



Australian Government

Defence Honours and Awards Appeals Tribunal

Curran and the Department of Defence [2016] DHAAT 037 (25 October 2016)

File Number(s) 2015/025

Re **Mr Andrew Curran**
Applicant

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

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

Hearing Date 12 September 2016

DECISION

On 25 October 2016 the Tribunal decided to recommend to the Minister:

- a. that the decision by the Chief of Navy not to upgrade Naval Airman (Weapons) Andrew Curran's Naval Board Commendation to a gallantry award for his service as a helicopter gunner with the Royal Australian Navy Helicopter Flight Vietnam in 1970-71 be affirmed; and
- b. that he recommends that Navy consider presenting Mr Curran and those Naval Airmen who received the Naval Board Commendations for their service with the Royal Australian Navy Helicopter Flight Vietnam with the Service Commendation Badge to complement the Naval Board Commendations they received after their respective deployments.

CATCHWORDS

DEFENCE HONOUR – *Mention in Despatches* – *Gallantry Decorations* – *Naval Board Commendation - Vietnam* – *Royal Australian Navy* – *Navy Helicopter Flight Vietnam*

LEGISLATION

Defence Act 1903 – ss 110V(1), 110VA, and 110VB(1)
Defence Force Regulations 1952 – Reg 93B Sch 3

REASONS FOR DECISION

Introduction

1. The applicant, Mr Andrew Curran (Mr Curran) seeks review of a decision by the Chief of Navy (CN) to not support the upgrading of his Naval Board Commendation to a gallantry award for his service as a helicopter gunner with the Royal Australian Navy Helicopter Flight Vietnam (RANHFV) from September 1970 to June 1971. Mr Curran was commended for the ‘efficient execution of his duties’ on 22 September 1971.¹

2. On 19 May 2011, Mr Curran made a submission to the Tribunal’s *Inquiry into unresolved recognition for past acts of naval and military gallantry and valour* (the Valour Inquiry) claiming that:

*... I seem to have been recognised by the American Army but all I have from Australia is the letter from the Department of the Navy.*²

3. On 14 March 2013 the Australian Government referred Mr Curran’s submission to the CN through the Chief of the Defence Force for consideration. On 23 September 2014 CN, acting on advice contained in a review conducted by Doctor David Stevens of the Sea Power Centre – Australia (the Stevens Review), referred the submission to the Parliamentary Secretary to the Minister for Defence (the Parliamentary Secretary) recommending that he ask the Tribunal to ‘review the nomination’ for Mr Curran.³ The Stevens Review indicated that ‘an initial desktop review of naval submissions has been completed and the conclusion of the review team is that none (including Mr Curran) contain new or compelling evidence that would warrant a merits review’.⁴

4. On 5 March 2015 the Parliamentary Secretary asked the Tribunal to conduct a ‘further review’ of the submission for Mr Curran.⁵ On 30 June 2015, the Tribunal asked Mr Curran whether he would like to proceed with a review of recognition and invited him to submit further information.⁶ On 12 July 2015 Mr Curran confirmed he would like the review to proceed and he subsequently asked the Tribunal that he be considered for the award of the Mention in Despatches (MID).⁷

Tribunal Jurisdiction

5. Pursuant to s110VB(1) of the *Defence Act 1903* (the Defence Act) the Tribunal has jurisdiction to review a reviewable decision if an application is properly made to the Tribunal. The term *reviewable decision* is defined in s110V(1) and includes a decision made by a person within the Department of Defence or the Minister to refuse to recommend a person for an honour or award in response to an

¹ Department of the Navy Commendation dated 22 September 1971

² Submission 31 to the Valour Inquiry by Mr Andrew Curran dated 19 May

³ CN/OUT/2014/1259 dated 23 September 2014

⁴ Decision Brief for CN dated 9 April 2014, Paragraph (ii)

⁵ Parliamentary Secretary to the Minister for Defence MA14-001989 dated 5 March 2015

⁶ DHAAT OUT/2015/353 to Mr Curran dated 30 June 2015

⁷ Letter from Mr Curran to the Tribunal dated 12 July 2015

application. Regulation 93B of the *Defence Force Regulations 1952* defines a defence honour as being those awards set out in Part 1 of Schedule 3⁸. Included in the defence honours set out in Part 1 is the MID.

6. The Tribunal was satisfied that Mr Curran's submission to the Valour Inquiry constituted an application as defined in s110V(1)(c) of the Defence Act. The Tribunal also considered that the CN's referral of the matter back to the Tribunal via the Parliamentary Secretary for 'further review', constituted a refusal to recommend Mr Curran for a gallantry award (later identified as the MID) therefore satisfying the requirements of s110V(1)(a) and (b) of the Defence Act. The Tribunal therefore has jurisdiction to conduct the review and was satisfied that the *reviewable decision* is the decision by the CN in 2014 to refuse to recommend a gallantry award for Mr Curran.

