using the criteria for the MC as it applied in 1968, it may have been open to award an MC for gallant and distinguished service in action against the enemy over a period of time, without identifying a specific act of gallantry. The citation was, however, written in a manner that gave Brigadier Pearson the option of either confirming the recommendation for an MC or downgrading it to an MID. The Tribunal cannot use these criteria in considering Fraser for the MG.

73. If it could have used the criteria for the MC, the Tribunal considered, on the evidence available to it, Mr Fraser's command of 2 Platoon in the actions on 1 February and 19 October 1968 might have been worthy of the award of the MC. But as noted above, the criteria for the MC cannot be used to determine the award of the MG.,

74. The evidence presented by all the witnesses who served in Vietnam indicates that Fraser was an outstanding officer who led his platoon with great courage and ability. He has maintained the respect and affection of his men over the succeeding 47 years. The decision not to recommend him for the award of the MG was made within the tight constraints of the criteria for the award. He might well have carried out many acts of singular gallantry. But evidence of such acts was not presented to the Tribunal. This is the nature of operational service.

DECISION

75. The Tribunal decided to recommend to the Minister that the decision of the Department of Defence not to review Mr John Stretch's request that Mr Peter Fraser be recognised by the award of the Medal for Gallantry be affirmed.

Appendices

Appendix A Extract of the Recommendation for Honours and Awards, Second Lieutenant Peter Howard Fraser

Appendix B Extract from Ian McNeill and Ashley Ekins, *On the Offensive, The Australian Army in the Vietnam War, January 1967 to June 1968*, Allen & Unwin in association with the Australian War Memorial, Sydney, 2003, pp. 305-309.

Extract of the Recommendation for Honours and Awards, Second Lieutenant Peter Howard Fraser

Place..... NUI DAT, SOUTH VIETNAM..... Date..... 20th November, 1968.....

Second Lieutenant Peter Fraser enlisted in the Australian Regular Army on 14th January, 1965. He graduated from the Officer Cadet School on 10th December, 1966 and joined 3rd Battalion, The Royal Australian Regiment on 24th February, 1967. He arrived in South Vietnam on 27th December, 1967 as platoon commander, 2 Platoon, A Company.

On 1st February, 1968, during the Vietcong Tet Offensive, Second Lieutenant Fraser was given the task of locating and rescuing three American advisors who were besieged in Baria, capital of Phuoc Tuy Province. Through his initiative, determination and calm leadership his platoon saved the advisors and inflicted heavy casualties on the numerically superior enemy force.

Second Lieutenant Fraser continued to distinguish himself as a resolute platoon commander. On Operation Pinnaroo during mine clearing operations he became known for his steady control although under continuing stress and working under difficult conditions.

During Operation Capital in October, 1968 his platoon was engaged by an estimated battalion size force. His sections were subjected to heavy fire assault and it was only through his resourceful leadership and daring that he was able to break contact with the enemy. He then directed artillery and helicopter fire against the enemy causing them heavy casualties and forcing them to withdraw.

Second Lieutenant Fraser has participated in all A Company operations. By his coolness under fire, consistent and sound leadership he has led his platoon with distinction. His cheerful leadership and personal courage have been an inspiration not only to his platoon but to many officers and soldiers of the battalion.

Extract from Ian McNeill and Ashley Ekins, *On the Offensive: The Australian Army in the Vietnam War 1967 – 1968*, Allen & Unwin in association with the Australian War Memorial, Sydney, 2003, pp. 305-309.

Tet Mau Than, January–February 1968

305

to the approaching festival.⁸¹ South Vietnamese forces entered the Tet season with a relaxed attitude and seemed not particularly alert to the enemy threat. Not wishing to violate the festival period, Province Chief Nguyen Van Truoc purposely reduced the level of actions against the Viet Cong infrastructure.⁸²