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

Conduct of the review

8. In accordance with its *Procedural Rules 2011*, on 30 July 2015, the Tribunal wrote to the Secretary of the Department of Defence informing him of Mr Curran's submission and requested a report on the material questions of fact and the reasons for the decision made in relation to Mr Curran's request for a higher level of recognition for his service with the RANHFV.⁹ The Tribunal also requested that the Secretary provide copies of documentation relevant to the reviewable decision and that he provide a copy of Mr Curran's service record.

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

10. On 11 November 2015 the Tribunal provided the Navy sourced material to Mr Curran for comment.¹⁰ On 23 November 2015 Mr Curran acknowledged receipt of the material.¹¹

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

12. The Tribunal noted that in accordance with its *Procedural Rules 2011* the hearing into this matter would need to be conducted in public and accordingly, Mr Curran was invited to provide evidence at a hearing held in Canberra on 12

⁸ Under Section 85 of the *Defence Regulation 2016*, the *Defence Force Regulations 1952* continue to apply to an application made under those regulations before their repeal on 1 October 2016.

⁹ DHAAT/OUT/2015/430 dated 30 July 2015

¹⁰ DHAAT/OUT/2015/674 dated 11 November 2015

¹¹ Letter from Mr Curran to the Tribunal dated 23 November 2015

September 2016. Navy was represented at the hearing by Captain Bruce Legge, RAN from Navy Strategic Command. The Directorate of Honours and Awards in the Department of Defence (the Directorate) was not represented at the hearing.

Historical Background

13. In July 1967 the Australian Government announced that a detachment of Royal Australian Navy Fleet Air Arm personnel would join a United States Army aviation company to provide airborne support for allied forces operating in South Vietnam. This new flight, known as the RANHFV was integrated with the US Army 135th Assault Helicopter Company (AHC) flying helicopters in both utility and gunship configurations.¹²

14. AHCs comprised multiple platoons of Iroquois UH-1D troop carrier aircraft supported by a platoon of UH-1C gunships. These gunships carried forward firing mini-guns and rocket pods attached to the aircraft skids. Each aircraft also carried M60 machine guns fired by hand from the side doors. AHCs generally flew three types of mission: troop lift, combat assault and general support. During troop insertions and extractions, the gunships usually provided direct aerial fire support to the troop carriers before and as they landed. Each helicopter gunship crew comprised a pilot who commanded the aircraft, a co-pilot, a crew chief or load-master (who was also a door-gunner) and a second door-gunner.

15. The first RANHFV contingent became fully operational on 3 November 1967. During its tenure of almost four years, over 200 Fleet Air Arm personnel rotated through the RANHFV in four contingents of approximately one year's duration. Five Navy personnel died whilst serving with the RANHFV and 22 were wounded in action. 42 individuals were decorated for their service with 25 of these sailors receiving the MID.¹³ They were the most highly decorated Navy unit during the Vietnam war.¹⁴

Naval Airman (Weapons) A.J.R. Curran's Service and Vietnam Deployment

16. Mr Curran originally joined the Navy on 27 January 1951 and served until 26 July 1957. On 10 January 1969 Mr Curran re-enlisted for a six-year period and was trained as an armourer. He deployed with the Fourth Contingent of the RANHFV in September 1970 and during his deployment he was employed as a weapons mechanic and a door-gunner. His flying log book records his first combat mission occurring on 13 September 1970 and his last on 27 May 1971. The log book indicates that he flew 456 combat hours during his deployment.

17. Mr Curran was awarded the US Air Medal for Heroism on 19 May 1971 for his actions as a door-gunner on 17 December 1970. The citation states:

... upon notification that another helicopter was shot down in close proximity of enemy troops, his aircraft went to their assistance. Immediately Naval

¹² Defence Honours and Awards Appeals Tribunal, Report of the *Inquiry Into Unresolved Recognition for Past Acts of Naval and Military Gallantry and Valour* dated 21 January 2013, p.18-5 to 18-8

¹³ *Ibid.* p.18-26

¹⁴ Oral Evidence from Captain Legge, RAN - Navy Representative at the 12 September 2016 hearing

*Airman (Weapons) Curran began placing accurate suppressive fire upon the foe surrounding the downed crew members, enabling their successful rescue by extraction helicopter...*¹⁵

18. Mr Curran's service record indicates that he was wounded in action on 12 January 1971 when hit by shrapnel. The award of the US Purple Heart was approved by US Authorities as a result of this incident on 19 February 1971.¹⁶ The letters of recommendation for the Purple Heart were passed to his parent unit (HMAS *Albatross*) for presentation on 21 June 1971.¹⁷

19. On 22 September 1971, Mr Curran received the Australian Naval Board Commendation for 'the efficient execution of his duties whilst serving with the RANHFV from September 1970 to June 1971'.¹⁸ The Commendation stated:

As a gunner in helicopter gunships, he remained calm under hostile fire at all times. He also proved an able and respected administrator, working with great dedication to duty under arduous conditions.

20. Mr Curran returned to Australia with the last contingent of the RANHFV on 12 June 1971 and was discharged from the Navy on 16 January 1974.

Mr Curran's Submissions

21. As previously stated, on 19 May 2011, Mr Curran made a submission to the Valour Inquiry stating that he was a 'Naval Airman (Weapons) who served with the RANHFV as a volunteer "Gunship Gunner"'. He claimed that:

*... I seem to have been recognised by the American Army but all I have from Australia is the letter from the Department of the Navy. The letter about the Purple Heart from the Department of the Navy was shoved into my hands at the Guard House.*¹⁹

22. He said in his submission that 'I would like to present my records to the Tribunal' and he attached documents which included his Commendation, correspondence relating to his award of the Purple Heart and the nomination for the US Air Medal. On 12 July and 28 July 2015 Mr Curran wrote to the Tribunal reiterating his previous submission and including a copy of his flying log book. On 23 November 2015 after receiving the Defence Submission, Mr Curran again wrote to the Tribunal indicating that the award of the Naval Board Commendation had been treated with derision in 1971 by his colleagues.²⁰ In this letter he also requested that 'those sailors who received the Naval Board Commendation in those years' have it replaced with the 'currently awarded Naval Commendation Badge'.

¹⁵ The Air Medal – Form 4960-9 dated 20 December 2001

¹⁶ US Request for Orders dated 19 February 1971

¹⁷ Department of the Navy 38/3/2111P dated 21 June 1971

¹⁸ Department of the Navy Commendation dated 22 September 1971

¹⁹ Submission 31 to the Valour Inquiry by Mr Andrew Curran dated 19 May 2011

²⁰ Letter from Mr Curran to the Tribunal dated 23 November 2015

23. On 23 December 2015 Mr Curran wrote to the Tribunal and indicated that he was in the fourth RANHFV contingent and ‘someone’ in each of the previous contingents who did a similar job to him had been ‘awarded the Mention in Despatches Award’.²¹ He asserted that during his tour of duty he:

won a valour award and was wounded three times.

24. He stated that he ‘was flying with American pilots and crews’ and therefore ‘only had American records of his service in Vietnam ... and no Australian records made of my work during that time’. He asked if the Tribunal would consider him for the award of the Mention in Despatches.

25. During the hearing, the Tribunal asked Mr Curran why he thought he was eligible for the MID and on what evidence he based his request. He stated that the action for which he received the Air Medal was the most important event of his operational deployment and that he was relying on that citation as the description of his gallantry. He gave a detailed account of the action and also outlined the circumstances which resulted in him being wounded on three occasions. He stated that he had selected the MID as it was the ‘lowest of the lot’ and that he was aware that two other individuals who did a similar job to him had received the MID during previous deployments. He also strongly asserted that his application was ‘really trying to get attention to the 34 other people who received the Navy Commendation’ as he believed that this award was ‘inadequate recognition’.²²

The Defence Submission

26. Navy considered Mr Curran’s submission to the Valour Inquiry as part of a package of eight individual applications. The consideration was conducted before Mr Curran had clarified that he was seeking the award of the MID. The material relied upon by the CN in making his decision to refer the submission back to the Tribunal via the Parliamentary Secretary was the Stevens Review.²³ The Stevens Review indicated that the Tribunal’s own assessment guidelines from the Valour Inquiry had been used in the conduct of the review of the submission. Doctor Stevens relied upon archival material held in the Sea Power Centre, his personal knowledge of naval history and secondary published materials. No attempt was made to seek supplementary information from Mr Curran.

27. Doctor Stevens stated that Mr Curran ‘regards the Naval Board Commendation as only a “letter”, but did not specify the higher level of recognition he was seeking’. Doctor Stevens indicated that ‘the Purple Heart is only awarded to US citizens’ and that there is ‘no suggestion that Australian authorities failed to adhere to the proper process in deciding to award him the Naval Board Commendation’.²⁴ Doctor Stevens concluded that Mr Curran’s submission did not ‘warrant a merits review’ and that none of the material provided by Mr Curran:

²¹ Letter from Mr Curran to the Tribunal dated 14 December 2015

²² Oral Evidence by Mr Curran on 12 September 2016

²³ CN/OUT/2014/1259 dated 23 September 2014

²⁴ Ibid. p.11

contained new or compelling evidence that was not available at the time of the original decision to award him a Naval Board Commendation.