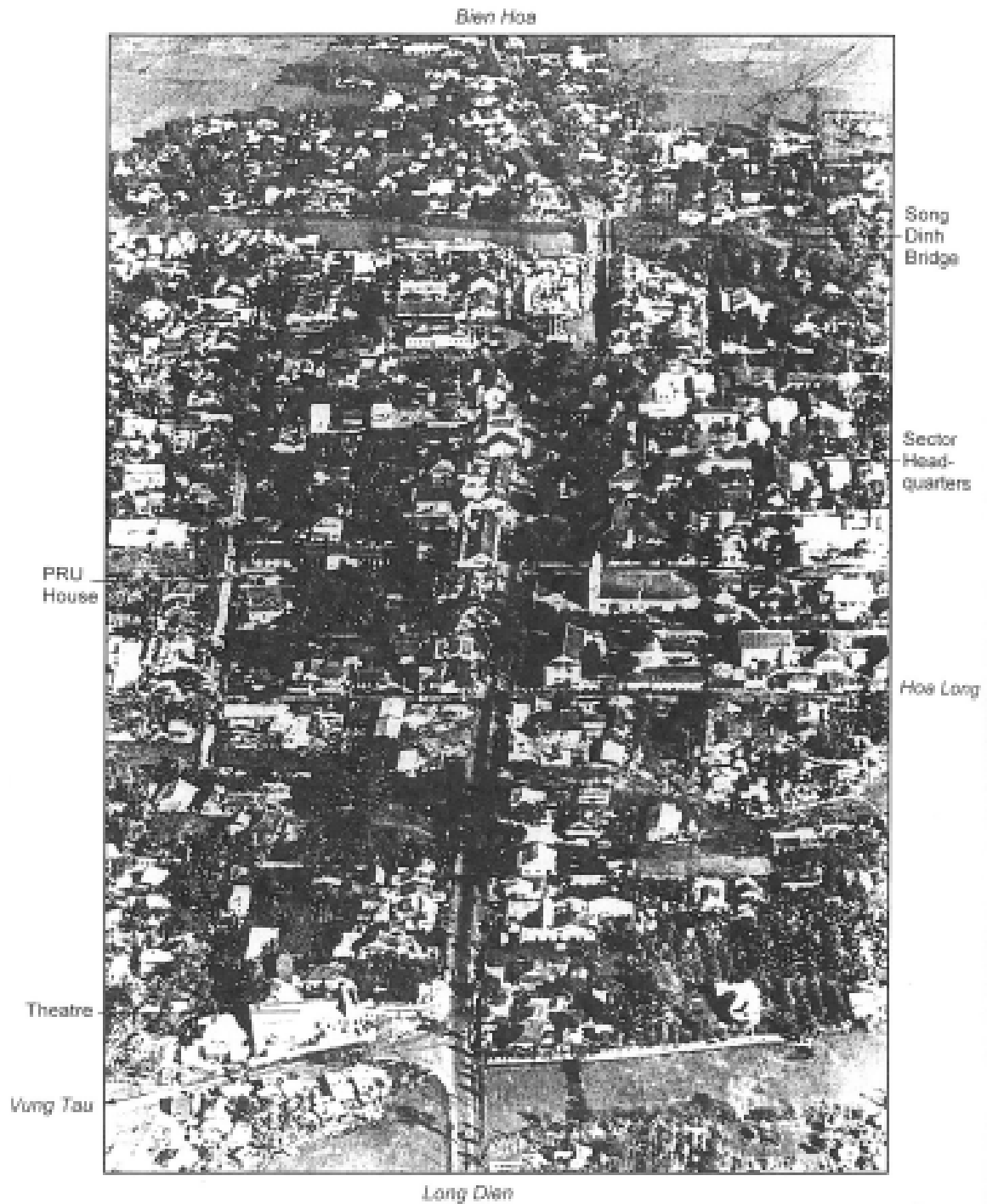
Meanwhile, Viet Cong preparations for a major offensive during Tet were proceeding. *D445 Provincial Mobile Battalion*, according to its commanding officer at the time, had been based in the Hat Dich during the build-up to Tet. With an effective strength of over 600 soldiers, it then moved in late January into concentration areas, which it occupied for a week, in the Nui Dinh and Nui Thi region. Its objectives were the provincial capital Ba Ria (population 15 683) and the district headquarters town of Long Dien (population 14 783) five kilometres to the east. Elsewhere in the province, some 1400 Viet Cong of the local forces and guerrilla cells were also preparing to join the offensive with attacks on district headquarters, installations and military posts.⁸³