28. In reaching the decision to recommend to the Parliamentary Secretary that he consider directing the Tribunal to review Mr Curran's submission, the CN noted the recommendations of a Decision Brief that:

*... none of the received submissions warrant a merits review on the basis of either maladministration or compelling new evidence.*²⁵

29. Prior to the hearing, Navy provided answers to a number of questions asked by the Tribunal and the Directorate made contact with Mr Curran's contingent Commanding Officer. The advice where relevant is discussed in the merits review.

The Mention in Despatches

30. Section F of the *Pamphlet on Military Honours and Awards* (WO 12922) dated July 1960 provides descriptions and guidance on the eligibility criteria (conditions) for Imperial awards that were available during the Vietnam War.²⁶ The guidance states that the conditions for the award of the MID are that it may be awarded 'on the recommendation of Commanders²⁷':

for an act of bravery or for continuous good work over a long period.

Tribunal Consideration – The Merits Review

31. **General.** The Tribunal is required to review decisions 'on the merits'. This requires an examination of the merits of the matter in dispute rather than the lawfulness of the decision under review.²⁸ The merits review revolves around the evidence and accordingly, the Tribunal conducts an independent review, with values, expertise, methods and procedures of its own, and not those of the decision-maker.

32. The facts, law and policy aspects of the decision are all considered afresh and a new decision made.²⁹ The Tribunal reviews the decision, and not the reasons for the decision. In doing so, there is no legal onus of proof, and there is no presumption that the decision was correct.³⁰ The Tribunal is bound to make what it regards as the 'correct or preferable' decision and must reach a decision that is legally and factually correct.

33. **Mr Curran's Service Record.** There is no dispute that Mr Curran deployed with the Fourth Contingent of the RANHFV in September 1970 as a weapons mechanic. During the deployment he was also used a door-gunner. There is no

²⁵ Decision Brief for CN dated 9 April 2014, p.8

²⁶ Pamphlet on Military Honours and Awards 1960 WO Code No 12922 – War Office (MS3) July 1960, p20

²⁷ Ibid. Sect A.6.(b)

²⁸ *Council of Australian Tribunals Practice Manual* dated 7 April 2006 p.1.3.1.2

²⁹ Pearson, Linda, "Merit Review Tribunals", in Creyke, Robin and McMillan, John, *Administrative Law – the Essentials*, AIAL 2002, p. 68

³⁰ *McDonald v Director-General of Social Security* (1984) 1 FCR 354

dispute that he was awarded the US Air Medal for Heroism on 19 May 1971 for his actions as a door-gunner on 17 December 1970. The Tribunal notes Mr Curran's assertion that he was wounded three times however, the service record contains only one reference to injury which occurred on 12 January 1971 when he was hit by shrapnel. He was awarded the US Purple Heart as a result of this incident.

34. There is also no dispute that Mr Curran received the Australian Naval Board Commendation for 'the efficient execution of his duties whilst serving with the RANHFV from September 1970 to June 1971'.³¹ The service record also confirms that Mr Curran returned to Australia with the last contingent of the RANHFV on 12 June 1971 and was discharged from the Navy on 16 January 1974.

35. **Legislation.** The Tribunal was reasonably satisfied that the correct legislation to answer Mr Curran's claim for the MID is the *Pamphlet on Military Honours and Awards* (WO 12922) dated July 1960. The Tribunal noted that to be eligible for this award Mr Curran would need to be 'recommended by his Commander' and there would need to be evidence that he had performed 'an act of bravery' or provided 'continuous good work over a long period'.

36. Australian service personnel received honours and awards including the MID under the Imperial system until February 1975 when the Government introduced the Australian system. The two systems – the Imperial and the Australian; then operated in parallel until October 1992 when the Government announced that Australia would no longer make recommendations for Imperial awards:

*Her Majesty The Queen has indicated her view that it is appropriate that Australian citizens should be recognised exclusively by the Australian system of honours ... accordingly I have consulted with the Premiers of States and we have agreed that Australian Governments, both State and Commonwealth, will henceforth cease to make recommendations for British honours...*³²

37. As the Tribunal is unable to make recommendations relating to Imperial honours, it may only review eligibility for contemporary gallantry awards for Mr Curran.

38. **Contemporary Gallantry Awards.** The Star of Gallantry (SG), the Medal for Gallantry (MG) and the Commendation for Gallantry were established as Gallantry Decorations by Letters Patent on 15 January 1991 for the purpose of:

*'according recognition to members of the Defence Force and certain other persons who perform acts of gallantry in action.'*³³

39. The honours are governed by Regulations set out in the Schedule:

...

Conditions for award of the decorations

³¹ Department of the Navy Commendation dated 22 September 1971

³² Prime Minister of Australia Media Release 111/92 dated 5 October 1992

³³ *Commonwealth of Australia Gazette No. S25 – Gallantry Decoration Regulations* - dated 4 February 1991

3. (1) *The Star of Gallantry shall be awarded only for acts of great heroism or conspicuous gallantry in action in circumstances of great peril.*
 (2) *The Medal for Gallantry shall be awarded only for acts of gallantry in action in hazardous circumstances.*
 (3) *The Commendation for Gallantry may be awarded for other acts of gallantry in action which are considered worthy of recognition.*
4. *Each decoration may be awarded posthumously.*

...

Making of awards

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

...³⁴

40. The 1996 Interdepartmental Committee on Honours and Awards established the End of War List Vietnam and in so doing was required to equate Imperial awards to the Australian system as Imperial awards could no longer be awarded to Australians. The Committee determined that the MID was equivalent to the contemporary Commendation for Gallantry:

...the IDC found that the Australian Commendation for Gallantry and Distinguished Service directly replace the Imperial MID.³⁵

41. The Tribunal did not consider that a merits review could fairly adopt a simple 'equivalency' matrix and therefore discarded the advice that the MID was 'equivalent to the Commendation for Gallantry'. The Tribunal decided that in conducting the merits review it would consider all of the material before it, including evidence available from Mr Curran's deployment, citations, historical records, the service record and oral evidence, and Mr Curran's claims; as well as the evidence available to the decision maker in 2014. Noting that Imperial awards were no longer available, the Tribunal determined that it would then assess the evidence against the eligibility criteria for contemporary gallantry awards.

Evidence and Findings from the Deployment

42. **The Chain of Command.** The Tribunal noted Mr Curran's claim that he 'was flying with American pilots and crews' and therefore 'only had American records of his service in Vietnam ... and no Australian records made of my work during that time.'³⁶ The Tribunal did not accept this claim as the RANHFV was a formed Australian contingent with a clear internal chain of command culminating in the appointed Commanding Officer for the particular contingent. In the case of Contingent Four, this was Lieutenant Commander W.P. James, DSC, RAN.

43. Whilst the Tribunal accepted that Mr Curran may have been integrated into a US crew each time he flew and was rarely under the individual command of an Australian aircraft captain; his actions would have been advised to his Commanding

³⁴ Ibid.

³⁵ *Independent Review Panel of the End of War List – Vietnam* dated 25 August 1999, P.17

³⁶ Letter from Mr Curran to the Tribunal dated 14 December 2015

Officer on a regular basis as part of normal debriefing activities. During the hearing, the Navy agreed that this was a likely occurrence as Lieutenant Commander James had national command responsibilities and like Mr Curran, was integrated into the AHC.

44. The Tribunal noted that the Senior Naval Historical Officer provided advice regarding command and control in response to questions from the Tribunal in August 2016.³⁷ The advice stated:

many of the missions that he (Curran) flew were under the command of US Army pilots and not RAN pilots. This circumstance seems to have worked both for and against him insofar as recognition is concerned. Naval Airman Curran was decorated by the US for his overt skill and bravery as evidenced by the ... award of the US Air Medal for heroism. He also received (unusually) a Purple Heart. This is most likely due to his US pilots and mission commanders having visibility of his bravery and processing recommendations through the system they were familiar with - the US system.

45. The Tribunal was however satisfied that whilst the Commanding Officer of Contingent Four, Lieutenant Commander James may not have witnessed Mr Curran's individual actions, he would have been able to rely upon daily reports and mission 'after-action reviews' in determining whether Mr Curran should have been nominated for individual gallantry awards.

46. **US Air Medal for Heroism.** The Tribunal noted that Mr Curran was awarded the US Air Medal for Heroism on 19 May 1971 for his actions in 'bringing accurate suppressive fire upon the enemy' during a crew rescue operation on 17 December 1970.³⁸ Given the date of the action and the circumstances involved in a crew rescue, the Tribunal was reasonably satisfied that Mr Curran's Commanding Officer would have been aware of the action and would have had this information available to him to make a discretionary decision in relation to any further individual recognition. The Tribunal noted that several similar actions occurred during the RANHFV deployment to Vietnam and many individuals were recognised for gallantry with Australian awards.