In its approach march on Ba Ria, *D445 Battalion* used the general line of the power transmission lines north of Route 15 and west of Ba Ria. The enemy avoided military posts near Route 15 and crossed well clear of those posts in order to reach assembly areas to the south and south-east of the capital during the night of 31 January/ 1 February. Delays involved in moving out of the mountainous terrain of the Nui Dinh and Nui Thi by night meant that arrival in the assembly areas was behind schedule. This ultimately affected the battalion's ability to achieve its objective.⁸⁴

At 5.00 a.m. on 1 February, the Tet Offensive in Phuoc Tuy was launched with *D445 Battalion's* attack on Ba Ria. One element overran the Administration and Logistics compound while a second element attacked a house-complex used by the US special agency advisers in the south-east of the town. Another element occupied the hospital and established a first-aid station there while a fourth element, in co-ordination with local forces, isolated the prison and attacked the National Police Headquarters. A machine-gun post was established at the town theatre and snipers were sited on the cathedral. The headquarters of *D445 Battalion* located itself behind the provincial Public Health Service office. At least two companies were committed, as well as two platoons which attacked the Van Kiep Military Training Centre, about two kilometres to the north-east. By first light the NLF flag was flying over Ba Ria. A number of key installations in the town were either neutralised or isolated, the whole city seemed to have been infiltrated, and small-arms and rocket-propelled grenade launcher snipers were positioned throughout the built-up area.⁸⁵

The enemy forces might have achieved greater success, however, had not many of the attackers been strangers to the area. Some seemed confused about the layout of Ba Ria and unaware of the nature and location of South Vietnamese units defending the town.⁸⁶ As well as being disoriented, the Viet Cong appeared to be short of equipment and rations, demanding food or taking it by force from townspeople.⁸⁷ There was little indication that the population of Ba Ria assisted in helping the communists to overcome their disorientation. Further attacks developed, in particular on Sector Headquarters and the US advisers' complex, near the Province Reconnaissance Unit (PRU) installation. In the meantime, less intense Viet Cong attacks were being mounted elsewhere in the province, including at Long Dien, Hoa Long and Dat Do.⁸⁸

About 45 minutes after the attack in Ba Ria began, an area 300 metres west of the 'Heavyweight' compound occupied by Battery A 1/83d Artillery (US), close to the



Aerial photograph of provincial capital Ba Ria, showing major landmarks. An enemy attack at dawn on 1 February 1968 signalled the start of the Tet Offensive in Phuoc Tuy province. (Courtesy of SRAR)

south-western corner of the 1ATF base, received approximately 40 rounds of 82 mm mortar fire. About 25 of these rounds, suspected initially to be delay-fused, failed to detonate.⁵² Two RPG missiles were also directed at the Americans' compound. No damage or casualties were reported.⁵³ Although the enemy attack seemed half-hearted and was possibly a diversion, it was still a dramatic start for Colonel D.B. Dunstan, who had just arrived to take over as Deputy Commander of the task force from Colonel White on 30 January. As the senior commander at Nui Dat, Dunstan quickly found himself commanding the task force reserve in action during the Tet Offensive in Phuoc Tuy.

Soon after the offensive began to unfold across the province, the available combat elements of 1ATF at Nui Dat were committed to help stem the communist attacks in conjunction with South Vietnamese forces. The Province Chief, Nguyen Van Truoc, personally led a rescue force into the enemy-held part of Ba Ria, and the ARVN 52nd Ranger Battalion set about recapturing the area. At 8.15 a.m., the 1ATF Ready Reaction Force was despatched from Nui Dat in the APCs of 3 Troop, A Squadron, 3 Cavalry Regiment to assist in the defence of Sector Headquarters in Ba Ria. The force, comprising A Company, 3RAR, commanded by Major B.W. 'Horrie' Howard, less 1 Platoon (already committed to checking enemy movement detected west of the task force base), had been alerted earlier and briefed. On entering Ba Ria, the leading section of APCs came under light automatic weapon fire. They returned fire, killing two Viet Cong. Arriving at Sector Headquarters, the infantry dismounted and deployed under enemy rocket-propelled grenade and small-arms fire from the surrounding houses.⁵⁴