47. The Tribunal also noted that Mr Curran draws significant motivation for his claims for a gallantry award from the fact that he was presented the US Air Medal. The Tribunal notes that the US Air Medal was awarded to foreign personnel on a relatively 'liberal' basis.³⁹ The Tribunal accepted the Navy view during the hearing that the Air Medal for Heroism was less frequently awarded than the standard Air Medal, which was usually awarded based on hours flown. Notwithstanding, the Tribunal noted that the Air Medal for Heroism was still given out to a reasonably large number of personnel for 'heroic performance of their duties'. Whilst not wishing to denigrate the award, the Tribunal was satisfied that the award itself could not be considered as a strong indicator that would satisfy the eligibility criteria for an

³⁷ E-mail from the Senior Naval Historical Officer to Commander Fothergill dated 1217 hours 29 August 2016

³⁸ HQ US Army Vietnam General Order 1703 dated 19 May 1971

³⁹ Oral Evidence from Captain Legge, RAN - Navy Representative at the 12 September 2016 hearing

Australian gallantry award. The fact that Mr Curran brought ‘accurate suppressive fire upon the enemy’ was not in the Tribunal’s view, an act of gallantry but rather a courageous and commendable performance of his specific duties as a door-gunner. Mr Curran advised during the hearing that he had been ‘trained and rigorously tested’ for his role as a door-gunner before commencing his operational duties.

48. **Was Mr Curran Nominated for a Gallantry Award in 1970.** There was no evidence produced by the Applicant or discovered by the Tribunal that suggested that Mr Curran had ever been considered or nominated for a gallantry award by his Commanding Officer. Defence advised that they had approached Lieutenant Commander James in August 2016 and he advised that to the best of his recollection, Mr Curran was ‘not nominated for any other Australian awards or honours by himself or any other members at the time’.⁴⁰ Lieutenant Commander James acknowledged that:

*what everyone did over there was "above and beyond" what would be expected of a Naval aviator however, when compared to the accomplishments/feats of others, Mr Curran's efforts did not warrant special recognition.*⁴¹

49. **Finding in Relation to the Evidence Available from the Deployment.** The Tribunal finds that Mr Curran’s Commanding Officer had sufficient material available to him to consider Mr Curran’s collective and individual actions and had made a conscious decision not to recommend an individual gallantry award.

Applicant Claims and Evidence Available to the Decision Maker

50. **The Reviewable Decision.** The Tribunal noted that the 2014 decision by the CN to not upgrade Mr Curran’s commendation and to refer the matter to the Tribunal for review (the reviewable decision) was based upon the Stevens Review. The Tribunal considered that the reason given by Doctor Stevens that none of the material presented ‘contained new or compelling evidence that was not available at the time of the original decision to award him a Naval Board Commendation’ was a valid reason to refuse to recommend a gallantry award and the final decision was open to the CN to make.

51. However, the recommendation that ‘none of the received submissions warrant a merits review’, was in the view of the Tribunal shallow. Whilst a merits review by Doctor Stevens may have reached the same conclusion, the Tribunal considered that such review would have helped Mr Curran to understand the reasons for the refusal.

52. **New Evidence.** During the hearing Mr Curran was asked if he could point to any other specific acts of individual gallantry or evidence to support his claim for the MID. He was unable to produce such evidence preferring to continue to rely on the citation for his Air Medal and the fact that he had been wounded as evidenced by the award of the US Purple Heart.

⁴⁰ E-mail Director Honours and Awards to the Tribunal dated 1418 hours 5 September 2016.

⁴¹ Ibid.

53. The Tribunal noted that Mr Curran is not mentioned in contemporary publications including the history of the RANHFV⁴² or Professor Jeffery Grey's publication on the RANHFV.⁴³ The Tribunal also noted that neither of these publications mentions the action on 17 December 1970 which resulted in Mr Curran's Air Medal for Heroism.

54. **Precedent.** The Tribunal noted Mr Curran's assertion 'someone' in each of the RANHFV contingents who did a similar job to him had been 'awarded the Mention in Despatches Award'.⁴⁴ The Tribunal did not accept that precedent was a justifiable factor in determining eligibility for defence honours and awards. Eligibility is determined by 'the conditions for the award of the decorations' as declared in the Instruments, Regulations and Determinations for each particular honour or award. Eligibility is determined in each matter according to its own facts and in the case of gallantry, decisions to grant awards are discretionary. The Tribunal dismissed Mr Curran's assertion regarding precedent, preferring to determine eligibility based on individual merits - precedent not being a relevant consideration.