Leaving one carrier section for protection of the Sector Headquarters, Howard sent 3 Platoon, mounted in carriers, to deal with the enemy in the Administration and Logistics (A&L) Compound. Meanwhile the headquarters and 2 Platoon proceeded in APCs to the rescue of the US Army advisers in their complex. The carrier section with 3 Platoon evacuated some 28 allied and two Australian wounded from the A&L Compound. 2 Platoon began clearing and occupying the houses around the PRU and US complex. Heavy fighting ensued, with five Australians being wounded and evacuated along with the Americans. At this stage, 3 Platoon, engaging Viet Cong in bunkers at the A&L Compound, was reinforced and an airstrike was used in an attempt to clear other Viet Cong from nearby houses.

During the actions near the PRU location, the carrier section at Sector Headquarters had been continuing its defensive task. When another attack appeared to be developing from the Ba Ria Theatre, A Company (less 3 Platoon) was requested at 11 a.m. to move to that location to pre-empt the attack. Some two hours later, after further contacts, 2 Platoon mounted in APCs (assisted by an American civilian and an Australian warrant officer adviser) was sent to rescue an American civilian adviser trapped in his house in the US complex. This task was accepted because the adviser was holding important documents, and because the tactical situation appeared to have improved.

The mission fared badly, however. Both the American and Australian advisers were killed and the carrier troop commander and another Australian soldier were wounded. Two carriers were hit by RPGs and disabled, leaving 2 Platoon isolated. Company headquarters with its carriers moved in to assist. Although one company of the ARVN Ranger battalion launched an assault in mid-afternoon they were unable to penetrate

far. The withdrawal of both 2 Platoon and the disabled carriers was not achieved until just before last light, following an airstrike and reinforcement by 3 Platoon.

In the early evening of 1 February, A Company with the carrier troop moved to secure the eastern bank of the Song Dinh where the Route 15 bridge gave access from the west into Ba Ria. Ammunition was running low. An ARVN outpost was tentatively securing the western bank. The remaining casualties were evacuated from the town square in the late evening, under enemy fire, by a 161 Reconnaissance Flight OH-13 helicopter. Sporadic contact continued during the night, with some enemy elements withdrawing across the Song Dinh from Ba Ria. The next day, airstrikes on enemy elements continued both within Ba Ria and to the west of the bridge. In the mid-afternoon of 2 February, B Company 3RAR arrived in Ba Ria. With most of the enemy having withdrawn, its task was to escort A Company with its 3 Troop carriers back to Nui Dat.

Casualties for A Company and 3 Troop from the fighting so far were a total of 19 wounded in action, of whom seven remained on duty; enemy losses were 40 killed, and fourteen wounded but escaped.⁵⁷ The day-long series of contacts had been the first major action by any element of 3RAR. Although untrained for street fighting in built-up areas (for which the task force had no standard procedures), and lacking heavy infantry support weapons, A Company had performed outstandingly.

Vital to the success of the operation were the APCs of 3 Troop, courageously commanded by Second Lieutenant Roger Tingley.⁵⁸ The APC's troop-carrying capacity, direct fire support, ground-holding capability in conjunction with the infantry, and source of infantry ammunition re-supply were all of inestimable value. As Major Howard later remarked, in street fighting suppressive fire was needed to help movement across street junctions. 'Someone said once that fighting in a built-up area takes a lot of ammunition', Howard remarked, 'and you'd better believe it!' He also felt acutely, his company's lack of 'a heavy, direct fire weapon . . . something like a bazooka'.⁵⁹

The Vietnamese townspeople gave Australian soldiers the credit for repelling the Viet Cong attack and driving them out of Ba Ria.⁶⁰ They praised the Australians' courage and said they trusted them much more than the ARVN troops. While a number of civilian casualties appeared to have been caused by the rescue force (some of whom were treated by the A Company medical orderly and stretcher bearers), few, if any, were caused by the A Company group. The Australians limited the use of artillery to illumination fire because of the injury and damage conventional fire could have caused in the built-up area. The population appeared to respond by giving A Company a good deal of information regarding the location of Viet Cong elements.⁶¹