55. **Finding in Relation to Applicant Claims and Evidence Available to the Decision Maker.** The Tribunal notes that no relevant new evidence was produced that would support Mr Curran's claims for a gallantry award and accordingly the Tribunal finds that the decision-maker's decision to not nominate Mr Curran for a gallantry award was a valid decision.

Mr Curran's Eligibility for a Gallantry Award

56. **The MID.** To be eligible for the award of the MID Mr Curran would need to demonstrate that he had performed 'an act of bravery'. The Tribunal noted that the only evidence available to support his claim was the citation supporting the Air Medal, the Purple Heart and Mr Curran's own oral evidence. The Tribunal gave some weight to the citation for the Air Medal noting that this award was made 'liberally' by the US to foreigners and the citation itself was not in the Tribunal's view compelling. Similarly, the Tribunal was not persuaded that the award of the Purple Heart was an indicator of gallantry. The Tribunal gave significant weight to the fact that Mr Curran was unable to point specifically to other acts of gallantry or bravery during his deployment.

57. The Tribunal also carefully examined Mr Curran's flying log book and concluded that from a gallantry or bravery perspective, the record of action was largely unremarkable. The Tribunal therefore could find no evidence that would support the claim that Mr Curran's actions in 1970/71 could meet the eligibility criteria for the MID.

58. The Tribunal noted that the guidance for the award of the MID required that the individual be 'recommended by his Commander'. In its consideration, the Tribunal gave great weight to the 2016 advice from Mr Curran's Commanding

⁴² <http://www.navy.gov.au/history/squadron-histories/ran-helicopter-flight-vietnam-history> accessed 13 September 2016

⁴³ Jeffery Grey, *Up top: the Royal Australian Navy and Southeast Asian Conflicts 1955-1972*, Allen and Unwin 1998 p 236-279

⁴⁴ Letter from Mr Curran to the Tribunal dated 14 December 2015

Officer that ‘Mr Curran’s efforts did not warrant special recognition’ and noted that he had not at time, or subsequently, recommended the award of the MID.

59. **Finding in Relation to Eligibility for the MID.** The Tribunal, giving significant weight to the fact that Mr Curran was unable to point specifically to other acts of gallantry or bravery during his deployment and great weight to the advice that his Commanding Officer had not recommended him, finds that Mr Curran is not eligible for the award of the MID for his service as a helicopter gunner with the RANHFV in 1970-71.

60. **Contemporary Gallantry Awards.** For completeness, the Tribunal turned to an assessment of Mr Curran’s eligibility for contemporary gallantry awards. The Tribunal noted that the current suite of gallantry awards provide recognition for individuals ‘who perform acts of gallantry in action’. The SG is awarded ‘only for acts of great heroism or conspicuous gallantry in action in circumstances of great peril’; the MG is for ‘acts of gallantry in action in hazardous circumstances’ and the Commendation for Gallantry may be awarded for ‘other acts of gallantry in action which are considered worthy of recognition’.

61. The Tribunal reviewed Mr Curran’s Air Medal for Heroism citation and was satisfied that the actions described were undeniably ‘in action’. The Tribunal accepts that the citation was crafted almost 45 years ago and was written to support a foreign award, however with no first-hand accounts available other than the wording of the citation, the Tribunal was satisfied that it could only assess the action using the contemporaneous evidence in the citation.

62. The Tribunal turned to the definition of gallant - ... ‘brave and dashing’, with dashing described as ‘impetuous; spirited; lively’.⁴⁵ The Tribunal noted that nowhere in the citation does it refer to Mr Curran’s specific actions being ‘brave and dashing’. The Tribunal noted that the key phrase in the citation which relates to Mr Curran’s specific action states:

... Naval Airman Curran began placing accurate suppressive fire upon the foe surrounding the downed crew members, enabling their successful rescue by an extraction helicopter ...

63. The Tribunal was not satisfied that the citation adequately described Mr Curran’s actions as ‘gallant’. The Tribunal considered that the evidence and the citation does not suggest that Mr Curran exposed himself to greater risk than would be expected from a helicopter door-gunner in any similar circumstance. The Tribunal was reasonably satisfied that by ‘placing accurate suppressive fire upon the foe’, Mr Curran was doing what he was trained to do and what was expected of him. Whilst his circumstances were undeniably hazardous, the Tribunal did not believe that his actions could be considered to have been ‘gallant’.

64. **Finding in Relation to Contemporary Gallantry Awards.** The Tribunal finds that there is insufficient evidence in the description of Mr Curran’s actions on 17 December 1970 to support a gallantry recommendation. Accordingly, the Tribunal

⁴⁵ *The Macquarie Encyclopaedic Dictionary*, Macquarie University 1990

determined that it could not recommend Mr Curran for a contemporary gallantry award.