The Communist Vietnamese account of the action in Ba Ria is revealing:

At 7 a.m., a rescue force comprising dozens of tanks and a battalion of US troops from Suoi Ram base advanced towards Ba Ria along Road No 2. Battalion 445 destroyed 12 tanks, and caused much damage to the US battalion which was forced to withdraw . . . We lost 50 comrades in the battle of Ba Ria.⁶²

Notwithstanding the claimed destruction of twelve 'tanks', this account indicates that the Viet Cong believed that the rescue force was from the American 11th Armoured Cavalry Regiment, whose base—Blackhorse—was located in the vicinity of the Suoi

Ram, in Long Khanh province adjacent to Route 2, some seven kilometres north of the Phuoc Tuy province border.¹⁰²

Viet Cong harassing attacks on Long Dien also commenced with the start of the Tet Offensive in Phuoc Tuy. The estimated strength of the enemy in Long Dien district was 800, formed in two unidentified units. Their method of operation was for one unit to carry out attacks or resist allied efforts to evict them, while the other unit rested and supplied the active unit with ammunition. These units were well equipped, with AK47 assault rifles, K50 sub-machine guns and B40 (RPG2) rocket-propelled grenade launchers.¹⁰³ Communist accounts estimate the force in Long Dien at three platoons. Their targets included the Sub-Sector Headquarters, the District National Police Headquarters and the office of the Long Dien Village Administrative Committee. All three were destroyed.¹⁰⁴

In the late afternoon of 3 February, D Company, 3RAR, commanded by Major Peter Phillips, was deployed by 3 Troop, A Squadron 3rd Cavalry Regiment, to the northern outskirts of Long Dien to assist Sector authorities in clearing the town. An ARVN Ranger battalion had earlier been forced to withdraw due to heavy enemy fire. The following morning, commencing at about first light, D Company swept through the marketplace without incident. There followed, throughout the day, platoon patrolling and a number of minor contacts.¹⁰⁵ After receiving sniper fire in the marketplace on the morning of 5 February, D Company patrolled Route 23 to the east and west of the marketplace to secure it for the re-supply of the Sub Sector compound. That night, the company harboured in open ground well clear of Long Dien, with the intention of cordoning at first light the next day, 6 February, the village of Ap Long Kien, which lay 800 metres to the west. Once cordoned, the village was searched by South Vietnamese forces. D Company returned to Nui Dat on foot by the early afternoon. Casualties for the D Company operation were one killed and one wounded in action, for one Viet Cong killed and five wounded/escaped. Some enemy equipment, munitions and documents were captured.¹⁰⁶

The attitudes of the people of Long Dien during the communist offensive were very different from those experienced in Ba Ria. Following the heavy fighting in Ba Ria during 1–2 February, enemy pressure shifted to Long Dien, resulting in extensive loss of civilian lives and property. The situation was aggravated by the reluctance, observed by the population, of ARVN elements to engage the enemy. As a result, significant numbers of the population assisted the enemy, while the remainder appeared too frightened to assist the allied elements attempting to clear the town. The pro-Viet Cong attitude in Long Dien was attributed partly to the people witnessing ARVN soldiers' cowardice and looting, and partly to the ineffective government information programme.¹⁰⁷

On 7 February, the task force was again requested to assist with the security of Ba Ria, this time to secure the western approaches to the town from Viet Cong raids mounted from the Nui Dinh and Nui Thi. The Viet Cong had infiltrated over the bridge carrying Route 15 across the Song Dinh into the town. B Company 3RAR, commanded by Major Bert Irwin, was deployed into position in the late morning by trucks with APC escort. By last light the company had occupied a defensive position astride Route 15 by the Song Dinh bridge.¹⁰⁸

Following a night without incident, B Company moved the next morning to assist ARVN forces in clearing Viet Cong from Long Dien by establishing a blocking position