Other Issues - The Award of the Naval Board Commendation

65. The Tribunal noted Mr Curran's assertion that the award of the Naval Board Commendation had been treated with derision in 1971 by his colleagues.⁴⁶ Whilst this may have been the case, the fact remains that Mr Curran was formally commended for his overall performance and the Commendation Scheme was, and remains to this day, a means of 'recognising outstanding achievement, or specific acts of bravery for which awards from within the Australian Honours System are not an appropriate medium of recognition'.⁴⁷

66. The Tribunal sought advice from Navy as to the process of nomination and the quantity of Commendations awarded to the RANHFV for service in Vietnam. The response indicated that 34 commendations were issued and that:

*... it is not known who specifically wrote Naval Airman Curran up for recognition but it would have received the attention and approval of his then commanding officer, Lieutenant Commander WP James, DSC, RAN, prior to being forwarded to the Naval Board for consideration ...*⁴⁸

67. However, the Directorate also sought advice from Lieutenant Commander James regarding the nomination process for the Commendation.⁴⁹ He stated that he was:

unsure who exactly nominated Curran or the others for the Navy Board Letter of Commendation at the time. He was not advised of it until after the event and the commendations along with the other awards were approved and publicly released.

68. The Tribunal noted that contemporary Service recognition is more formal and includes the presentation of a Service Commendation in the form of a Certificate of Commendation and a Commendation Badge. The Tribunal asked Navy prior to the hearing if it would be prepared to replace Mr Curran's 1971 letter of commendation with a contemporary Commendation badge. Advice from the Senior Naval Historical Officer was that provision of the badge:

... could be viewed as a considerate and practical means of acknowledging his 'efficient execution of his duties whilst serving in the Royal Australian Navy Helicopter Flight Vietnam'...

and

*... should this be agreed to by CN it would most likely be instigated by Navy.*⁵⁰

⁴⁶ Letter from Mr Curran to the Tribunal dated 23 November 2015

⁴⁷ *Defence Honours and Awards Manual* dated September 2012, Vol 1, Chap 39

⁴⁸ E-mail from the Senior Naval Historical Officer to Commander Fothergill dated 1217 hours

29 August 2016

⁴⁹ E-mail Director Honours and Awards to the Tribunal dated 1418 hours 5 September 2016

69. The Tribunal noted that the policy and provisions for the Defence Commendation Scheme are articulated in the Defence Honours and Awards Manual.⁵¹ The provisions include the ability for an individual to seek retrospective issue of a commendation badge by application to the Service headquarters.⁵² The Tribunal also noted that during the hearing, Navy indicated that they had the names of the 34 individuals who were commended from the RANHFV.

70. **Recommendation Regarding the Contemporary Service Commendation.** The Tribunal does not have jurisdiction to consider Service Commendations and badges. However, given the advice by Navy that provision of the contemporary Service Commendation Badge to Mr Curran could be viewed as a considerate and practical means of acknowledging his service in Vietnam, the Tribunal recommends that Navy consider presenting Mr Curran with the Service Commendation Badge to complement his existing letter of commendation and to extend this presentation to the other individuals who served with the RANHFV and were commended for their service.

Finding in Relation to the Merits Review

71. No previously missing, new or compelling evidence was produced that would cause the Tribunal to conclude that Mr Curran's actions during his deployment to Vietnam with the RANHFV were more substantial than are recorded in his records. Accordingly, the Tribunal finds that Mr Curran's performance of duty during his deployment with the RANHFV was commendable and that he was appropriately recognised through the presentation of the Naval Board Commendation. The Tribunal finds that Mr Curran's individual actions on 17 December 1970, whilst undeniably hazardous, did not meet the threshold for a gallantry award. This finding does not in any way diminish the contribution Mr Curran made to his country during his service in Vietnam or during his naval service.

TRIBUNAL DECISION

72. The Tribunal decided to recommend to the Minister:
- a. that the decision by the Chief of Navy to not upgrade Naval Airman (Weapons) Andrew Curran's Naval Board Commendation to a gallantry award for his service as a helicopter gunner with the Royal Australian Navy Helicopter Flight Vietnam in 1970-71 be affirmed; and
 - b. that he recommends that Navy consider presenting Mr Curran and those Naval Airmen who received the Naval Board Commendations for their service with the Royal Australian Navy Helicopter Flight Vietnam with the Service Commendation Badge to complement the Naval Board Commendations they received after their respective deployments.

⁵⁰ E-mail from the Senior Naval Historical Officer to Commander Fothergill dated 1217 hours 29 August 2016

⁵¹ *Defence Honours and Awards Manual* dated September 2012, Vol 1, Chap 39

⁵² *Ibid.* 39.28